

Padmanabhan A. Vs. Joint Commissioner of Labour and anr.

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Court : Chennai

Decided On : Oct-23-2008

Reported in : (2009)IIILLJ414Mad; (2009)2MLJ560

Judge : R. Banumathi, J.

Acts : Payment of Gratuity Act - Sections 4(6) and 5A; Companies Act - Sections 385(1)(C); Uttar Pradesh Panchayat Raj Act; Industrial Disputes Act - Sections 17B; Indian Penal Code

Appeal No. : W.P. No. 12297/2006

Appellant : Padmanabhan A.

Respondent : Joint Commissioner of Labour and anr.

Advocate for Def. : N. Senthilkumar, AGP, ;V. Karthik, Adv. for ;T.G. Gopalan and Co.

Advocate for Pet/Ap. : V. Prakash, Sr. Counsel for ;S.S. Vasudevan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

R. Banumathi, J.

1. Petitioner seeks writ of certiorarified mandamus to quash the orders of the 1st respondent in P.G.A. No. 38/2005 on December 26, 2005 and to direct the 2nd respondent to pay a sum of Rs. 59,466/- as gratuity.

2. Brief facts which led to the filing of the writ petition are as follows:

(i) 2nd respondent is a commercial establishment acting as an agent for other manufacturers Petitioner joined the services of the 2nd respondent in 1957 and was deputed to the holding company and he was working as a salesman in charge of sale of CO2. Petitioner was in constant touch with dealers and he was overseeing the maintenance of records relating to cylinders in the CO2 department of Nellikupam Factory.

(ii) In March 1990, certain discrepancies relating to receipt of empty cylinders from A.B. Doraiswamy & Co., Pondichery delivered on November 30, 1988 in the cylinder ledger account came to be noticed. It was also noticed that there were manipulation of entries in the cylinder ledger account and the bills and there was payment of gratification to the petitioner and CO2 clerk Nicholas in March/April 1989, which came to light only In March 1990. After issuing charge memo, enquiry was held against the said Nicholas and the petitioner. Enquiry Officer held that charges against the petitioner and the said Nicholas proved.

(iii) On the basis of the report of the Enquiry Officer on August 22, 1991 second show cause notices were issued to the petitioner and Nicholas proposing punishment of dismissal. After considering their representations, orders were passed on September 10, 1991 dismissing the petitioner and Nicholas from service. Nicholas accepted the order of dismissal.

(iv) Petitioner raised an Industrial Dispute challenging his dismissal in I.D. No. 146/1992 before the II Additional Labour Court, Madras. The Labour Court passed an award dated June 14, 1994 directing reinstatement of the petitioner with continuity of service and attendant benefits. The 2nd respondent challenged the award of the Labour Court in I.D. No. 146/1992 in the High Court, Madras in W.P. No. 19032/1994. The High Court by its order dated December 10, 1997 allowed the writ petition and set aside the award of the Labour Court and upheld the

dismissal of the petitioner. The writ appeal No. 1668/1997 preferred by the petitioner before the Division Bench of High Court, Madras was dismissed on November 19, 1999 against which the petitioner took up the matter to Supreme Court by way of SLP which was also dismissed on April 10, 2000.

(v) After the order of dismissal from service was issued to the petitioner, on September 10, 1991, a show cause notice was issued to the petitioner asking to give explanation as to why the gratuity should not be forfeited for his proved misconduct of dishonesty in connection with company's business. On September 13, 1991, the petitioner submitted his explanation. After taking into consideration the explanation submitted by the petitioner, on October 9, 1991 orders were passed forfeiting gratuity amount to the petitioner,

(vi) Being aggrieved by the order of forfeiture of gratuity amount the petitioner filed, appeal before the Controlling Authority in P.G. No. 48/2004. By order dated November 29, 2004 the Controlling Authority under the Payment of Gratuity Act held that the dismissal of the petitioner was for the offence involving moral turpitude and therefore Management was justified in forfeiting the gratuity amount.

3. As against the order of Controlling Authority petitioner preferred appeal to the Appellate Authority - 1st respondent in PGA 38/2005. By the impugned order dated December 26, 2005, Appellate Authority held that the misconduct held by the petitioner would amount to an offence involving moral turpitude and therefore denial of gratuity was held to be justified.

4. The Impugned order is challenged on the ground that the alleged misconduct would not constitute an offence involving moral turpitude within the meaning of Section 4(6)(b)(ii). Placing reliance upon Jaysing Rangarao Raut v. Maharashtra State Electricity Board : 1980 I LLJ 117 (Bom), the learned Counsel submitted that to constitute an offence involving moral turpitude it must be an offence falling within the provisions of Indian Penal Code and mere act of misconduct would not fall within the meaning of offence constituting moral turpitude and therefore the impugned order cannot be sustained.

5. Learned Counsel for the 2nd respondent, Mr. V. Karthik, has contended that dismissal of the petitioner having been upheld by the Hon'ble Supreme Court, the Court cannot take a different view in respect of payment of gratuity. Drawing Court's attention to the facts the learned Counsel for 2nd respondent would further submit that the 2nd respondent was justified and well within the limits to forfeit the gratuity of the petitioner. It was further argued that the act of manipulation of records and receiving illegal gratification would certainly be an offence involving moral turpitude and therefore forfeiture of gratuity by the management was legal and permissible.

6. Section 4, Sub-section (6) provides forfeiture of gratuity. Section 4, Sub-section (6) reads as under:

4. Payment of gratuity. (1) Gratuity Shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years..

(6) Notwithstanding anything contained In the Sub-section (1),:

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee (may be wholly or partially forfeited)

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence Is committed by him in the course of his employment.

7. Section 4, Sub-section (6) consist of two parts:

The first part is in respect of loss causing any damage, or loss or destruction of the property belonging to the employer;

The second part relates to forfeiting of gratuity if the service of the employee was terminated for any act which constitutes an offence involving moral turpitude.

8. There is no denying that clerk Nicholas and the petitioner were found guilty of manipulating entries in the records and are alleged to have received gratification from one Dakshinamoorthy. Concededly for the alleged misconduct the petitioner was dismissed from service which was confirmed up to the level of Supreme Court.

9. In the light of rival contentions and the facts, the point falling for consideration is whether the alleged misconduct would constitute an offence involving moral turpitude under Section 4(6)(b)(ii).

10. Learned senior counsel for the petitioner Mr. V. Prakash, submitted that payment of gratuity being beneficial to the 'employee 'Moral turpitude' cannot be so widely interpreted. Learned Counsel further argued that any omission or commission may be a misconduct as per Standing Rules, but, such misconduct by itself is not punishable by any law constituting an offence, involving moral turpitude.

11. It was further argued that in respect of manipulation of records no loss was caused to the Management and no criminal case was registered against the petitioner and the case did not end in conviction. It was further argued that when no criminal case was registered against the petitioner, the petitioner cannot be said to have committed an offence involving moral turpitude.

12. Countering the arguments learned Counsel for 2nd respondent submitted that for invoking Section 4(6)(b)(ii) conviction is not a condition precedent. Learned Counsel for the Management further argued that when the alleged act of misconduct involving dishonesty the act would squarely fall within Section 4(6)(b)(ii). In support of his contention the learned Counsel placed reliance upon Allahabad Bank and Anr. v. Deepak Kumar Bhola : (1997) 4 SCC 1 : 1997 I LLJ 854.

13. As rightly submitted by the learned Counsel for the respondent conviction is not a condition precedent under Section 4(6)(b)(ii). Sub-section (ii) of Section 4(6)(b) is silent on the conviction while so to insist upon the conviction in a criminal case would be a stress upon the intention of the legislature. The learned Counsel for petitioner is not right in submitting that to invoke Section 4(6)(b)(ii) registration of criminal case and conviction thereon for alleged act of misconduct is essential.

14. Petitioner is alleged to have abetted CO2 clerk Nicholas in manipulation of record whether the alleged misconduct would constitute an offence involving moral turpitude is the main point for consideration.

15. In P. Ramanathan Aiyar's The Law LEXICON-2nd Edition meaning of moral turpitude is explained as under:

Moral Turpitude. Anything done contrary to justice, honesty, principle, or good morals; an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man.

The morally culpable quality held to be present in some criminal offences as distinguished from others (Section 385(1)(C), Companies Act)

A term not clearly defined - what constitutes moral turpitude, or what will be held such, is not entirely clear. A contract to promote public wrong, short of crime, may or may not involve it. If parties intend such wrong, as where they conspire against the public interests by agreeing to violate the law or some rule of public policy, the act doubtless involves moral turpitude. When no wrong is contemplated, but is unintentionally committed, through error of judgment, it is otherwise. (Pullman's Place Car Co. v. Central Transp. Co. 65 Fed 158, 161.) Everything done contrary to Justice, honesty, modesty, or good morals is done with turpitude, so that embezzlement involves moral turpitude. Anything done contrary to justice, honesty, principle or good morals, an act of baseness, vileness of depravity in the private and social duties which a man owes to his fellowmen or society in general, contrary to the accepted and customary rule of right and duty between man and man,'

16. In *Buddha Pitai v. Sub-Divisional Officer, Malihabad Lucknow* : AIR 1965 All 382 (FB), some provisions of U.P. Panchayat Raj Act were examined by the Full Bench of the (Allahabad High Court, while delivering the majority judgment, Desai, C.J. observed as follows:

In deciding whether a person is convicted of an offence involving moral turpitude there are two ways of looking at the matter, one of considering the nature of the offence, punished under the statutory provision. Section 5-A speaks of 'an offence involving moral turpitude' and suggests that what is to be seen is the nature of the offence which is made punishable by 'the statutory provision and not that of the act which is brought within its ambit. It must be the offence, i.e. the ingredients of the offence prescribed by the statutory provision, and not the act actually done, which must involve moral turpitude.

17. Referring to the above decision, in *Jaysing Rangarao Raut v. Maharashtra State Electricity Board* (supra) considering the meaning of the term moral turpitude the Bombay High Court has held as under : 1980 I LLJ 117 at p. 121:

6 ...The term 'moral turpitude' by its very nature is somewhat nebulous because it involves an examination of an action in the light of the prevailing moral norms. Unlike legal norms, moral norms are somewhat nebulous. They can vary from time to time, from society to society and even from individual to individual. Hence it is quite possible that an action which may be violative of moral norms in one society may appear acceptable to another society. Hence one can only judge the action in any given case in the light of what one considers to be the prevailing moral norms of the society in which such an action has taken place. Secondly, action should involve turpitude. Hence, the action should not merely be contrary to moral norms but it should involve a violation of the moral code in such a manner that it indicates baseness or depravity of the character.

18. The terms 'moral turpitude' has been discussed in number of cases. In *Durga V. Singh v. State of Punjab* : AIR 1957 Punjab 97, while discussing the conduct of a police constable, the Court has held that 'the term ('moral turpitude') has generally been taken to mean to be a conduct contrary to Justice, honesty, modesty or good morals and contrary to what a man owes to a fellow-man or to

society in general.

19. A similar test has been propounded in *Baleshwar Singh v. District Magistrate and Collector, Banaras* : AIR 1959 All 71, where the Court has once again reiterated that 'moral turpitude' means anything done contrary to Justice, honesty, modesty or good morals. It implies, depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude but it would be so, if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. The above tests are couched in a language which is capable of embracing acts which one would not normally consider as acts of moral turpitude; every breach of duty which a man owes to his fellow-men or to the society may not necessarily involve moral turpitude. A man may commit a breach of his civic duties and harm his fellow-men. His action may be in violation of the duty which he owes to the society. Nevertheless the act may not involve any moral turpitude. A standard example is a breach of the traffic rules. It is quite possible that by committing a breach of the traffic rules a man may violate his duty to the other road users and put them in unnecessary jeopardy. But violation of traffic rules is not normally considered as an action involving moral turpitude. Basically all laws, rules and regulations are framed for an orderly conduct of transactions in a complex society. It is quite possible that every breach of such laws, rules and regulations would involve a violation of duty to others. But every such violation does not involve moral turpitude. Hence a more precise test for determining whether a particular offence involves moral turpitude or not, is required.

20. From the discussion in the above cases it becomes clear that an offence may be considered as involving moral turpitude it is necessary that there should be transgression of the moral code coupled with baseness or depravity of character.

21. The expression moral turpitude means anything done contrary to justice, honesty, modesty or good morals. Every false statement made by a person may not be an offence involving moral turpitude; but it would be so, if it discloses vileness or depravity in the doing of any private and social duty which a person

owes to his fellow-men or to the society in general.

22. In the light of the above, in the present case whether manipulation of records in entering number of cylinders can it be said to be an act involving moral turpitude. The petitioner and CO2 clerk Nicholas are said to have manipulated number of cylinders in the delivery note. One Dakshinamoorthy is said to have paid Nicholas gratification of Rs. 5000/-. It is alleged that the petitioner was paid gratification of Rs. 11,000/-. Undoubtedly receiving gratification is a serious misconduct; but every such misconduct cannot be said to be depravity of character involving moral turpitude so as to deprive the petitioner of the gratuity payable to the petitioner. It is for the alleged misconduct the petitioner was dismissed from services. The alleged misconduct cannot be considered as an offence involving moral turpitude to forfeit the gratuity amount payable to the petitioner.

23. Drawing Court's attention to payment made under Section 17-B of the I.D. Act, the learned Counsel for 2nd respondent/Management would submit that the petitioner was sufficiently paid under Section 17-B of the I.D. Act and even after confirmation of dismissal order the said amount was not ordered to be refunded and therefore on equity, management may not be directed to pay gratuity amount of Rs. 59,466/- claimed by the petitioner. Of course as rightly submitted by Mr. V. Karthik learned Counsel for 2nd respondent-management has paid the amount under Section 17-B to the petitioner. But that cannot be a ground for declining payment of gratuity to the petitioner.

24. 2nd respondent/Management was not justified in forfeiting the gratuity therefore the impugned orders are liable to be set aside. Controlling Authority and the Appellate Authority erred in finding that the alleged act of misconduct would constitute an offence involving moral turpitude under Section 4(6)(b)(ii)

25. In the result the writ petition is allowed and the impugned orders are quashed. The 2nd respondent/Management is directed to disburse the gratuity amount of Rs. 59,466/- to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

