

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(L) No. 236 of 2018

The Project Officer, Madhuban Colliery of M/s. Bharat Coking Coal Ltd., P.O. – Kharkhari, P.S.-Madhuban, District-Dhanbad, PIN – 828125 through Sri Piyush Kisore, son of Dr. Nand Kishore Sahu, resident of Qr. No. C-4. Harina Bagan Colony, Bhaghmara, P.O. & P.S.- Bhaghmara, District-Dhanbad. **Petitioner**

Versus

1. Union of India through its Secretary, Ministry of Labour, Government of India, Shashtri Bhawan, P.O. & P.S. & District- New Delhi, PIN-110001.

2. The Controlling Authority under Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (Central), Dhanbad-II, having its office at ‘Shram Bhawan’, Jagjivan Nagar, P.O.-Jagjivan Nagar, P.S.-Saraidhela, District-Dhanbad, PIN-826003.

3. Raju Beldar aged about 38 years, S/o Late Chota Chandradhan Beldar, R/o: New Colony Parbaniya Madhuban, P.O. Nadkhurkee, P.S. Madhuban, District- Dhanbad. **Respondents**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner	: Mr. A.K. Mehta, Advocate
For the U.O.I.	: Mr. Shiv Kumar Sharma, Sr. P.C.
	: Mr. Nishant Kumar, Advocate
	: Mr. Jeetendra Kumar Mishra, Advocate
For the Resp. No. 3	: Mr. Anuj Kumar Trivedi, Advocate
	: Mr. Amitesh Kumar Geasen, Advocate

13/14.10.2024

1. Heard the learned counsel for the parties.
2. This writ petition has been filed for the following reliefs:-

“(i) For issuance of an appropriate writ in the nature of certiorari or any other appropriate writ for quashing that part of the findings/order dated 5.12.2014 (Annexure-2) passed by the Respondent No. 2, the Controlling Authority under the Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (Central), Dhanbad-II, by which the petitioner has been directed to pay the Gratuity amounting to Rs. 1,95,702.00, although an amount of Rs. 33,139.00 towards Gratuity has already been paid to the Respondent No. 3 and therefore, needs to be set off;

AND

(ii) For quashing the order of the Respondent No. 2 contained in Letter No. 36/(39)/2013/E-4 dated 29/30.05.2017 (Annexure-6); whereby and whereunder the Respondent No. 2 has informed the petitioner that he has

no power of review and therefore, the order to pay the entire amount requires to be complied;

AND

(iii) For issuance of such other writ, order or direction as Your Lordships may appear just and proper for doing conscionable justice to the petitioner.”

3. The records of the case reveal that the ex-employee who was respondent No. 3 expired during the pendency of this case and he was substituted by the present respondent No. 3.

Argument of the writ petitioner.

4. The learned counsel for the petitioner submits that the order of the Controlling Authority Under Payment of Gratuity Act 1972 dated 5th December, 2014 (Annexure-2) is under challenged in the present proceedings only to the extent that the amount of Rs. 33,139.80 which was paid to the ex-employee is required to be adjusted.

5. The learned counsel submits that at the time of adjudication of the said case by the controlling authority the proof of the payment of Rs. 33,139.80/- towards gratuity could not be substantiated by any documentary evidence and therefore, such payment was disbelieved by the authority and the total amount of gratuity was quantified at Rs. 1,95,702.00 without adjusting the amount of Rs. 33,139.80 already paid. He submits that subsequently the petitioner applied for information from the branch manager of Allahabad Bank vide letter dated 26.10.2015 who certified that an amount of Rs. 32,969.00 arising out of cheque No. 441134 dated 02.07.2009 was credited in the account of the ex-employee after deducting Rs. 170/-. The learned counsel for the petitioner submits that the said credit of Rs. 32,969.00 was on account of gratuity which requires adjustment.

6. The learned counsel has further submitted that a supplementary affidavit has been filed in the present case bringing on record the register maintained by the petitioner with respect to the various employees regarding payment of gratuity and the name of the concerned ex-employee is found at page No. 9 of the supplementary affidavit dated 08.08.2019 giving the details of the cheque number and the gratuity amount of Rs. 33,139.00.

7. The learned counsel submits that after receiving the aforesaid document from the bank the petitioner approached the controlling authority for review of the order seeking adjustment of the amount of Rs. 33,139.00 against the gratuity already paid and to pass appropriate order but the said authority vide order dated 29th May, 2017 has refused to entertain the petition by observing that there is no power of review. The learned counsel submits that thereafter the writ petition was filed on 12.01.2018.

8. He has submitted that the entitlement of gratuity is not under challenge but the amount of gratuity already paid to the extent of Rs. 33,139.00 to the ex-employee is sought to be adjusted by filing this writ petition.

Arguments of the private respondent.

9. The learned counsel appearing on behalf of the private respondent has submitted that a rejoinder to the supplementary affidavit dated 08.08.2019 has been filed mentioning that the said amount of Rs. 33,139.00/- was paid in connection with the revised basic wage rates for piece rated workers and the payment was not on account of gratuity. The learned counsel has submitted that the document in connection with bank only refers to transfer of the amount and no heading for such transfer has been mentioned. He has further submitted that a copy of the gratuity register which has been filed before this Court by way of supplementary affidavit was always available with the petitioner but there is no explanation for not submitting the same before the authority. The learned counsel submits that it is a disputed fact as to whether the amount of Rs. 33,139.00 which is claimed to have been credited in the account of the ex-employee was on account of gratuity or under some other head.

10. The learned counsel has also submitted that the so-called payment of gratuity amounting to Rs. 33,139.00 has not been included in the statutory form (L) register maintained under rule 8 of Payment of Gratuity (Central) Rules 1972 and therefore, the said amount cannot be said to be a payment against gratuity.

11. The learned counsel has also submitted that the order by the controlling authority was passed on 05th December, 2014 and the petition seeking review, though it was not maintainable, was filed on 07.11.2015 i.e. after expiry of more than one year from the order passed by the controlling authority and the same has been rightly declined as the review is not maintainable.

12. The learned counsel has also submitted that even the appeal against the order of the controlling authority had become time bared by the time the so-called review petition was filed which in turn was not maintainable. He has also submitted that there is strict time line of maximum period of 120 days for filing of appeal. The learned counsel submits that the impugned order passed by the controlling authority may not be set aside in the writ jurisdiction. He has also submitted that the petitioner had also prepared a cheque for payment of the amount as contained in Annexure 7 to the writ petition but necessary formalities having not been done, the ex-employee could not receive the said payment and ultimately the ex-employee has expired.

Findings of this court.

13. A proceeding for payment of gratuity was initiated by the ex-employee on 28.05.2014 and after due opportunity to the concerned parties the total amount was quantified at Rs. 1,95,702.00. Although, the petitioner had claimed that an amount of Rs. 33,139.80 was paid to the applicant towards gratuity but no documentary proof was filed to that effect and consequently the said amount was not adjusted and a direction was issued to pay an amount of Rs. 1,95,702.00 with Simple Interest @ Rs. 5% per annum.

14. The order dated 05.12.2014 passed by the controlling authority became final as no appeal was filed by the petitioner.

15. Much after the order dated 05.12.2014 passed by the controlling authority, the petitioner approached the Allahabad Bank vide letter dated 26.10.2015 and got a certificate that an amount of Rs. 33,139.00 was credited in the account of the ex-employee through cheque No. 441134 dated 02.07.2009 and while crediting the amount, an amount of Rs. 170/- was deducted on account of bank charges and

consequently the net credited amount was only Rs. 32,969.00/-, the statement of account has been annexed along with the writ petition. The statement of account does not reflect under which head the amount was credited.

16. This Court further finds that the petitioner has filed a supplementary affidavit trying to bring on record the so-called register regarding payment of gratuity for the first time in writ proceedings although, no such document was produced by the petitioner before the authority either in the original proceedings or even when the petitioner filed a petition seeking review of the order passed by the controlling authority. The respondent No. 3 has vehemently opposed the stand of the writ petitioner that the amount credited in the bank account to the extent of Rs. 32,969.00/- was on account of gratuity. Rather, the respondent No. 3 has claimed that the credit amount of Rs. 32,969.00 was on account of payment due to the ex-employee under a different head.

17. This Court finds that there is no explanation on the part of the petitioner as to why they did not produce the so-called gratuity register before the controlling authority at any point of time, either at the time of original proceedings or even at the time of so-called review proceedings.

18. The fact also remains that the petitioner has not been able to show any provision of law under which the review petition could be filed by the petitioner.

19. The Payment of Gratuity Act, 1972 is a complete code in itself as held in the judgement passed by the Hon'ble Supreme Court in the case of *State of Punjab v. Labour Court, (1980) 1 SCC 4* wherein it has been held as under: -

7. It is apparent that the Payment of Gratuity Act enacts a complete code containing detailed provisions covering all the essential features of a scheme for payment of gratuity. It creates the right of payment of gratuity, indicates when the right will accrue, and lays down the principles for quantification of the gratuity. It provides further for recovery of the amount, and contains an especial provision that compound interest at nine per cent per annum will be payable on delayed payment. For the enforcement of its provisions, the

Act provides for the appointment of a controlling authority, who is entrusted with the task of administering the Act. The fulfilment of the rights and obligations of the parties are made his responsibility, and he has been invested with an amplitude of power for the full discharge of that responsibility. Any error committed by him can be corrected in appeal by the appropriate Government or an Appellate Authority particularly constituted under the Act. ”

20. It has been held by Hon’ble Supreme Court in Haryana *State Industrial Development Corpn. Ltd. v. Mawasi*, (2012) 7 SCC 200, paragraph 26 that the power of review is a creature of the statute and no court or quasi-judicial body or administrative authority can review its judgment or order or decision unless it is legally empowered to do so.

21. Thus, the power of review is not inherent but must be conferred by law either specifically or by necessary implication.

22. The learned counsel for the petitioner has not been able to satisfy this Court that the petition seeking review was maintainable. The respondent authority has rightly refused to entertain the review petition by observing that there is no provision for review under the aforesaid Act of 1972 or the rules framed there under.

23. This is over and above the fact that the matter was sought to be reopened by filing review petition, much after the original order passed by the adjudicating authority became final. The petition for review was filed on the basis of certain information from the bank under right to information regarding credit of certain amount in the bank account of the ex-employee at the instance of the petitioner by issuing a cheque.

24. However, for the sake of argument, even if the review petition is considered on merits, the review was not maintainable. The order sought to be review was neither alleged to suffering from any error or mistake apparent on the face of record nor the ground on which the order was sought to be review [that is, receipt of information from bank under right to information with regards to the transactions undertaken by the petitioner themselves] could be said to fall under any valid ground within the principles of review under Order XLVIII

of C.P.C. nor there is any allegation that the original order passed by the controlling authority suffered from any procedural irregularity.

25. The fact remains that there is a serious dispute in connection with the purpose the credit was made in the account of the ex-employee to the extent of Rs. 32,969.00. The objection raised by the private respondent to the supplementary affidavit has not been controverted by the writ petitioner by filing a rejoinder.

26. Thus, *neither* the order passed by the controlling authority dated 5.12.2014 (Annexure-2) under the Payment of Gratuity Act, 1972 calls for any interference as the same has been passed after following due procedure of law *nor* the letter dated 29/30.05.2017 (Annexure-6), whereby the controlling authority has informed the petitioner that he has no power of review, calls for any interference. Consequently, the petitioner is not entitled to any relief of set-off as prayed for in this writ petition.

27. In view of the aforesaid findings, this writ petition is dismissed.

28. Interlocutory application, if any, is closed.

(Anubha Rawat Choudhary, J.)

Rakesh/-

AFR