

MANAGEMENT OF TOURNAMULLA ESTATE

v.

WORKMEN

March 26, 1973

[A. N. GROVER, S. N. DWIVEDI AND C. A. VAIDIALINGAM, JJ.]

Labour Law—Gratuity Scheme—Workmen dismissed for misconduct—Gratuity whether can be forfeited.

Clause (4) of the Scheme of gratuity applicable to the appellant Estate provided that a dispute regarding a claim for payment of gratuity of a workman who had been dismissed for misconduct shall be referred to the Labour Court for decision. One of workmen of the appellant was charge-sheeted in respect of riotous and disorderly behaviour for having assaulted a tea-maker inside the factory of the appellant. A departmental enquiry was held and being found guilty of misconduct he was dismissed. As a dispute arose about the payment of gratuity the matter was referred to the Labour Court. Before the Labour Court it was not disputed that the dismissal of the workman was on account of misconduct consisting of riotous and disorderly behaviour and assaulting a tea-maker. The Labour Court, relying upon the decision of this Court in *State of Punjab v. Suraj Prakash Kapur*, [1962] 2 S.C.R. 711 decided the question in favour of the workman. Appeal by special leave, was filed in this Court. Allowing the appeal,

HELD: According to the decision of this Court in the *Delhi Cloth Mills* case misconduct could be of three kinds, (1) technical misconduct which leaves no trial of indiscipline; (2) misconduct resulting in damage to the employer's property which might be compensated by forfeiture of gratuity or a part thereof, and (3) serious misconduct such as acts of violence against the management or other employees or disorderly behaviour in or near the place of the employment, which though not directly causing damage is conducive to grave indiscipline. The first should involve no forfeiture, the second may involve forfeiture of an amount equal to the loss directly suffered by the employer in consequence of the misconduct, and the third will entail forfeiture of the gratuity payable to the workman. In other words, according to this decision, if a workman is guilty of a serious misconduct of the third category, then his gratuity can be forfeited in its entirety. [764D]

The decision in the *Delhi Cloth Mills* as applicable to the facts of the present case and the appeal must accordingly be allowed.

State of Punjab v. Suraj Parkash Kapur, etc., [1962] 2 S.C.R. 711 applied.

Delhi Cloth & General Mills Co. Ltd. v. Workmen and Others, etc. [1969] 2 S.C.R. 307, referred to.

(ii) The contention that the Labour Court did not apply its mind to the nature and degree of the misconduct committed and therefore the matter should be remitted to that court for decision in accordance with law, could not be accepted because the facts were not in dispute before the Labour Court. [765D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 698 of 1968.

A Appeal by special leave from the Award dated August 10, 1967 of the Labour Court, (Kerala State), Quilon, Camp at Calicut, in Industrial Dispute No. 70 of 1965 published in the Kerala Govt. Gazette No. 39 dated 3-10-67.

G. B. Pai, Bhuvanesh Kumari and O. C. Mathur, for the appellant.

B *A. S. Nambiyar*, for the respondent.

The Judgment of the Court was delivered by

GROVER, J.—This is an appeal by special leave from an award of the Labour Court, Quilon (Kerala State)

C The point before us is simple. The workman concerned was charge-sheeted in respect of riotous and disorderly behaviour for having assaulted a tea maker Shri U. M. Abdul Kadar on May 29, 1965, inside the factory. A departmental enquiry was held wherein, it is said, he was given every opportunity to fully participate. He was found guilty of misconduct by the domestic tribunal and was accordingly dismissed. There was a scheme of D gratuity in force, which was and is not challenged by the respondent. Clause 4 of that scheme, which is called "Terms of Agreement", provides that if a dispute arises regarding a claim for payment of gratuity of a workman who has been dismissed for misconduct, such a dispute shall be referred to the labour court having jurisdiction, for decision. As a dispute arose with regard E to the payment of gratuity, the matter was referred to the Labour court. Before that court, in the statement of case submitted by the Secretary of the Malabar Estate Workers' Union, it was stated in clause (c) as follows :

F "The worker was not paid gratuity on dismissal, in spite of making a request for the same. There is a gratuity scheme applicable to this estate and as per the terms of the scheme if a dispute arises regarding the payment of gratuity to a dismissed workman, the same is left open to be decided by this Court. The allegations of misconduct levelled against the worker in this case cannot be considered to be one which by its nature G disentitles the worker to claim gratuity. Even if the allegation is true the same does not involve any question of moral turpitude or cause any financial loss to the company. Any allegations of misconduct do not impose (sic) disentitle the workmen for gratuity. Hence in this H particular case it is submitted that the worker is entitled for gratuity as claimed. The worker has put in 18 years of service and as such he is entitled to get at the rate of 15 days wages based on last draw wage rate for every completed years of service."

In reply, which was filed by the management, the facts which have been set out above and the circumstances in which the dismissal was directed, were fully given. Before the Labour court, there seems to have been no dispute whatsoever that the dismissal of the respondent workman was on account of misconduct consisting of behaving in a riotous and disorderly manner and having assaulted a tea maker (supervisor). The Labour court, however, referred to the judgment of this Court in *State of Punjab v. Suraj Parkash Kapur, etc.*⁽¹⁾ in which the general argument was not accepted that in all cases where services of an employee are terminated for misconduct, gratuity should not be paid to him. However, this Court has had occasion to consider in detail the various circumstances in which gratuity would be liable to forfeiture for misconduct of a particular nature. It was laid down in *Delhi Cloth & General Mills Co., Ltd., v. Workmen and Others, etc.*⁽²⁾ that the object of having a gratuity scheme is to provide a retiring benefit to workmen who have rendered long and unblemished service to the employer and thereby contributed to the prosperity of the employer, and it is, therefore, not correct to say that no misconduct however grave, may not be visited with forfeiture of gratuity. Misconduct could be of three kinds, (1) technical misconduct which leaves no trail of indiscipline, (2) misconduct resulting in damage to the employer's property which might be compensated by forfeiture of gratuity or part thereof, and (3) serious misconduct such as acts of violence against the management or other employees or riotous or disorderly behaviour in or near the place of employment, which, though not directly causing damage, is conducive to grave indiscipline. The first should involve no forfeiture, the second may involve forfeiture of the amount equal to the loss directly suffered by the employer in consequence of the misconduct and the third will entail forfeiture of gratuity due to the workman. In other words, according to this decision, if a workman is guilty of a serious misconduct of the third category, then, his gratuity can be forfeited in its entirety.

In yet another case in *Remington Rand of India Ltd. v. The Workmen*,⁽³⁾ one of the questions was whether a provision can be made in a gratuity scheme that if the misconduct is a gross one, involving violence, riotous behaviour, etc., the qualifying period should be limited to fifteen years of continuous service. The earlier decision in *Delhi Cloth and General Mills Ltd.*, was discussed and reference was made to it. The Court expressed agreement with the decision in the earlier case that matters which had impact on the discipline and the working of the concern, require a different treatment in the matter of forfeiture of gratuity. It is

(1) [1962] 2 S.C.R. 711.

(2) [1969] 2 S.C.R. 307.

(3) [1970] 2 S.C.R. 935.

A significant that in s. 4(6)(b) of the Payment of Gratuity Act, it has been provided as follows :

“the gratuity payable to an employee shall be wholly 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,”

B Although the provisions of this statute would not govern the decision of the present case, the importance of the enactment lies in the fact that the principle which was laid down in the *Delhi Cloth Mills* case with regard to forfeiture of gratuity in the event of commission of gross misconduct of the nature mentioned above, has been incorporated in the statute itself. Even otherwise, such a rule is conducive to industrial harmony and is in consonance with public policy.

C Learned counsel for the respondents has not been able to show how the rule laid down in the *Delhi Cloth Mills* case would not be applicable if the concerned workman was guilty of the kind of misconduct mentioned above. His sole contention has been that the Labour court did not apply its mind to the nature and degree of the misconduct committed, and, therefore, the matter should be remitted to that court for a decision in accordance with law. In our opinion, it is not necessary to send the matter to the labour court, because the facts were not in dispute before it.

D For the reasons given above, the appeal is allowed and the award of the Labour Court is set aside. It is hereby declared that the concerned workman will not be entitled to the gratuity earned by him. The respondents will be entitled to costs in view of the order already made by this Court on February 1, 1968.

G.C.

Appeal allowed.