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DISCIPLINARY PROCESS POST EMPLOYEE'S RETIREMENT: SUPREME COURT'S TAKES A PRO EMPLOYER STANCE

3 June 2020

[Background](#)

It is not an everyday instance for the apex court in the country to adopt a pro employer approach, specifically in a matter pertaining to a disciplinary inquiry initiated against an employee. In the case of *Chairman-cum-MD, Mahanadi Coalfields Limited v Rabindranath Choubey [Civil Appeal Number 9693 of 2013]* (Mahanadi), however, the Supreme Court of India (Supreme Court) did so. Exercising its appellate jurisdiction, the Supreme Court decided on the question whether it is permissible for an employer to continue a disciplinary proceeding, initiated during an employee's tenure with the employer, even after his retirement. A related question before the court was whether it was tenable for an employer to withhold the payment of an employee's gratuity, which would have been payable upon his superannuation, on account of pendency of the disciplinary proceedings against him.

[A Peek into the Factual Matrix](#)

In the present case, the employee was occupying the position of Chief General Manager (Production). Allegations relating to misconduct on the employee's part were raised before the management, including dishonestly causing coal stock shortages, which misconduct purportedly caused substantial monetary loss to the employer.

Disciplinary proceedings were initiated against the employee, but before these could be completed, he attained the age of superannuation and retired from service. In view of the said inquiry, the employer withheld the gratuity which the employee would have otherwise been entitled to. This prompted the employee to apply to the controlling authority under the Payment of Gratuity Act 1972 (Gratuity Act) for recovery of the dues.

When the employee did not receive a remedy from the controlling authority, he filed a writ petition before the Orissa High Court, which held that the disciplinary proceedings against the employee commenced prior to his attaining superannuation. The High Court, however, noted that since the employee had already retired from service, there was no question of imposing removal from services as a penalty. Basis this view, the High Court ordered the employer to pay the amount due towards gratuity.

[Supreme Court's Emphasis on Service Rules / Terms of Employment](#)

When the matter reached the Supreme Court, there was an in-depth evaluation of and emphasis on the service rules applicable to the employee. In particular, the court quoted the following provision of the service rules:

"Disciplinary proceeding, if instituted while the employee was in service whether before his retirement or during his reemployment shall, after the final retirement of the employee, be deemed to be proceeding."

The Supreme Court was of the view that full effect ought to be given to this provision. If one takes the view that no major penalty (such as dismissal from services) can be imposed after cessation of employment, the above provision will become otiose. Therefore, if the service rules applicable to the employee provide that the disciplinary proceeding, initiated during service, can operate post retirement, the same should be allowed. An inquiry must, therefore, be allowed to reach its logical conclusion. In such cases, a *legal fiction* is created and the concept of *deemed continuance in service* would come into play, meaning that an order of removal can indeed be passed (although operative only prospectively).

Section 4(6) of the Gratuity Act overrides Section 4(1)

Basis the abovementioned understanding, the court noted that the other question also stood answered – the employer would, in such cases, be allowed to withhold gratuity until pendency of the disciplinary proceedings. Given that Section 4(6) of the Gratuity Act allows the employer to forfeit gratuity in the event the employee's services are terminated due to an act causing damage / loss to the employer's property, the natural consequence would be that when a disciplinary proceeding on such charges is pending, the employer can withhold gratuity payment, and if the charges stand proved, the same need not be passed on to the employee.

The court noted that although Section 4(1) of the Gratuity Act provides that gratuity would become payable upon an employee attaining superannuation age, the said provision is subject to Section 4(6) which sets out the circumstances in which gratuity may be forfeited. Section 4(6) is a non-obstante clause and would prevail over the former.

Comment

Mahanadi brings to the fore an important facet of employment relationships – not everything can impliedly form part of the terms and conditions of service. Continuance of disciplinary proceedings post an employee's retirement should expressly form part of the employment terms, whether contained in the contract of employment, the code of conduct applicable to the employees or the disciplinary policy of the employer. In our experience, such provisions are typically stipulated expressly by public sector employers as part of detailed service rules / regulations.

Another takeaway from *Mahanadi* is that not every disciplinary proceeding would entitle the employer to withhold / forfeit gratuity. *Mahanadi* was a case wherein the charge pertained to substantial loss or damage to the employer's property. Under the Gratuity Act, there are limited cases wherein the employer can forfeit gratuity, and loss / damage to property is one such case. For this reason, the Supreme Court allowed the employer to withhold gratuity during continuance of disciplinary proceedings and even forfeit the same upon establishing the guilt of the employee.

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