A

P. RAJAN SANDHI

v.

UNION OF INDIA & ANR.

(Civil Appeal No. 4095 of 2006)

B

SEPTEMBER 21, 2010

[MARKANDEY KATJU AND T. S. THAKUR, JJ.]

SERVICE LAW:

C ***WORKING JOURNALISTS AND OTHER NEWSPAPER EMPLOYEES (CONDITIONS OF SERVICE) AND MISCELLANEOUS PROVISIONS ACT, 1955:***

s.5(1) – Payment of gratuity – Assistant Editor in a printing and publishing company – Dismissed from service D *after a disciplinary inquiry – Claim for gratuity – Held: Not maintainable – There is a difference between the provisions for denial of gratuity under the Payment of Gratuity Act and in the Working Journalists Act – Under the Working Journalists Act, gratuity can be denied if the service is* E *terminated as a punishment inflicted by way of disciplinary act, as has been done in the instant case – s.5 of the Working Journalists Act being a special law will prevail over s.4(6) of the Payment of Gratuity Act, which is a general law – s.5(1)(a)(i) of the Working Journalists Act does not require any* F *allegation of proof of any damage or loss to, or destruction of, property, etc. as is required under the general law, i.e. the Payment of Gratuity Act – All that is required under the Working Journalists Act is that the termination should be as a punishment inflicted by way of disciplinary action, which is* G *the position in the case at hand – Thus, if the service of an employee has been terminated by way of disciplinary action under the Working Journalists Act, he is not entitled to gratuity – Payment of Gratuity Act, 1972 – s.4(6).*

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G. P. Singh's Principles of Statutory Interpretation **Ninth Edition, 2004 pp. 133 and 134 – referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4095 of 2006.

From the Judgment & Order dated 29.07.2005 of the High Court of Kerala at Ernakulam in W.A. No. 2131 of 2002 (D).

Ron Sastian, Lakshmi Raman Singh for the Appellant.

K.V. Viswanathan, B. Ragunath, Abhishek Kaushik (for Mahalakshmi Balaji & Co.) Sushma Manchanda, Sonia Malhotra, B. Krishna Prasad for the Respondents.

The following Order of the Court was delivered

O R D E R

Heard the learned counsel for the parties.

This Appeal, by special leave, has been filed against the impugned judgment of the High Court of Kerala dated 29.07.2005 passed in W.A. No. 2131 of 2002.

The facts of the case have already been set out in the impugned judgment and hence we are not repeating the same here, except wherever necessary.

The appellant herein was an Assistant Editor in Mathrubhumami Printing and Publishing Company Limited, (respondent No. 2 herein) which is a newspaper publishing company. The appellant was charge-sheeted for making false allegations against the Managing Director of respondent No. 2 and of using discourteous language and for other various misconduct. An enquiry was conducted and, after giving him opportunity of hearing, the enquiry office found him guilty. The appellant was ultimately dismissed from service on 20.06.1988. An industrial dispute was raised and the Industrial Tribunal upheld the order of dismissal. The appellant challenged the

A order of the Industrial Tribunal by filing a Writ Petition which was dismissed. Thereafter, the appellant unsuccessfully challenged the dismissal of the Writ Petition by filing a Writ Appeal which was dismissed. Special Leave Petition filed by the appellant against the dismissal of the Writ Appeal was also dismissed
B by this Court.

In this round of litigation, now the question is about the appellant's claim for gratuity.

The claim of the appellant for gratuity was rejected by the
C Management of respondent No. 2 against whose order the appellant has filed a Writ Petition which has been allowed by the learned single Judge of the High Court. However, by the impugned judgment passed in Writ Appeal No. 2131 of 2002 the Division Bench of the High Court set aside the judgment of
D the learned single Judge. Hence, this appeal by special leave.

The learned counsel for the appellant relies on Section 4(6) of the Payment of Gratuity Act, 1972 (39 of 1972) which reads as under :-

E "Section 4(6) Notwithstanding anything contained in sub-section (1),-

(a)The gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence
F 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 –
G

(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

H (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."

The learned counsel further submits that since no damage or loss to, or destruction of, property of the employer was alleged or proved against the appellant nor was he alleged to have committed any riotous or disorderly conduct or any other act of violence or any offence involving moral turpitude, his claim for gratuity could not have been denied.

On the other hand, the learned counsel for respondent No. 2 relies on Section 5(1)(a)(i) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 [for short 'the Working Journalists Act']. The relevant part of Section 5 is as under :-

"Section 5. Payment of gratuity.-(1) Where – .

(a) any working journalist has been in continuous service, whether before or after the commencement of this Act, for not less than three years in any newspaper establishment, and –

(i) his services are terminated by the employer in relation to that newspaper establishment for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary act, or

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the working journalist or, in the case of his death, his nominee or nominees or, if thee is no nomination in force at the time of the death of the working journalist, his family, as the case may be, shall, without prejudice to any benefits or rights accruing under the Industrial Disputes Act, 1947 (14 of 1947), be paid, on such termination, retirement, resignation or death, by the employer in relation to that

establishment gratuity which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months."

It may be seen that there is a difference between the provisions for denial of gratuity in the Payment of Gratuity Act and in the Working Journalists Act. Under the Working Journalists Act gratuity can be denied if the service is terminated as a punishment inflicted by way of disciplinary act, as has been done in the instant case. We are of the opinion that Section 5 of the Working Journalists Act being a special law will prevail over Section 4(6) of the Payment of Gratuity Act which is a general law. Section 5 of the Working Journalists Act is only for working journalists, whereas the Payment of Gratuity Act is available to all employees who are covered by that Act and is not limited to working journalists. Hence, the Working Journalists Act is a special law, whereas the Payment of Gratuity Act is a general law. It is well settled that special law will prevail over the general law, vide G.P. Singh's 'Principles of Statutory Interpretation', Ninth Edition, 2004 pp. 133, 134.

The special law, i.e., Section 5(1)(a)(i) of the Working Journalists Act, does not require any allegation of proof of any damage or loss to, or destruction of, property, etc. as is required under the general law, i.e., the Payment of Gratuity Act. All that is required under the Working Journalists Act is that the termination should be as a punishment inflicted by way of disciplinary action, which is the position in the case at hand. Thus, if the service of an employee has been terminated by way of disciplinary action under the Working Journalists Act, he is not entitled to gratuity.

For the reasons above stated, we see no infirmity in the impugned judgment of the High Court. The Appeal is dismissed accordingly. No costs.

R.P. Appeal dismissed.