



**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**



DATED THIS THE 10TH DAY OF JANUARY, 2025

**BEFORE
THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ**

WRIT PETITION NO.102635 OF 2024 (L-PG)

BETWEEN:

CENTRAL WAREHOUSING CORPORATION,
REPRESENTED BY ITS GENERAL MANAGER (PERSONNEL)
CORPORATE OFFICE,
NO.4/1, SIRI INSTITUTIONAL AREA,
AUGUST KRANTI MARG, NEW DELHI-110016,
REPRESENTED BY REGIONAL MANAGER,
REGIONAL OFFICE, LF-10, NANDINI LAYOUT,
BENGALURU-560096.

...PETITIONER

(BY SRI. GURUDAS KANNUR, SENIOR COUNSEL FOR
SRI. S.S. NIRANJAN, SRI. B.S. KARTHIKEYAN AND
SMT. RAMYA N. HIRIYUR, ADVOCATES)

AND:

1. SRI. G.C. BHAT,
NO.35, 5TH MAIN, NEAR CHURCH,
SHARAVATHI NAGAR, SHIMOGA-577201.
2. THE CONTROLLING AUTHORITY UNDER THE
PAYMENT OF GRATUITY ACT & ASSISTANT
LABOUR COMMISSIONER (CENTRAL), HUBLI-580025.

...RESPONDENTS

(NOTICE TO RESPONDENTS IS DISPENSED WITH)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET-ASIDE THE ORDER DATED 11-09-2023 PASSED BY THE 2ND RESPONDENT CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT AND ASSISTANT LABOUR COMMISSIONER (CENTRAL), HUBLI IN NO.48 (9) 2020-A/H, IN THE INTEREST OF JUSTICE AND EQUITY.





THIS PETITION IS COMING ON FOR PRELIMINARY HEARING
THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ)

1. Notice to respondents is dispensed with the in view of the proposed order to be passed.
2. The petitioner is before this Court seeking the following reliefs:
 - i. *Call for records from the 2nd Respondent Controlling Authority under the Payment of Gratuity Act and Assistant Labour Commissioner (Central) Hubli in No.48(9) 2020- A/H.*
 - ii. *Issue an order of Writ of Certiorari by setting aside the order dated 11-09-2023 passed by the 2nd Respondent Controlling Authority under the Payment of Gratuity Act and Assistant Labour Commissioner (Central), Hubli in No.48 (9) 2020-A/H.*
 - iii. *Pass any such other order or orders as deemed fit, in the circumstances of the case, including awarding costs, in the interest of justice and equity.*
3. Respondent No.1 was working as a Junior Superintendent in the petitioner's Central Warehousing Corporation and he was initially



suspended from service on serious charge of misappropriation of amounts and misconduct.

4. An enquiry having been held resulted in imposition of penalty of dismissal from service on 06.12.2013 with effect from 12.12.2013.
5. Respondent No.1 after a long gap of 7 years from the date of dismissal filed proceeding before respondent No.2 in proceeding No.48(9) 2020-A/H claiming gratuity amount of Rs.14,03,860/- with interest alleging that he has earned the gratuity amount due to his service.
6. Respondent No.2 vide his order dated 11.09.2023 directed the petitioner to pay gratuity amount of Rs.7,88,165/- with 10% interest from 12.12.2013, till the date of actual payment. It is challenging the same, the petitioner is before this Court.
7. Shri Gurudas Kannur, learned Senior counsel appearing for Shri B.S.Karthikeyan, learned



counsel for the petitioner would submit that dismissal of respondent No.1 was necessitated on account of serious charges of misappropriation inasmuch as on account of respondent No.1 having issued 93 negotiable warehouse receipts in the name of fictitious persons, loans have been borrowed from various banks, who had initiated proceedings against the petitioner causing a loss of sum of Rs.1,71,68,033/- to the petitioner and as such, he submits that the petitioner was entitled to withhold the gratuity amount and adjust the amounts towards the losses which have been caused to the petitioner.

8. He submits that by way of order of respondent No.2, a premium is being provided to the illegal actions on part of respondent No.1 by firstly respondent No.1 having misappropriated monies and secondly, receiving gratuity amounts as regards ingratuitous acts of respondent No.1 in



misappropriating the monies and causing losses to the employer.

9. His further submission is that respondent No.1 choose to remain quite for seven years after the dismissal and the proceedings had been filed in the year 2020 for recovery of the gratuity amount and this long delay ought not to have been condoned by respondent No.1 and the matter preceded with. On the above grounds, he submits that the above petition is required to be allowed and the order passed by respondent No.2 is required to be quashed.
10. Heard Shri Gurudas Kannur, learned Senior counsel appearing for Shri B.S.Karthikeyan, learned counsel for the petitioner.
11. In the present case, though there is a serious contention and allegation made against respondent No.1 as regards the misappropriation of monies



and causing losses to the employer by issuance of 93 negotiable warehouse receipts in the name of different/various/fictitious names. On which basis, amounts have borrowed resulting in loss of Rs.1,71,68,033/- to the petitioner/employer. On enquiry as to whether any action has been taken by the Corporation for recovery of the said amount from respondent No.1, Shri Gurudas Kannur, learned Senior counsel fairly submits that no action was taken for recovery, but the amounts due to respondent No.1 were considered to be forfeited and that is the reason why the amounts were not paid to respondent No.1.

12. Whenever any employee were to be dismissed on account of misappropriation or causing losses to the employer, it is always available for the employer to initiate proceedings for recovery of the losses, which have been caused to the employer as also the amount misappropriated from the



employer. Suspension from service and later on dismissal from service, would not in any manner retribute the losses caused to the employer. Such, dismissal is only a punishment meted out by the employer after following the necessary procedure as against the delinquent employee. It was for the employer to have initiated proceedings for recovery of the losses, which had been caused and during those proceedings, to forfeit and or adjust the monies due to the delinquent employee after holding necessary proceedings by providing an opportunity to delinquent employee to contest those proceedings. In fact it is the duty of the other so called responsible officers of the employer to have done so.

13. In the present case, there is a further delinquency of the other officers in not seeking for recovery of the aforesaid losses, which have occurred to the employer, the Central Warehousing Corporation



being a public institution, dealing with public monies, which has been lost and I am of the considered opinion that the concerned officers, who were duty bound to initiate proceedings against respondent No.1 for the losses caused to the petitioner have failed in their duty, abdicated their responsibilities giving raise to a cause, for action to be taken against them, for their delinquency in not initiating proceedings against the dismissed employee, who had caused losses to the employer.

14. The Corporation could not without initiating proceedings for recovery, retain the gratuity amount, without such proceedings being initiated, the contention of the employer that losses have been caused will only remain a contention and is not one which has been adjudicated upon and orders passed.



15. Thus, I am of the considered opinion that no proceedings having been initiated against respondent No.1 for recovery of the alleged losses. The question of the employer retaining the gratuity amount and forfeiting the same, would not arise. The management of the petitioner would be well advised to look into these aspects and initiate action for recovery of losses and or misappropriated amounts at least in future against the employee, who has been dismissed on those charges.
16. Insofar as the delay in filing the proceedings by respondent No.1, I am of the considered opinion that respondent No.2 has taken into consideration the grounds urged by respondent No.1 that he was suffering from diseases, which prevented him from filing necessary proceedings and the same cannot be found fault with.



17. In the above circumstances, no grounds being made out, the petition stands **dismissed**.

18. The time fixed for payment of the gratuity amount by the petitioner to respondent No.1 is extended until 31.01.2025.

Sd/-
(SURAJ GOVINDARAJ)
JUDGE

AM
CT-MCK
List No.: 1 Sl No.: 40