

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC (WA) No.38/2023 in
WA No.37/2023

Date of order: 26.09.2023

Pranesh Biswas

vs.

Union of India & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Appellant : Mr. S. Chakrawarty, Sr.Adv with
Ms. E. Slong, Adv
Mr. E. Laloo, Adv

For the Respondents : Mr. R. Debnath, CGC

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

There is inordinate delay in seeking to prefer an appeal late in the year 2023 against an order of June 6, 2017.

2. However, considering the pandemic in the interregnum and the fact that the appellant feels deprived of the dues that he claims are owed to him by his erstwhile employer, the grounds for delay are found to be sufficient for the delay to be condoned and the appeal to be taken up for consideration on merits.

3. The appellant was an employee of the State Bank of India. During the period that the appellant was posted as the branch manager at Songsak Branch of State Bank between June 11, 2004 and March 19, 2005, it was alleged that he had committed gross irregularities in the issue and payment of deposits and in allowing advances. The employer instituted disciplinary proceedings on account of defalcation, irregularities and non-adherence to the bank's rules. It is not necessary to go into the specific charges or the findings rendered by the inquiry officer. All that needs to be noticed is that by an order dated August 8, 2007, the appellant was dismissed from service in terms of Rule 67(j) of the SBIOSR, which appears to be a set of rules applicable to senior officers of the bank. During the period of the disciplinary proceedings, the appellant was under suspension.

4. The order passed in the disciplinary proceedings has attained finality and, indeed, the appellant has made no attempt to reopen the case. Several years after the appellant stood dismissed from the bank's service in the circumstances indicated above, he made a claim for the employer's part of contribution towards the provident fund and the gratuity to be released to him.

5. As to the employer's part of the contribution to the provident fund, the bank denied the claim by referring to Rule 24 of the SBI Employees' Provident Fund Rules which provides as follows:

“If any member shall be dismissed from the service of the Bank for any fault or other cause justifying dismissal, he shall not be entitled to receive, unless permitted to do so by the Trustees, the sums contributed by the Bank to his Provident Fund account, or any interest credited to the account on the sums so contributed. Provided that when any member is so dismissed, any amount due under a liability incurred by the member to the Bank (not exceeding in any case the sums so contributed by the Bank and interest thereon) shall be paid by the 'Trustees' to the Bank out of the sum standing to the credit of the member's account.”

6. In respect of the gratuity, the bank issued a letter on March 27, 2012 for the appellant herein to show cause why the gratuity otherwise due to the appellant should not be forfeited. The appellant responded to such notice and indicated that nothing in the inquiry report on which the appellant's order of dismissal was based indicated that any pecuniary loss had been occasioned to the bank by reason of the appellant's acts complained of. However, by a terse order of May 2, 2012, the appellant's plea for gratuity was rejected and the entirety of the gratuity was directed to stand forfeited.

7. The writ petition came to be instituted in the year 2013 with the two principal reliefs being for the employer to pay the gratuity due to the appellant and also for the employer's contribution towards provident fund to be released to the appellant. In the judgment and order impugned of June 6, 2017, the second paragraph captured, in essence, what was claimed in the petition before the third to the sixth paragraphs narrated the circumstances in which the appellant came to be dismissed from service. After noticing the extent of the appellant's claim on account of gratuity and the provident fund contribution of the employer, Section 4(6)(b)(ii) of the Payment of Gratuity Act is quoted at the foot of paragraph 10 of the impugned judgment and Rule 24 of the aforesaid Provident Fund Rules of the State Bank is quoted at the foot of paragraph 11 of the impugned judgment with the following as the concluding paragraph thereof:

“12. With this observation and direction the writ petition is dismissed and stands disposed of.”

8. The appellant is understandably aggrieved since, according to the appellant, the relevant provisions had only been quoted and no reasons indicated in the impugned judgment as to why the appellant herein was

disentitled from receiving the gratuity or why the entirety of the provident fund contributed by the employer could have been forfeited.

9. Section 4(6)(b)(ii) of the Act of 1972 provides as follows:

“(b) the gratuity payable to an employee may be wholly or partially forfeited –

(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.”

10. It is evident from the relevant clause of the Act of 1972 that a discretion is conferred on the employer, as would be evident from the use of the expression “may be wholly or partially forfeited”, and the circumstances justifying the forfeiture have been indicated thereafter in the statute. There can be no dispute that this was a case of gross moral turpitude for a bank manager having wrongfully encashed a deposit apparently made by a customer of the bank. It was a charge of defalcation which was conclusively proved. The appellant has accepted the finding and the decision has attained finality.

11. Since the bank in this case as the employer was entitled, in terms of the statute, to partially or fully forfeit the quantum of gratuity, as the appellant had been found guilty of an offence involving moral turpitude,

an exceptional case had to be made out by the appellant for the bank to partially or fully release the gratuity that would otherwise have been payable upon the appellant's successful completion of his tenure and upon the appellant attaining superannuation. No exceptional reasons were cited by the appellant in making the appeal. On the contrary, the appellant, despite his shameful conduct as the branch manager, appeared to assert as a matter of right that he was entitled to the gratuity.

12. It is possible in an exceptional case that an employee, in dire circumstances or in distress, is forced to commit a wrong; whereupon the employee expresses remorse, cites the circumstances for falling to temptation, seeks pardon and makes a plea for the financial benefit to be released by citing some extraordinary financial crisis or dire distress. This was not such a case. An officer of a bank in the position of a branch manager had been found guilty of stealing, no less; and he appeared to stamp his foot and demand what he perceived was his pound of flesh. Such employees have to be dealt with ruthlessly.

13. No ground was made out by the appellant for the bank to exercise any discretion in his favour to release his gratuity or any part thereof.

14. As to the provident fund, Rule 24 of the relevant Rules indicate that upon the dismissal or the like of an employee from service, the general rule would be that the employer's contribution towards the provident fund of such employee would stand forfeited. But the relevant trustees are also conferred an element of discretion as to whether the employer's contribution may still be made available to the dismissed employee.

15. In the manner that the relevant rule has been framed, where forfeiture is the rule and payment is the exception, a case has to be made out for the discretion to be exercised and an exception to be made. It was open to the appellant, if the circumstances so existed, to make out an exceptional case of financial hardship or distress in some other form that may have prompted the bank to exercise its discretion in favour of the appellant despite his proven guilt and his dismissal from service. The appellant's appeal to the bank was not on such lines. The appellant asserted a right, which the appellant did not possess.

16. It is obvious from the tenor of the impugned judgment that the mere iteration of the applicable rules was deemed sufficient. However, the writ court may have done well to add a few sentences to justify the conduct of the bank. As it has been appropriately submitted on behalf of the appellant, a writ court does not sit in an appeal over the order passed by an executive functionary which is challenged in proceedings under Article 226 of the Constitution. Ordinarily, the writ court is concerned not with the correctness of the impugned order, but more with the decision-making process. Once the writ court finds that a fair procedure was adopted and the complaining writ petitioner was afforded an opportunity to make his representation which was, thereupon, taken into consideration before the impugned order was passed, the writ court would not interfere. There are obvious exceptions in cases where the order impugned is found to be grossly disproportionate or so absurd that not even the meanest mind in the position of the executive functionary could have passed the same on the set of facts presented before it.

17. In this case, the discretion of the bank in either case cannot be said to have been perversely exercised. Here was a disgraced bank official who was shamelessly pursuing demands for payment as if he

was entitled to receive such perceived dues. There was no such right in favour of the appellant and the bank, particularly as a nationalised bank, has done well to exercise its discretion against a recalcitrant erstwhile employee.

18. There is no merit in the appeal just as there was no meaning or good reason for the writ petition to have been carried to this Court. For all of the appellant's efforts, the appellant will pay costs assessed at Rs. 25,000/- to the bank within a fortnight from date, failing which the bank will be entitled to execute such order in accordance with law.

19. MC (WA) No. 38 of 2023 is allowed as indicated.

20. WA No. 37 of 2023 stands dismissed.

(B. Bhattacharjee)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
26.09.2023
"Santosh, P.S."