

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.84 of 2016**

1. The General Manager, UCO Bank, Head Office-3-4, DD Block, Sector-1, 2nd Floor, Salt Lake, Kolkata (W.B.) 700064
2. The Branch Manager, UCO Bank, Civic Centre, Bhilai, District Durg (Chhattisgarh)
Through – Dy. Zonal Head, Zonal Office, UCO Bank, Chhattisgarh Eye Hospital Campus, 1st Floor, Telibandha, Raipur (Chhattisgarh) 492006

---- Appellants**versus**

Shri Jitendra Kumar Shrivastava, S/o Late Shri A.K. Shrivastava,
H. No.06, Kanha Homes, Shanti Nagar, P.S. Civil Lines, Tahsil and
District Bilaspur (Chhattisgarh)

---- Respondent

For Appellants	:	Shri Ravindra Sharma, Advocate
For Respondent	:	Shri Devesh Chandra Verma and Shri Anup Majumdar, Advocates

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board**Per Navin Sinha, Chief Justice****5/4/2016**

1. The present appeal arises from order dated 4.1.2016 dismissing Writ Petition (L) No.42 of 2015, declining to interfere with the order of the Controlling Authority affirmed by the Appellate Authority, directing payment of Rs. 5,71,478/- along 10% interest to the Respondent under the Payment of Gratuity Act, 1972 (hereinafter called 'the Act').

2. Learned Counsel for the Appellants submits that the Respondent while posted as Advance Ledger Posting Machine Operator (hereinafter referred to as 'ALPM Operator') at the Bhilai Branch committed misconduct by unauthorised access to the storage data of the Savings Bank ALPM, and made alteration in the Savings Bank Accounts of some depositors with a fraudulent intent taking advantage of his computer proficiency to the detriment of the Bank's interest by illegally transferring and withdrawing

large amounts of money. Irreparable damage was caused to the reputation and business of the Bank which was a financial institution dealing with public money in which general public has reposed faith and confidence which was necessary to be maintained in public interest. Departmental proceeding were initiated against him on 21.11.2001 and culminated in order of dismissal dated 31.8.2010. The order attained finality.

3. The Respondent held a fiduciary relationship with the Bank and the money of the depositors held in trust. The acts committed by the Respondent while dealing with public money constituted an act of moral turpitude. The Bank had the power and authority under Section 4(6)(b)(ii) of the Act to withhold his entire gratuity pursuant to the punishment of dismissal in the departmental proceedings. The Controlling Authority allowed the same on 29.9.2014 contrary to law and the Appellate authority wrongly affirmed it on 6.2.2015.

4. The Learned Single Judge erred in law holding that the words 'Offence' under the Act had to be interpreted as meaning conviction by a criminal court only on grounds of moral turpitude, in absence of which forfeiture of Gratuity was unjustified, excluding a departmental proceeding for a misconduct constituting moral turpitude and a punishment of dismissal thereupon.

5. Learned Counsel for the Respondent submitted that no absolute power vests in the Appellants to withhold gratuity. There had to be a specific order assigning reasons for withholding gratuity. In absence of any separate order passed by the Appellants, withholding of gratuity was contrary to the Act and therefore arbitrary and *per se* illegal. If the illegality was from nativity, the Appellants cannot be given advantage of their own wrongs by providing them an opportunity to pass fresh orders. The order of the Controlling Authority and the Appellate authority directing payment of

gratuity with statutory interest is reasoned and merits no interference.

6. The conclusion by the Learned Single Judge that mere punishment in a departmental proceeding will not suffice for withholding gratuity calls for no interference. Unless the misconduct fell in the category of moral turpitude followed by conviction in a criminal case, it could not be said that an offence had been committed to deny payment of gratuity. Reliance in support of the submissions was placed on (1990) 4 SCC 314 (D.V. Kapoor v. Union of India), Writ Appeals No.118 and 144 of 2009 (A. Padmanabhan v. Joint Commissioner of Labour) (DB) (Madras High Court) and (2005) 1 LLJ 824 Gujarat (Union Bank of India v. K.R. Ajwalia) (S.J.) (Gujarat High Court) referred to by the Controlling Authority.

7. We have considered the submissions on behalf of the parties.

8. The extract of the statutory provision under the Act which falls for consideration reads as follows :-

“4. Payment of gratuity.— xxxxx xxxxx xxxxx

(6) Notwithstanding anything contained in sub-section (1),—

(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.”

9. The appeal primarily raises two questions for consideration :-

(A) Whether the word “offence” in Section 4(6)(b)(ii) of the Act has to be interpreted as meaning only conviction by a Criminal Court only excluding its applicability to an act of moral turpitude leading to punishment in a departmental proceeding?

(B) Is the statutory provision mandatory or vests discretionary jurisdiction in the employer to forfeit or not to forfeit, or to completely forfeit or partially forfeit gratuity. Is it an absolute power solely at the discretion of the employer or is it regulated by law and will principles of natural justice apply?

10. The Respondent, an employee in the Bank was charge-sheeted on 21.11.2001 on the grounds that in the given nature of his duties taking advantage of his proficiency with computers he gained unauthorised access to the storage data of Savings Bank ALPM without proper and valid authorisation of his superiors and made alterations in Savings Bank Accounts of depositors with a fraudulent intent. He unauthorisedly accessed the stock of cheque books with a *mala fide* intention to cause wrongful loss to the Bank. By two cheques bearing number 707921 and 707924 he made fraudulent encashment of aggregate amount of Rs.2,50,000/- and thus perpetrated fraud upon the Bank. For the purposes, he inflated the balance in Savings Bank Account Number 9868 of Ku. Sarla Lal and facilitated withdrawal of above amount otherwise having insufficient balance in the account. He likewise tampered with the balance in Savings Bank Account Number 2327 of Smt. Padma D. Idnani with the same intent. He presented cheque numbers 707921 and 707924 for fraudulent encashment by giving former in favour of Shri Ajay Anand for a loan of Rs.1,00,000/- and the latter in favour of Smt. Lalita Rani Anand for a loan of Rs.1,50,000/- and for repayment of the borrowed amount he tendered two cheques bearing number 699794 for Rs.80,000/- and cheque bearing number 699795 for Rs.70,000/- from his Savings Bank Account Number 14741 duly signed by him but without mentioning the name of the payee. He thus incurred excessive debts and for repayment of these debts, he issued forged cheques with deliberate intention to commit fraud.

11. The departmental proceedings culminated in an order of punishment for dismissal dated 31.8.2010. A person working in a Bank dealing with money of the depositors holds a fiduciary relationship. The Bank deals in public money and owes a duty to act in public interest and the interest of its depositors who have parked their money with it. The position of a Bank employee to that extent is not at par with any other employee and calls for greater sense of responsibility. If a Bank employee is alleged to have wrongly dealt with public money for personal gain violating the fiduciary relationship, undoubtedly it would constitute an act of moral turpitude. The position of a bank employee, and the nature of duty and responsibility was considered in (2005) 10 SCC 84 (Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain) observing :-

“17. A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank.....”

12. In (2001) 2 SCC 221 (D.P. Chadha v. Triyugi Narain Mishra) with regard to moral turpitude it was observed :-

“22...It is a relative term to be construed by reference to the subject-matter and the context where the term is called upon to be employed.”

13. The expression moral turpitude in context of the misconduct by a bank employee was considered in (1997) 4 SCC 1 (Allahabad Bank v. Deepak Kumar Bhola) observing as follows :-

“8. What is an offence involving “moral turpitude” must depend upon the facts of each case. But whatever may be the meaning which may be given to the term “moral turpitude” it appears to us that one of the most serious offences involving “moral turpitude” would be where a person employed in a banking company dealing with

money of the general public, commits forgery and wrongfully withdraws money which he is not entitled to withdraw.”

14. The word “moral turpitude” has not been defined anywhere. It constitutes an act done wrongly and deliberately with vileness contrary to established collective societal standards with base depravity for pure personal aggrandizement and irrespective of all consequences. In *Deepak Kumar Bhola* (supra), it was explained as follows :-

“9. This Court in *Pawan Kumar v. State of Haryana* dealt with the question as to what is the meaning of the expression “moral turpitude” and it was observed as follows:

“ ‘Moral turpitude’ is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity.”

This expression has been more elaborately explained in *Baleshwar Singh v. Distt. Magistrate and Collector* where it was observed as follows:

“The expression ‘moral turpitude’ is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man.”

15. Section 4(6)(b)(ii) of the Act provides that if an employee is terminated for an act which constitutes an offence involving moral turpitude during the course of employment gratuity ‘may’ be forfeited wholly or partially. It does not provide for mandatory forfeiture and that too of the entire gratuity. If the legislature had so intended, instead of the words ‘may’ it would have used the word ‘shall’. The Act therefore vests a discretionary power in the employer to forfeit or not to forfeit gratuity if the employee is

dismissed even on grounds of moral turpitude. If a decision is taken to forfeit gratuity, the Act again vests discretion in the employer whether to forfeit the entire gratuity or part of it only. Therefore at both stages a reasoned decision is required.

16. It is not an absolute power but a power coupled with a duty. The power is to withhold gratuity and the duty is to weigh and decide keeping in mind the interest of the employee. This naturally will involve an exercise with regard to the extent and level of the moral turpitude and which would necessarily have to be an important factor in decision making process. Additionally, since it visits the employee with adverse consequences natural justice will have to be complied with. The employee has to be informed why the employer opines to withhold gratuity and the reasons why it was proposed to be withheld in part or wholly as the case may be. The employee may or may not be able to persuade the employer wholly or partially.

17. The payment of gratuity under the Act is a statutory obligation. Any action of withholding gratuity without compliance with procedures therefore has to be held to be bad. But, because power has not been exercised in a proper manner it cannot be held that the Appellants are now precluded from doing so. When power is not exercised by a statutory authority or exercised in a wrong manner, a writ of certiorari will issue to set aside the decision taken contrary to law coupled with mandamus to direct fresh consideration in accordance with law. To urge that no mandamus can be issued to act in accordance with law and full gratuity must be paid will amount to not only doing violence to the provisions of the Act but also to act contrary to law by releasing payment.

18. The statement of objects and reasons of the Act reads “an act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oil-fields, plantations, ports, railway companies, shops or

other establishments and for matters connected therewith or incidental thereto". The Payment of Gratuity (Central) Rules, 1972 provides the procedure to be followed for payment. Section 9 of the Act provides for penalties for non-compliance. Section 11 of the Act provides for institution of complaints before a Court not inferior to that of Metropolitan Magistrate or a Judicial Magistrate of the First Class. The Act therefore primarily deals with the rights in employment and makes the denial of those rights a punishable offence.

19. The Act provides that if an employee is terminated for an offence committed during employment constituting moral turpitude gratuity can be withheld. It does not provide that in addition to termination there must be conviction by a criminal court for such act. If the legislature so intended the language of the Act would have been different and express. To hold that gratuity cannot be withheld even if termination was due to an act of moral turpitude committed during employment would be doing complete violence to the provisions of the Act by reading something into it not provided by the legislature leading to absurd consequences.

20. The first principle of interpretation is one of strict interpretation. It is presumed that the Legislature intended to use the language that it has used and exclude any other meaning or language. Only if there is any ambiguity in the language of the statute or there is an omission evident from the remaining part of the statute can the Court in its power of interpretation look at other aims or supply the omission. There is no ambiguity in the language. The word "offence" has to be given a contextual interpretation in terms of service jurisprudence under the provisions of the Act. A contextual interpretation provides the key to the meaning of the words and the sense it carries in a particular statutory background. A person who commits a misconduct during employment also commits an offence. It is not necessary

that every offence would automatically amount to a criminal offence. The purpose of a criminal trial and a departmental proceeding are completely different.

21. In (2003) 3 SCC 309 (Mithilesh Singh v. Union of India), it was observed in the context of the service rules that absence from duty without proper intimation was a grave offence warranting removal from service.

22. In (2006) 4 SCC 278 (Standard Chartered Bank v. Directorate of Enforcement) relied upon by the Learned Single Judge, it has been observed that offence means only the commission of an act contrary to or forbidden by law. It is not confined to the commission of a crime alone. It is an act committed against law or omitted where the law requires it and punishable by it. Punishment would also include dismissal in a departmental proceeding. We may also profitably quote from the same as follows:

“..... This Court in Depot Manager, Andhra Pradesh State Road Transport Corporation v. Mohd. Yousuf Miya [(1997) 2 SCC 699] stated that the word 'offence' generally implies infringement of a public duty, as distinguished from mere private rights punishable under criminal law. In Brown v. Allweather Mechanical Co. [(1954) 2 QB 443], it was described as “a failure to do something prescribed by a statute may be described as an offence, though no criminal sanction is imposed but merely a pecuniary sanction recoverable as a civil debt”.

23. If the language of the statute is clear with no ambiguity there is no occasion to take assistance from the General Clauses Act, 1897 or the Code of Criminal Procedure, 1973. It is not possible to read a conviction by a criminal Court into Section 4(6)(b)(ii) of the Act. We find it difficult to uphold the reasoning that gratuity could not be forfeited for an act of moral turpitude during employment even if it has resulted in termination unless it was

accompanied by conviction from a criminal Court of law. Section 10(1)(b)(i) of the Banking Regulation Act, 1949 dealing with Prohibition of employment of managing agents and restrictions on certain forms of employment has no application to the facts of the case.

24. The Controlling authority correctly initiated the discussion with regard to the power being discretionary and at two stages but then veered off course by holding that the act did not constitute moral turpitude and was not accompanied by an order of conviction by a criminal court of law. D.V. Kapoor (*supra*) relied upon by the Respondent related to gratuity under the Central Civil Services (Pension) Rules, 1972. There was no provision for forfeiting gratuity. It related to withholding and not forfeiture of gratuity as a matter of punishment.

25. A. Padmanabhan (*supra*) even though it does not bind us, nonetheless, since Learned Counsel for the Respondent has relied upon it, we consider it appropriate and respectful to deal with and distinguish the judgment. Again it did not relate to an act of moral turpitude by a bank employee but only an act prejudicial to the interest of the Gas Delivery Firm. The Court was only concerned with the claim for interest. We regret our inability to concur with that part of the conclusion that in absence of a criminal prosecution, moral turpitude *per se* could not justify withholding of gratuity.

26. K.R. Ajwalia (*supra*) again did not relate to an allegation of moral turpitude but leaving of cash unattended with the result that the bag was stolen. Full forfeiture was ordered under the Gratuity Rules of the Bank contrary to the principles of natural justice. Liberty was therefore granted for proceeding afresh in accordance with law.

27. The aforesaid discussion leads us to the conclusion that the orders of the Controlling Authority, the Appellate Authority and the order under appeal

are not sustainable. They are set aside.

28. In view of our conclusion that the Appellants had a power coupled with a duty under Section 4(6)(b)(ii) of the Act and that this power has not been exercised in accordance with law making the forfeiture bad nothing precludes the Appellants from proceeding afresh in accordance with law if they so wish. This part of our order cannot be construed or opined as any observation, opinion or direction that forfeiture ought to be done or ought not to be done or that it ought to be done either partially or fully. That is an aspect completely in the discretionary jurisdiction of the bank as discussed to be exercised in accordance with law.

29. The appeal is allowed to the extent indicated.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE