NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No. 16 of 2015

Dena Bank Through Chairman And Managing Director, Dena Bank, Dena Corporate Centre, C-10, G-Block, Bandra Kurla Complex, Bandra (East), Mumbai-400051

---- Petitioner

Versus

1. Shri Sharad Govind Goverdhan, 67, Sujata Layout, Deendayal Nagar, Nagpur- 440022.
2. Appellate Authority Under The Payment of Gratuity Act 1972, and Regional Labour Commissioner (Central) Raipur C.G.
3. Controlling Authority Under The Payment Of Gratuity Act 1972 And Assistant Labour Commission (Central) Raipur, D-6 Others Society, Sector-1, Avanti Vihar Raipur, Distt. Raipur C.G.

---- Respondents

For petitioner	Shri Vinod Deshmukh, Advocate.
For respondent No.1	Shri Soumya Roy, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

02/12/2016

1. The petitioner by way of this petition under Article 226 of the Constitution of India intends to challenge the order dated 25.02.2014 passed by the appellate authority, payment of gratuity Act and the Regional Labour Commissioner (Central), Raipur. Vide the said order, the appellate court has rejected the appeal preferred by the petitioner-Bank under the provisions of Section 7(7) of the Payment of Gratuity Act (for short, the Act).

2. The brief facts relevant for adjudication of the present petition is that, the respondent No.1 in the instant case was an employee working with

the management of Dena Bank and was posted as a Branch Manager at Ambagarh Chowki Branch, Distt. Rajnandgaon. The said respondent was issued with a charge sheet dated 29.07.2000 alleging certain misconduct that have been committed by him during the course of his tenure as Branch Manager. Subsequently, the respondent was subjected to Departmental Enquiry and the inquiry officer also found that the charges have been proved against the respondent and finally vide order dated 11.09.2001 imposed a punishment of dismissal from service with immediate effect.

3. Subsequently, the respondent is said to have moved an application before the Controlling authority under the Payment of Gratuity Act on 19.08.2011 for release of his payment of gratuity. What is pertinent to note at this juncture is also the fact that vide order dated 14.11.2001, the petitioner-Bank has passed an order of forfeiture of the payment of gratuity payable to the respondent-employee. The petitioner-bank has entered into appearance before the controlling authority and had filed a detailed reply opposing grant of payment of gratuity to the respondent and has also taken an objection that the application was barred by limitation at the first instance and on the merits also the respondent-employee was not entitled for payment of gratuity on two grounds firstly, that his services has been dismissed by way of an order of punishment and therefore he is not entitled for gratuity and secondly, the dismissal order was on account of serious misconduct committed by him which had put the Bank to great financial loss.

4. The controlling authority, after considering the objections and contentions put forth on either side, finally vide order dated 03.12.2012 had allowed the application of the respondent-employee and had ordered that the respondent shall be entitled for payment of gratuity of Rs.3,40,424/-along with interest @ 10 percent per annum from 11.09.2001 i.e. date of dismissal to the date of actual payment of gratuity.

5. This order of Controlling Authority was subjected to challenge by the petitioner-Bank before the appellate authority under the Act. The appellate authority also vide impugned order rejected the appeal of the petitioner-bank holding that there was no illegality or infirmity committed by the controlling authority while allowing the gratuity in favour of the respondent-employee. It is these two orders which are under challenge in this petition.

6. Counsel for the petitioner challenges the two orders on the same grounds firstly the application being barred by limitation and the court below should not have entertained the application as the delay was not properly explained by the respondent and secondly on the merits, the contentions of the petitioner is that as per rules governing the service conditions of the respondent-employee he would not have been entitled for the gratuity for the reason that after departmental enquiry he was dismissed on account of misconduct. He further submits that even otherwise, since the nature of allegation imposed against the respondent employee was that of having committed misconduct to the extent of putting the bank to financial loss and as such he would not be entitled for the benefit of the gratuity.

7. Counsel for the respondent No.1 however opposes the petition and submits that the two orders i.e. order passed by the controlling authority as well as the order passed by the appellate authority do not warrant any interference as both the orders are speaking orders and there is no scope of interference exercising writ jurisdiction of this court. The question of limitation as well as the entitlement of the gratuity of the respondent both have been discussed elaborately by two authorities below. The authorities below had considered the issues and reached to the conclusion that delay was not the factor for denial of gratuity to the respondent. Likewise, the Act does not provide for withholding of the gratuity on the ground of service being dismissed and that the issue of financial loss is not reflected either from the charges or from the order of dismissal, and therefore, in the absence of any financial loss expressly mentioned in the charge sheet or in the dismissal order, the gratuity in the given facts and circumstances of the case could not have been withheld.

8. He further submits that a perusal of the order of two authorities below by itself would reveal that they had taken into consideration the authoritative pronouncements of various High Courts under the payment of gratuity Act and relying upon those judgments the authorities have passed the orders as such this court may not exercise its jurisdiction again sitting over those orders as an appellate authority by re-appreciating the entire facts and decide the matter afresh.

9. Having considered the rival contentions put forth on either side and on perusal of records what would be relevant at this juncture to take note of the fact is that Section-4 of Payment of Gratuity Act specifically deals with the issue of withholding and forfeiture of gratuity, which for ready reference is being reproduced as under :

> “(6) Notwithstanding anything contained in sub-section (1),-
>
> (a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence 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 shall be wholly forfeited,-
>
> (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
> (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. If we take into consideration the said provisions of law, there are two parameter or factors on which the gratuity can be withhold, they are (I) if the act on the part of the employee getting terminated amounts to an act of moral turpitude and (ii) if the act for which he has been removed was on account of misconduct which has put the employer to a financial loss and under the said circumstances also the recovery would be only to be extent of loss caused, and could not be total forfeiture of the gratuity unless the loss is more than the gratuity payable.

11. If we take into consideration the charge sheet which has been served upon the respondent-employee on the basis of which he was dismissed from service, it clearly reflects that none of the charges dealt with an issue by which it can be said that the act or the misconduct alleged against the respondent has subjected the petitioner's establishment to financial loss. Neither does the charge sheet or the dismissal/punishment order reflect an act to have been committed by the respondent which may fall within the ambit of moral turpitude. In the absence of these two parameters, this court is of the opinion that under no circumstances the payment of gratuity of respondent-employee could be withheld or forfeited.

12. Though the counsel for the petitioner-Bank relies upon the Rules governing the field i.e. Dena Bank Employees Gratuity Fund Rules. Clause-12(4) of the said rules deals with forfeiture of the gratuity. The same in the opinion of this court would not have an overriding effect over the Payment of Gratuity Act and that even otherwise rule 12-A also is almost para materia to the provisions of Section 4(6) of the Payment of Gratuity Act, which again deals with forfeiture of gratuity to the extent of damage or loss cause to the petitioner-Bank. The provisions of Section 12(2)(b) of the said Rules deals with denial of gratuity to the the respondent-employee, but a perusal of this provision also would show that the charge sheet issued to the respondent was not in connection with any of the conditions so stipulated under clause-12(b) of the said Rules.

13. In the given factual matrix of the case, this court is of the opinion that no strong case has been made by the petitioner-Bank for interfering with the impugned orders passed by the controlling authority as well as by the appellate authority.

14. Thus, the petition being devoid of merit is liable to be and is accordingly dismissed. No order asto costs.

Sd/-

(P. Sam Koshy)
Judge

inder