

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 42 Of 2015**

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, Dist-Durg (CG) Through Dy. Zonal Head, Zonal Office, UCO Bank, Chhattisgarh Eye Hospital Campus, 1st Floor, Talibandha, Raipur (C.G.) 492006

---- Petitioners**Versus**

Shri Jitendra Kumar Shrivastava S/o. Late Shri A.K. Shrivastava, H. No.06, Kanha Homes, Shanti Nagar, P.S. Civil Lines, Tah & Dist-Bilaspur (C.G.)

---- Respondent

For Petitioners : Mr. Ravindra Sharma, Advocate

For Respondent : Mr. D.C. Verma, Advocate

For Amicus Curiae : Mr. Abhishek Sinha & Mr. Gary Mukhopadhyay, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal

C A V Order**4/1/2016**

1. Renowned issue that emanates for consideration in this writ petition is whether the employer (petitioners herein) is justified in forfeiting the amount of gratuity payable to the employee (respondent herein) on the ground of his dismissal

from service without his conviction by jurisdictional criminal Court for an offence involving moral turpitude within the meaning of Section 4 (6) (b) (ii) of the Payment of Gratuity Act, 1972 (hereinafter called as “PG Act”) ?

2. The above-stated question arises for consideration in the following factual matrix incorporated hereinbelow:-

(i) The respondent/employee of the petitioner-Bank was charge-sheeted for having unauthorizedly accessed storage data of Saving Bank Accounts of depositors with a fraudulent intention and upon conclusion of full-fledged departmental inquiry, disciplinary authority by its order dated 31.8.2010 reached at a finding, agreeing with enquiry report, that the employee has caused by his misconduct, irreparable damage to the reputation and business of the banks, there has been a deliberate perpetration of fraud involving malafide with unpardonable offence and consequently, inflicted apart from other punishment, dismissal from service and said order of dismissal is said to have been attained finality. Thereafter, on 26.8.2013 the respondent herein made an application to the Controlling Authority for Payment of Gratuity under the provisions of the PG Act claiming gratuity.

(ii) The Controlling Authority issued notices in Form-O under Rule 11(1) of the Payment of

Gratuity (Central) Rules, 1972 asking the parties to appear before him. In reply to the notice, the petitioner-Bank submitted that the respondent herein was dismissed from service of the petitioner-Bank for commission of misconduct which constitutes an offence involving moral turpitude, therefore, Section 4(6) (b) (ii) of the PG Act squarely attracts and gratuity payable to the respondent herein stands forfeited and as such, when services of the respondent-employee have been terminated for an offence involving moral turpitude, gratuity has rightly been forfeited by the petitioner-Bank.

(iii) The Controlling Authority by its order dated 29.9.2014 holding that services of the respondent herein were not terminated for an offence involving moral turpitude, no prosecution was launched by the petitioner-Bank against the respondent herein for commission of an offence, no full-fledged inquiry was conducted before forfeiting his gratuity and held that the respondent herein is entitled for payment of gratuity of ₹ 5,71,478/- along with 10% simple interest per annum on the payable gratuity amount with effect from 30.8.2010 up to the date of its actual payment.

(iv) Feeling aggrieved and dissatisfied against the order of the Controlling Authority directing payment of gratuity, the petitioner-Bank preferred

an appeal before the Appellate Authority under the PG Act. The Appellate Authority by its order dated 6.2.2015 dismissed the appeal upholding the order passed by the Controlling Authority.

3. Questioning the order passed by the Appellate Authority upholding the order of the Controlling Authority, the instant writ petition has been filed by the petitioners under Article 226 of the Constitution of India stating inter-alia that the petitioner-Bank was justified in forfeiting the gratuity as the act committed by an employee for which his services have been terminated, constitutes an offence involving moral turpitude and as such, initiation of prosecution and consequent conviction of an employee by the criminal Court is not a condition precedent for forfeiting the gratuity in terms of Section 4 (6) (b) (ii) of the PG Act.
4. Return has been filed on behalf of the respondent opposing the writ petition stating inter-alia that the Controlling Authority is justified in holding that conviction of an employee for an offence involving moral turpitude by jurisdictional criminal Court is condition precedent for invoking Section 4 (6) (b) (ii) of the PG Act and in absence of conviction of terminated employee for an offence involving moral turpitude, invocation of

the above-stated provision is absolutely bad and illegal in law.

5. Mr.Ravindra Sharma, learned counsel appearing for the petitioners, would submit that order passed by the Controlling Authority holding that since the employee/respondent herein, who was terminated for his misconduct, has not been convicted by the criminal Court in a duly launched prosecution for an offence involving moral turpitude, suffers from grave jurisdictional error, as the act committed by the respondent/employee for grave misconduct for which his services have been terminated, ipso facto would constitute an offence involving moral turpitude, therefore, Section 4 (6) (b) (ii) of the PG Act squarely attracts and gratuity stands forfeited. He would further submit that order passed by the Controlling Authority as affirmed by the Appellate Authority is without due application of mind and as such, the writ petition deserves to be allowed and orders passed by two authorities directing payment of gratuity deserve to be quashed.
6. Mr.D.C.Verma, learned counsel appearing for the respondent, would oppose the writ petition and submit that concurrent finding recorded by two authorities holding that the respondent is entitled for payment of gratuity is based on ma-

terial available on record and as such, concurrent finding is not liable to be interfered with.

7. I have heard learned counsel appearing for the parties, also considered the rival submissions made therein and gone through the record of the case with utmost circumspection.
8. The question that cropped up for consideration is whether conviction of terminated employee for an offence involving moral turpitude is a condition precedent for forfeiting gratuity in terms of Section 4 (6) (b) (ii) of the PG Act.
9. In order to determine the controversy raised at the Bar, it would be appropriate to notice Section 4 (6) (b) (ii) of the PG Act which reads as under:-

“4. Payment of gratuity.-

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

(a) xxx xxx xxx

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

(i) xxx xxx xxx

(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. The following condition precedent must be satisfied in order to invoke the said provision:-

“(i) Proven misconduct which is based for determination for tenure of employee must be an offence under the law; and

(ii) Such misconduct which is an offence under the law must involve moral turpitude.

11. Section 3 (38) of the General Clauses Act, 1897 defines “offence” shall mean any act or omission made punishable by any law for the time being in force.

12. Section 2(n) of the Code of Criminal Procedure, 1973 defines “offence” as under:-

“offence means any act or omission made punishable by any law for the time being in force and includes an act in respect of which a complaint may be made under Section 20 of the Cattle-trespass Act, 1871 (1 of 1871).”

Thus, a common string running through all the above definitions is that for act or omission to constitute an offence, it must be a breach of a law or statute and such an act or omission must be punishable by any law.

13. In the matter of **Standard Chartered Bank v. Directorate of**

Enforcement¹, Their Lordships of the Supreme Court while

dealing with the word “offence” observed as under:-

“The word 'offence' is not defined in the Act. According to Concise Oxford English Dictionary, it means, 'an act or instance of offending'. Offend means, 'commit an illegal act' and illegal means, 'contrary to or forbidden by law'. According to New Shorter Oxford English Dictionary, an offence is "a breach of law, rules, duty, propriety, etiquette, an illegal act, a transgression, sin, wrong, misdemeanour, misdeed, fault." Thus, an offence only means 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. In its legal significance, an offence is the transgression of a law; a breach of the laws established for the protection of the public as distinguished from an infringement of mere private rights; a punishable violation of law, a crime, the doing that which a penal law forbids to be done or omitting to do what it commands (see P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edn, 2005 page 3302). This Court in Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. 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." The expression 'offence' as defined in [Section 3\(38\)](#) of the General Clauses Act means an act or

¹ (2006) 4 SCC 278

omission made punishable by any law for the time being in force. 'Punishable' as noticed by this Court in *Sube Singh & Ors. Vs. State of Haryana & Ors.* [(1989) 1 SCC 235] is ordinarily defined as deserving of, or capable or liable to punishment. According to Concise Oxford English Dictionary, 'punish' means, 'inflict a penalty on as retribution for an offence, inflict a penalty on someone for (an offence)'. In the New Shorter Oxford English Dictionary (Vol. 2, 3rd ed., reprint 1993), the meaning of punishment is given as, "infliction of a penalty in retribution for an offence; penalty imposed to ensure application and enforcement of a law."

14. The question for consideration is whether proven misconduct of the respondent herein in duly constituted departmental proceeding initiated and culminated against him inflicting the penalty of dismissal from service can be equated to an offence which is punishable under the law. In the considered opinion of this Court, departmental proceeding is independent in character and any misconduct proved in a departmental proceeding cannot be said to be an offence punishable under the law.
15. In order to invoke Section 4 (6) (b) (ii) of the PG Act at once, it is imperative that employee is terminated for proven misconduct and thereafter criminal prosecution is launched in jurisdictional criminal court and finding the said terminated employee guilty, he is convicted by the said criminal Court

holding that he has violated the provisions of law and statute. In catena of judgments, Their Lordships of the Supreme Court have held in no uncertain terms that departmental enquiry cannot be equated with criminal prosecution as the standard of proof in a departmental proceeding is based on preponderance of probabilities, whereas in criminal cases, it is beyond reasonable doubt. (See: AIR 1984 SC 626 [Corporation of the City of Nagpur, Civil Lines, Nagpur v. Ramchandra G. Modak and (2008) 3 SCC 729 [West Bokaro Colliery (TISCO Ltd) v. Ram Pravesh Singh)

16. In the matter of **Jashwant Singh Gill v. Bharat Coking Coal Ltd. and others**², Their Lordships of the Supreme Court have clearly held that under clause (b) of sub-section (6) of Section 4 of the PG Act, forfeiture of gratuity can be made only if he has been convicted for an offence involving moral turpitude and observed as under:-

“13. [The Act](#) provides for a close-knit scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. As noticed hereinbefore, sub-section (6) of [Section 4](#) of the Act contains a non-obstante clause vis-a`-vis sub-section (1)

² (2007) 1 SCC 663

thereof. As by reason thereof, an accrued or vested right is sought to be taken away, the conditions laid down thereunder must be fulfilled. The provisions contained therein must, therefore, be scrupulously observed. Clause (a) of Sub-section (6) of [Section 4](#) of the Act speaks of termination of service of an employee for any act, willful omission or negligence causing any damage. However, the amount liable to be forfeited would be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or damage. It was not found that the damages or loss caused to Respondent No. 1 was more than the amount of gratuity payable to the appellant. Clause (b) of Sub-section (6) of [Section 4](#) of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude. Conditions laid down therein are also not satisfied.”

17. Thus, on the basis of above-stated analysis, it can be safely deduced that in order to invoke Section 4 (6) (b) (ii) of the PG Act to forfeit an amount of gratuity payable to an employee, the condition precedent is that terminated employee must be convicted for an offence for the time being in force and that offence must be an offence involving moral turpitude. Unless the aforesaid two conditions are fully established by an employer, mere termination or dismissal of an employee concerned would not *ipso facto* constitute an offence that too an offence involving moral turpitude to attract

Section 4 (6) (b) (ii) of the PG Act and an employer would have no jurisdiction to invoke the provision contained in Section 4 (6) (b) (ii) of the PG Act to forfeit gratuity payable to an employee under the PG Act.

18. The aforesaid determination of the legal question brings me to advert to the facts of the present case as to whether the petitioner-Bank is justified in forfeiting the amount of gratuity payable to the respondent herein upon his termination from service. It is apparent that the disciplinary authority inflicted penalty of dismissal to the respondent herein from service by order dated 31.8.2010 for his proven misconduct. Thereafter, no prosecution was launched/initiated on behalf of the petitioner-Bank before the jurisdictional criminal Court for his proven misconduct holding it to be criminal offence and the respondent herein was not convicted by the said Court and that too not for an offence involving moral turpitude, as such conviction of terminated employee concerned for commission of offence involving moral turpitude by him in course of his employment is imperative condition precedent for forfeiting the amount of gratuity payable to an employee, as held by Their Lordships of the Supreme Court in the matter of **Jashwant Singh Gill (supra)**, which is absolutely missing in the factual matrix of the instant case. In view of the aforesaid

legal discussion, order of the Controlling Authority directing payment of gratuity to the respondent herein along with interest duly affirmed by the Appellate Authority would stand further reaffirmed.

19. As a fallout and consequence of the aforesaid discussion, the writ petition filed by the petitioners is liable to be and is hereby dismissed, but without imposition of cost.
20. Before parting with the records, this Court appreciates the able assistance rendered by Mr.Abhishek Sinha and Mr.Gary Mukhopadhyay, learned Amicus Curiae and excellence of their written submission as well.

**Sd/-
(Sanjay K. Agrawal)
JUDGE**

B/-

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 42 Of 2015

Petitioners

The General Manager, UCO Bank,
and another

Versus

Respondent

Shri Jitendra Kumar Shrivastava

(English)

In order to forfeit gratuity of terminated employee u/s 4(6)(b)(ii) of PG Act, 1972, his conviction for an offence involving moral turpitude is mandatory.

(हिन्दी)

उपदान संदाय अधिनियम, 1972 की धारा 4(6)(ख)(ii) के अंतर्गत बर्खास्त कर्मचारी के उपदान समपहरण हेतु नैतिक अद्यमता के अपराध में उसकी दोषसिद्धि आज्ञापक है।