NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No. 18 of 2015

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

2. The Regional Manager Dena Bank Rukmani Bhawan Behind Jairam Complex Mg Road Raipur The Branch Manager Dena Bank Surana Complex, Station Road Durg C.G.

---- Petitioners

Versus

1. Shri G.M. Karnawat, S/o Late P.D. Karnawat, Ex Manager, Dena Bank, R/o 221, Arya Nagar, Opp. Agrawal Nursing Home, District Durg C.G.

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 Commissioner (Central) Raipur D - 6 Other Society, Sector -1 Avanti Vihar Raipur District Raipur C.G.

---- Respondents

For Petitioners	Mr. Vinod Deshmukh, Advocate
For Respondent No.1	Mr. N.K. Vyas, Counsel

SB: Hon'ble Shri Justice P.Sam Koshy

Order On Board

02.12.2016

1. The present petition under Article 226/ 227 of the Constitution of India has been preferred challenging order of Respondent No.2 i.e. the Appellate Authority under Payment of Gratuity Act, 1972 and Regional Labour Commissioner (Central) Raipur dated 27/28.02.2014 in case No. P.G.A.19/2012.

2. Vide the said impugned order the Appellate Authority had rejected

the appeal of the Petitioners preferred under Section 7(7) of the Payment of Gratuity Act.

3. The facts relevant for the adjudication of the present case is that the Respondent No.1 was an employee of the Petitioner Bank working as Manager at Durg Branch at that relevant point of time. He was issued with charge sheet on 31.01.2007 alleging various misconduct against him. As per the article of charge- sheet imposed on him the charges were as below:

    1. Violated/flouted the rules and procedures of the Bank in performance of his official duties and thereby exposed to the Bank to risk of financial loss.
    2. Failed to take requisite steps to protect the interest of the Bank and thus exposed the Bank to financial loss.
    3. Committing an act prejudicial to the interest of the Bank involving the Bank in serious loss.
    4. Failed to discharge his duties with utmost devotion and diligence.
    5. Doing acts unbecoming of an officer employee.

4. A departmental enquiry was initiated against him and after the inquiry as per the report only two charges i.e. charges No. 1 & 4 have been proved and other charges have not been proved and the bank finally vide its order dated 03.1.2008 Annexure P/3 has imposed order of punishment of compulsory retirement from the service with immediate effect.

5. Thereafter vide the order 05.5.2010 the Petitioner bank also issued an order of forfeiture of the gratuity invoking the Rules under 12(A & B) of the Dena Bank Employees' Gratuity Fund Rules which deals with the payment of gratuity of the employees and officers working with Dena Bank. Later on the Respondent employee is said to have moved application before the Controlling Authority under Payment of Gratuity Act and Assistant Labour Commissioner (Central) Raipur for

release of gratuity under Section 4 of the Payment of Gratuity Act. The Petitioner before the Controlling Authority had filed written submissions raising objection that the application having been moved beyond the period of limitation therefore it is not maintainable and also raised objection that since he was subjected to disciplinary action and was punished with compulsory retirement, he was not entitled for the payment of gratuity. It was further alleged that on account of his misconduct the bank got exposed to financial loss.

6. The Controlling Authority after having considered the contentions and objections raised on either side allowed the application vide its order dated 11.09.2012 holding Respondent employee to be entitled for receiving amount of gratuity and ordered to the Petitioner Bank to pay an amount of Rs. 5,12,672/- with simple interest of 10% per annum on the amount from the date the Respondent employee was compulsorily retired i.e. 03.01.2008 to till the actual date of payment.

7. The said order of the Controlling Authority dated 11.09.2012 was put to challenge by way of an appeal before the Appellate Authority under Payment of Gratuity Act i.e. Regional Labour Commissioner (Central), Raipur. The Appellate Authority taking into consideration the provisions of law and the rules governing the field vide the impugned order rejected the appeal of the Petitioner Bank, leading to the filing of the present Petition.

8. Counsel for the Petitioners challenges the impugned order on two grounds, firstly the application being barred by limitation and submitted that the court below should not have entertained the application as the delay was not properly explained by the respondent and secondly on merits, the contentions of the petitioner

was 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 imposed with order of punishment of compulsory retirement from the service with immediate effect. 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.

9. 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 have considered the issues and reached to the conclusion that delay cannot be a 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 compulsory retirement. In the absence of any financial loss expressly mentioned in the charge sheet or in the order of compulsory retirement, the gratuity in the given facts and circumstances of the case could not have been withheld.

10. He relied upon the recent decision of the Madhya Pradesh High Court delivered on 28.11.2013 in Writ Petition No. 6551/2013 in case of Zonal Manager, Central Bank vs. R.R. Das wherein the High Court of Madhya Pradesh has held that the Payment of Gratuity Act would have overriding effect over the rules framed by the Bank establishment in this regard.

11. 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, the relevant portion of which for ready reference is being reproduced as under :-.

> "**4....**...................
>
> **(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."

12. 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 there could not be total forfeiture of the gratuity unless the loss is more than the gratuity payable.

13. If we take into consideration the charge sheet which has been served upon the respondent-employee on the basis of which he was compulsorily retired from service, it clearly reflects that none of the charges reflects that the act or the misconduct alleged against the respondent has caused the petitioner's establishment any financial loss. Neither does the charge sheet or the compulsory retirement /punishment order reflect an act alleged to have been committed by the respondent 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.

14. 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 Clause 12-A also is *pari 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 respondent-employee, but a perusal of this provision also it 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.

15. 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.

16. Thus, the petition being devoid of merit is liable to be and is accordingly dismissed.

17. No order as to costs.

Sd/-
(P. Sam Koshy)
JUDGE

kishore