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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No.5 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. Indrajeet Singh Solanki, S/o Gulab Singh Solanki, MIG-5, Housing Board Colony, Tatibandh, Raipur (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 Adarsh Society, Sector-1, Avanti Vihar, Raipur, Distt. Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Vinod Deshmukh, Advocate.
For Respondent No.1: Mr. Soumya Rai, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

25/04/2017

1. This petition is directed against the order dated 24-2-2014 passed by the appellate authority under the Payment of Gratuity Act, 1972 (for short, 'the Act, 1972'), whereby the appellate authority has modified the order of the controlling authority and directed the petitioner Bank to release the amount of gratuity of ₹ 3,76,320/- along with 10% interest.
2. The aforesaid order has been passed in the following factual backdrop: -

2.1) Respondent No.1 was convicted by the Court of Special Judge (CBI), Raipur for commission of offence under Sections 120B, 420, 468, 471 of the IPC and Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, and sentenced to RI for 2 years & fine of Rs.1,000/-, in default of payment of fine additional RI for two months; RI for 2½ months & fine of Rs.2,000/-, in default of payment of fine additional RI for three months; RI for 2½ months & fine of Rs.2,000/-, in default of payment of fine additional RI for three months; RI for 2½ months & fine of Rs.2,000/-, in default of payment of fine additional RI for three months; and RI for 2½ months & fine of Rs.2,000/-, in default of payment of fine additional RI for three months, respectively, by judgment dated 31-7-2007.

2.2) Since respondent No.1 was, at the relevant point of time, working as Manager of the said Bank, he was served with show-cause notice dated 11-8-2007 under Regulation 11 of the Dena Bank Officer Employees' (Discipline and Appeal) Regulations, 1976, and the said Bank sought explanation from respondent No.1 as to why the penalty of dismissal from service of the Bank without notice with immediate effect should not be imposed upon him, as he has already been convicted by the criminal court, which respondent No.1 responded, but ultimately, by order dated 10-9-2007, the disciplinary authority imposed the penalty of compulsory retirement from service of Dena Bank with immediate effect.

Thereafter, again, show-cause notice was issued for forfeiture of gratuity which was replied by respondent No.1 and ultimately, by order dated 18-6-2009, gratuity amount to the extent of ₹ 3,76,320/- was forfeited. Thereafter, respondent No.1 filed an application before the controlling authority for payment of gratuity which was allowed and the controlling authority granted the amount of gratuity against which the petitioner Bank preferred appeal. In appeal, the order granting the amount of gratuity was modified and respondent No.1 was held entitled for gratuity of ₹ 3,76,320/- along with 10% interest.

2.3) Feeling aggrieved against the order of the appellate authority under the Payment of Gratuity Act, 1972, this writ petition has been filed by the petitioner Bank stating inter alia that respondent No.1 is not entitled for gratuity under Section 4 (6) (b) (ii) of the Act, 1972, particularly when he has been convicted for offence under Sections 120B, 420, 468, 471 of the IPC and Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act and terminated by way of compulsory retirement. Therefore, the order of payment of gratuity granted by the appellate authority deserves to be set aside.

2.4) The contention of the petitioner Bank has been opposed by respondent No.1 by filing written statement.

3. Mr. Vinod Deshmukh, learned counsel appearing for the petitioner Bank, would vehemently submit that respondent No.1 has been convicted for offence under Sections 120B, 420, 468, 471 of the IPC and Section 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, for having committed criminal conspiracy, forgery etc., and having been compulsorily retired, therefore, he is not entitled for gratuity in terms of Section 4 (6) (b) (ii) of the Act, 1972 and Rule 12 (b) (ii) of the Dena Bank Employees Gratuity Fund Rules.

4. On the other hand, Mr. Soumya Rai, learned counsel appearing for respondent No.1, would submit that respondent No.1 was only compulsorily retired from service, he was never terminated from service that too for offence involving moral turpitude, therefore, the provisions of Section 4 (6) (b) (ii) of the Act, 1972, are not attracted and as such, the appellate authority is absolutely justified in grating the amount of gratuity to respondent No.1 which has already been paid to him and, therefore, the writ petition deserves to be dismissed.

5. I have heard learned counsel for the parties and considered their rival submissions and also gone through the record with utmost circumspection.

6. It is not in dispute that respondent No.1 was convicted for offence under Sections 120B, 420, 468, 471 of the IPC and Section 13 (2) read with Section 13 (1) (d) of the Prevention of

Corruption Act, and sentenced for the period mentioned therein. Thereafter, on the basis of such conviction under the above-stated offences, under the Dena Bank Officer Employees' (Discipline and Appeal) Regulations, 1976, penalty of compulsory retirement was imposed upon respondent No.1 on 10-9-2007. No departmental enquiry was held against respondent No.1 to prove his misconduct and only on the basis of his conviction on the aforesaid offences, he has been compulsorily retired from service. Thereafter, under the Dena Bank Employees Gratuity Fund Rules, his gratuity has been forfeited by order dated 18-6-2009.

7. Section 4 (6) (b) of the Act, 1972 provides for forfeiture of gratuity in following two conditions: -

> "(6) Notwithstanding anything contained in sub-section (1),—
>
> (a) *** *** ***
>
> (b) the gratuity payable to an employee may be wholly or partially 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."

8. A careful perusal of clause (b) of sub-section (6) of Section 4 of the Act, 1972, would show that the employee must have been terminated on account of alleged misconduct and that

misconduct must constitute an offence involving moral turpitude and further, that offence must have been committed by him in the course of his employment. It is settled law that statutory provision for forfeiture of gratuity must be construed strictly and in absence of termination, the employee does not forfeit his right of gratuity.

9. Very recently, Section 4 (6) (b) (ii) of the Act, 1972 came up for consideration before the Supreme Court in the matter of **Jorsingh Govind Vanjari v. Divisional Controller, Maharashtra State Road Transport Corporation, Jalgaon Division, Jalgaon**[1] in which Their Lordships have clearly held that in order to deny gratuity to an employee on the ground of dismissal for moral turpitude, prerequisites are there must be termination on account of alleged misconduct which constitutes an offence involving moral turpitude. Their Lordships observed as under: -

> "15. In order to deny grautity to an employee, it is not enough that the alleged misconduct of the employee constitutes an offence involving moral turpitude as per the report of the domestic inquiry. There must be termination on account of the alleged misconduct, which constitutes an offence involving moral turpitude."

10. The case of the petitioner Bank is that services of respondent No.1 have been terminated by way of compulsory retirement and since he was convicted for offence under Sections 120B, 420, 468, 471 of the IPC and Section 13 (2) read with Section

1 (2017) 2 SCC 12

13 (1) (d) of the Prevention of Corruption Act, which is an offence involving moral turpitude as held by the Supreme Court in the matter of **Allahabad Bank v. Deepak Kumar Bhola**[2] and **Sushil Kumar Singhal v. Regional Manager, Punjab National Bank**[3]. Therefore, the appellate authority is not justified in setting aside the forfeiture of gratuity.

11. Applying the principle of law and the statutory provisions as well as the decision of the Supreme Court in **Jorsingh Govind Vanjari** (supra) to the facts of the present case, it is apparent that there is no termination of service of respondent No.1 by the petitioner Bank on account of proven misconduct particularly which constitutes an offence involving moral turpitude. The petitioner Bank has imposed only the penalty of compulsory retirement against respondent No.1 that too on the basis of conviction of respondent No.1 in criminal offences. So the first and foremost prerequisite for invoking Section 4 (6) (b) (ii) of the Act, 1972 i.e. termination on account of proven misconduct, is absolutely missing in this case and therefore, Section 4 (6) (b) (ii) is not at all attracted and as such, the appellate authority is absolutely justified in holding that there is no termination of respondent No.1 and respondent No.1 is entitled for gratuity with interest.

12. For the reasons elaborated herein-above, I do not find any

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2 (1997) 4 SCC 1
3 (2010) 8 SCC 573

jurisdictional error in the order of the appellate authority. The writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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