IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2017

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.28185 of 2013

UCO Bank,
Regional Office,
328, Thambu Chetty Street,
Chennai - 1.
Rep. By its Chief Manager. .. Petitioner

Vs

1.The Appellate Authority
under Payment of Gratuity Act, 1972 and
Regional Labour Commissioner (Central),
26, Haddows Road,
Shastri Bhavan, Chennai - 6.

2.The Central Authority
under Payment of Gratuity Act, 1972 and
Regional Labour Commissioner (Central),
26, Haddows Road,
Shastri Bhavan, Chennai - 6.

3.Mrs.Suganthy Gomez .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the first respondent vide order dated 26.07.2012 made in G.A.No.148 of 2012 confirming the order dated 24.07.2012 made in G.A.No.125 of 2011 on the file of the second respondent herein and quash the same.

For petitioner : Mr.Srinath Sridevan
For R3 : Mr.S.Saravanan for R3

O R D E R

By way of filing this writ petition, the petitioner seeks to quash the impugned order dated 26.07.2012 passed by the first respondent in confirming the order dated 24.07.2012 of the second respondent, in and by which, the respondents 1 and 2, by quashing the order passed by the petitioner Bank in rejecting the claim of gratuity, directed them to release the same to the third respondent / wife of delinquent employee.

2. Learned counsel appearing for the petitioner Bank submitted that one Mr.P.J.Gomez was an employee of the petitioner Bank and during his course of employment as Assistant Manager, the Bank observed serious financial irregularities committed by him, which ultimately made them to initiate disciplinary proceedings against him by framing the following charges vide charge memo dated 24.09.2005:-

i. Unauthorized purchase of cheques;
ii. Borrow money from the Bank for own use;
iii. Forged the signature of Senior Manager in a consent letter;
iv. Unauthorized drawings from accounts;

On receipt of said charge memo, he had also submitted his explanation on 15.10.2005 denying all the charges levelled against him. Rejecting his explanation, the Bank proceeded to conduct enquiries on 23.01.2006, 07.03.2006, 26.04.2006 and 27.04.2006 and finally, the Disciplinary Authority, on the basis of evidence and proof placed before it, held that out of 12 charges, 11 charges were proved against him and he was found guilty of committing an offence involving moral turpitude during the course of his employment, which had caused severe financial loss to the Bank and therefore, for committing such grave misconduct, the Disciplinary Authority imposed the punishment of compulsory retirement from service without affecting his terminal benefits. The said order of the Disciplinary Authority had become final and Mr.Gomez, husband of the third respondent, did not challenge the same.

3. It is further stated that pursuant to the order of the Disciplinary Authority, the Bank sent a letter dated 26.03.2007 requesting him to show cause as to why his gratuity should not be forfeited and thereafter, he had also sent his reply on 16.04.2007. On receipt of his reply and also taking note of the findings of the Disciplinary Authority, the Bank found no merit in his claim seeking gratuity and accordingly, the Bank had rejected his claim on 02.05.2007.

4. It is further submitted that knowing the above said facts and presuming that he did not have a strong case to challenge the order passed by the Disciplinary Authority, the

said Mr.P.J.Gomez never pursued the matter thereafter. However, unfortunately, he died on 03.06.2009. Subsequently, with a huge delay of three years, the third respondent / wife of the said Gomez filed an application before the second respondent under Section 4(1)(b) of the Act claiming gratuity only in the year 2011. Thus, he contended, the challenge made by the third respondent with a delay of three years before the second respondent ought not to have been entertained by them.

5. It is further submitted that the second respondent, without appreciating the delay and merits of the case, by its order dated 24.07.2012, directed the Bank to pay Rs.5,75,000/- along with interest at 10%, but, the order failed to discuss as to how it has arrived at the said sum. Aggrieved by the same, when an appeal was preferred, the first respondent, by order dated 26.07.2012, had also confirmed the same holding that the actions of Mr.Gomez do not constitute moral turpitude. Such orders passed by the respondents 1 and 2, without taking note of the fact that out of 12 charges, 11 charges were found proved against him, are totally misconceived, he pleaded.

6. Assailing the observation of the second respondent that the order of forfeiture was passed without following the principles of natural justice, learned counsel for the petitioner contended that after imposition of punishment of compulsory retirement by the Disciplinary Authority, the Bank sent a notice dated 26.03.2007 asking him to show cause as to why his gratuity should not be forfeited and on receipt of same, the said Mr.Gomez had also sent his reply on 16.04.2007 and only thereafter, the Bank, finding no merit in his reply, had rightly passed an order dated 02.05.2007 forfeiting his gratuity amount. Thus, he contended, the impugned orders of the respondents 1 and 2 holding that the Bank did not follow the principles of natural justice before passing the order of forfeiture of gratuity cannot be sustained. On this basis, he prayed for quashing the impugned orders passed by the respondents 1 and 2.

7. Per contra, learned counsel appearing for the third respondent submitted that there is no infirmity in the impugned orders passed by the respondents 1 and 2 directing the Bank to pay the gratuity by holding that the falsification of accounts cannot be construed as moral turpitude. It is further contended that the findings given by the respondent that the falsification of accounts cannot be construed as moral turpitude cannot be interfered with by this Court as there is no infirmity therein.

8. This Court hardly finds any justification on the above said contention, the reason is that when the petitioner was issued with a charge memo dated 24.09.2005 containing 12 charges, the Enquiry Officer found him guilty of all charges except Charge No.2. One of the allegations in charge no.7 is that the said Gomez did not return the cheque for Rs.3062.00/- received for want of sufficient funds, but, he had unauthorizedly retained the same in the debit of DNR account and thereby he had also signed the relative vouchers for the same, although he was on leave on the said date i.e. 05.02.2005. Such an act candidly shows that he had not only failed to obtain prior permission from the Competent Authority of the Branch for retention of the cheque in DNR account, but also willfully indulged abusing his official position in signing the relative vouchers for the same, which he was not authorized to do so while on leave. Therefore, I am of the view that he had committed misconduct warranting forfeiture of his gratuity.

9. Besides, it is also pertinent to take note of the allegation Nos.9 and 10, which are stated below:-

> "Allegation No.9: Mr.Gomez on 19.05.2004 had unauthorizedly debited working expenses (TA & DA) A/c. with a sum of Rs.2670.00/- and appropriated the proceeds for transfer and credit of his SB A/c No.3434 with Tirunelveli Branch, for which Mr.Gomez had not remitted any TA bill claiming reimbursement from the Bank nor he obtained due permission from the Competent Authority to debit working Expenses A/c.
>
> Allegation No.10: Mr.Gomez on 22.01.2004, 12.03.2004 and 26.04.2004 had unauthorizedly debited working expenses (TA) A/c with a sum of Rs.1670.00/-; Rs.4330.00/-; and Rs.5470.00/- respectively, appropriated the proceeds for transfer and credit of his SB A/c.3434 with Tirunelveli Branch, for which Mr.Gomez had not got the TA bill duly sanctioned from the Competent Authority at the Branch, nor he obtained due permission from the Competent Authority to debit working expenses A/c."

From the above said allegations, it is clear that though he had claimed Travelling Expenses (TA) by debiting working expenses (TA) account, he did not produce any bill for the same nor he obtained prior permission for the said vouchers from the Competent Authority for crediting the said sum in his Savings Bank account. Such actions of the said Gomez, husband of third respondent, are directly related to embezzlement. Therefore, the Disciplinary Authority, by accepting the report of the Enquiry Officer finding him guilty in respect of all the charges except charge No.2, in which some of them are in relation to moral turpitude, rightly passed an order of compulsory retirement, instead of passing other capital punishment. Therefore, the premise on which the respondents 1 and 2 held that the allegations levelled against him do not involve moral turpitude is far from acceptance. Hence, the order passed by the second respondent confirming the order of the first respondent are set aside.

10. However, considering the fact that during the pendency of the writ petition, the third respondent has moved an application on the ground that she had fallen ill for which she required financial assistance, this Court, by order dated 18.12.2014, permitted the third respondent to withdraw a sum of Rs.2,87,500/-, therefore, on humanitarian ground, this Court permits the third respondent to withdraw a further sum of Rs.62,500/-, as the maximum amount of gratuity was only Rs.3,50,000/- as per the UCO Bank (Officer's) Service Regulation, 1979.

11. In fine, for the reasons stated above, the writ petition is allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Appellate Authority
under Payment of Gratuity Act, 1972 and
Regional Labour Commissioner (Central),
26, Haddows Road,
Shastri Bhavan, Chennai - 6.

2.The Central Authority
under Payment of Gratuity Act, 1972 and

Regional Labour Commissioner (Central),
26, Haddows Road,
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+1cc to S.Saravanan, Advocate Sr. 3521

W.P.No.28185 of 2013

RR(CO)
VR(14/03/2017)