THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.3042 of 2012

ORDER:

This Writ Petition is filed by the petitioner/Indian Bank assailing the order dt.12-12-2011 of the 2nd respondent i.e. Appellate Authority under the Payment of Gratuity Act, 1972 (for short "the Act") in Appeal No.36/09/2011-E1.

2. The 1st respondent was employed as Assistant Manager in the petitioner Bank. A charge sheet was issued to him by the petitioner, which ultimately resulted in punishment of compulsory retirement on 17-12-2002.

3. The 1st respondent filed an appeal on 29-10-2003 against the said order of punishment. Since it was not disposed of, he then filed W.P.No.1558 of 2004 and in the meantime, the appeal came to be disposed of on 12-10-2004 upholding the decision of the disciplinary authority of the petitioner Bank awarding compulsory retirement of 1st respondent.

4. On 01-07-2010, the 1st respondent made an application before the Controlling Authority under the Act seeking gratuity payable to him by the petitioner amounting to Rs.4,50,000/- with interest thereon at 10% p.a. from 19-01-2003.

5. The 1st respondent contended before the Controlling Authority under the Act that he challenged the punishment of compulsory

retirement, which was confirmed in appeal in W.P.No.23019 of 2005, which was pending, but the petitioner did not settle his gratuity for the service rendered by him to the petitioner and he is entitled to the payment of gratuity even though he was retired compulsorily from service by petitioner under Section 4(1)(b) of the Act. He contended that petitioner was obligated under Section 7(2) of the Act to determine the amount of gratuity payable to him, that the petitioner cannot forfeit the amount of gratuity payable to him and sought a direction to the petitioner from the Controlling Authority to release his gratuity.

6. The petitioner opposed the said application on the ground that the application is bared by limitation and on the ground that a major penalty of compulsory retirement was imposed on the 1st respondent under the Indian Bank Officers Service Regulations, 2002. It is contended that 1st respondent was awarded major punishment of compulsory retirement and so he was not eligible for payment of gratuity under the Indian Bank Officers Service Regulations, 2002 of the petitioner Bank and that the petitioner Bank was entitled to forfeit the gratuity payable to the 1st respondent.

7. By order dt.23-04-2011, the Controlling Authority under the Act condoned the delay in filing the application filed by 1st respondent seeking gratuity under the provisions of the Act and also directed the petitioner to release the gratuity amount to 1st respondent. It considered the question whether the punishment of compulsory

retirement from service imposed on 1st respondent by the Bank would cause any stigma and came to the conclusion that it is not a punishment carrying a stigma. It then relied on Section 4(6)(b) of the Act as amended in 1984 (which provided that an employee's gratuity may be forfeited if his services are terminated by employer for any act which constitutes an offence involving moral turpitude) and concluded that the petitioner's contention that the 1st respondent had committed acts of moral turpitude is only an after thought, that 1st respondent's case does not fall under Section 4(6)(b)(ii) of the Act and the petitioner was not entitled to forfeit or deny gratuity to the 1st respondent.

8. This was assailed by the petitioner before the 2nd respondent by filing an appeal, which was numbered as Appeal No.36/09/2011-E1.

9. In the appeal, it was contended that the provisions contained in Indian Bank (Officers) Services Regulations, 1979 enable forfeiture of gratuity amount, if an Officer was awarded punishment by the disciplinary authority and that the said Regulations would override the provisions of the Act. It was also contended that the Controlling Authority ought not to have condoned the delay in filing application seeking gratuity.

10. The appellate authority held that condonation of delay by the Controlling Authority was proper since on mere delay, amount of gratuity payable cannot be withheld. It also held that there is no order

passed either by the disciplinary authority or by the appellate authority prohibiting payment of gratuity to 1st respondent and W.P.No.23019 of 2005 filed by 1st respondent relates to payment of pension and does not relate to payment of gratuity. The 2nd respondent further held that the Act is the law of land enacted by the Parliament of India and would have overriding effect on any Act or Regulation, which provided to the contra. The 2nd respondent thus confirmed the order passed by the Controlling Authority.

11. Assailing the same, this Writ Petition is filed.

12. Sri Ambadipudi Satyanarayana, learned counsel for petitioner contended that 1st respondent is not entitled to gratuity and that the petitioner was entitled to forfeit the same in view of the provisions contained in Regulation No.46 of the Indian Bank (Officers) Service Regulations, 1979 as well as Section 4(6)(b)(ii) of the Act. He further contended that the Regulations were framed by the petitioner under Section 19 r/w Section 12(2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, that it would have the force of law and has to be treated as special law overriding the Act. He placed reliance on an unreported judgment of a single Judge of the Madras High Court in **M.Azeez Vs. Indian Bank**[1].

13. Learned counsel for 1st respondent, however, contended that both the Controlling Authority as well as the 2nd respondent did not commit any error in holding in favour of the 1st respondent. He

[1] W.P.Nos.8450 to 8459 of 2012 dt.11-04-2012

contended that Section 4(6)(b)(ii) of the Act would come into play only if the services of an employee have been terminated for any act which constitutes an 'offence' involving moral turpitude, if such 'offence' is committed in the course of employment; a Division Bench of this Court in **The Regional Manager, Indian Bank, Vijayawada Vs. J.Siva Sankaram**[2] has explained the said clause to mean that an employee would be denied gratuity only if a criminal case has been registered against him, but not if his services are terminated for a civil wrong such as misconduct as defined in Service Regulations of an Employer; and in the present case, there is no prosecution of the 1st respondent for any offence involving moral turpitude nor is there any conviction for such offence, and so the said provision of law is not attracted.

14. He further contended that in **Jaswant Singh Gill Vs. Bharat Cooking Coal Limited and Others**[3], the Supreme Court has held that the provisions of the Act would override Rules or Regulations framed by any employer. He also pointed out that the Supreme Court in **Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI)**[4] has held that even though an employee's services are terminated by order of compulsory retirement, it is not same like termination by dismissal or removal and that if an employee is compulsorily retired, he would be entitled to pension etc., which he has earned.

[2] 2012(4) ALT 239
[3] (2007) 1 SCC 663
[4] AIR 1954 SC 369

15. According to him, Regulation 46(1)(b) cited by the counsel for petitioner which entitles the Bank to withhold gratuity would apply only if there is termination of service by way of punishment and since compulsory retirement cannot be treated as such, even under the said Regulation, the petitioner cannot be denied gratuity.

16. I have noted the contentions of the parties.

17. Sub-section (1) of Section 4 of the Act creates a right in an employee to get gratuity on the termination of employment after he has rendered continuous service for not less than 5 years on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease. Sub-section (2) thereof provides quantum of gratuity which is payable and how it has to be calculated. Sub-section (3) imposes a statutory limit to the gratuity amount payable to the employee as Rs10 lakhs. Sub-section (6) of Section 4 of the Act provides for forfeiture of gratuity only if the services of an employee were terminated for any act which constitutes an offence involving moral turpitude, if such offence is committed in the course of his employment.

18. It is also pertinent to note that Section 4(1) of the Act provides that payment of gratuity not only on the superannuation of an employee but also on his retirement. The term “retirement” is defined in Section 2(q) of the Act as “termination of the service of an employee otherwise than on superannuation”. Therefore the term “retirement” used in Section 4(1)(b) of the Act would also apply to a

case of compulsory retirement since retirement on superannuation is dealt with separately by the said provision. Therefore, the Act entitles even an employee who has been compulsorily retired to get gratuity.

19. This Court in **J.Siva Sankaram** (2 supra) considered the above provision and observed that there is a distinction between a civil wrong and an offence, that 'offence' would mean only an act or omission made punishable by any law for the time being in force; and only acts or omissions involving criminal culpability can be characterized as offences. It held that such offences are required to be codified well in advance so that one can regulate his conduct carefully enough not to attract the penal consequences therefrom. Referring to clause (2) of Rule 2 of the Second Schedule of the Gratuity Fund of the Bank, which dealt with offences involving moral turpitude, the Bench held that if an employee's services are terminated on account of conviction, such employee's gratuity should be forfeited, but the Bank cannot itself unilaterally assume the conduct of its employee as an offence involving moral turpitude and it has no such power or jurisdiction. Only if such employee of the Bank was tried by a competent criminal Court and was punished for an offence involving moral turpitude, and basing upon such conviction if his services were terminated, it can withhold payment of gratuity and not otherwise. It held that where punishment of compulsory retirement is imposed on an employee, the Bank cannot withhold payment of gratuity.

20. Learned counsel for petitioner could not place any decision contrary to this decision and therefore since this decision is binding on me, I hold that the petitioner cannot deny gratuity on the ground that 1st respondent has been compulsorily retired for an act which it treats it as an offence involving moral turpitude.

21. In **Jaswant Singh Gill** (3 supra), the Supreme Court considered the claim for payment of gratuity of an employee working in Bharat Cooking Coal Limited, a Government company incorporated and registered under the Companies Act, 1956. In that case also, gratuity payable was denied to the appellant before the Supreme Court on the basis of Rules framed by the said Corporation. The Supreme Court held that the Rules framed by the said Corporation would be subservient to the provisions of the Act, that the Rules were also non-statutory in nature and the provisions of the Act would override the said Rules. It held that a statutory right accrued under the Act cannot be impaired by reason of a rule, which does not have the force of a statute.

22. Learned counsel for petitioner relied a judgment of a single Judge of the Madras high Court in **M.Azeem** (1 supra). In that case Madras High Court held that regulation 46 of the Indian Bank Officers Regulations, 1979 is a special law which would override the provisions of the Act, since said Regulation was framed by virtue of power conferred on the Indian Bank under the Banking Companies Nationalization Act i.e. Banking Companies (Acquisition and

Transfer of Undertakings) Act, 1970. The single Judge observed that if the Indian Bank is empowered to frame rules in terms of the law made by the Parliament, then Regulation 46 is a subsequent special law which will override the provisions of the Payment of Gratuity Act, 1972.

23. With respect, I am unable to agree with the said view for the reason that the attention of the Madras High Court does not appear to have been drawn to the judgment of the Supreme Court in **Jaswant Singh Gill** (3 supra).

24. Also Section 14 of the Act states:

> *"14. Act to override other enactments, etc.- The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."*

25. This provision will give overriding effect to any provision of law which is contrary to the provisions of the Act. Therefore it cannot be said that Regulation 46 would prevail over the provisions of the Act.

26. Also, the Supreme Court in **Shyam Lal** (4 supra) has held that where an employee is compulsorily retired, he does not lose any part of the benefit he earned and he would be entitled to pension, which he actually earned. The Supreme Court observed:

"18. Finally, rule 49 of the Civil Services (Classification, Control and Appeal) Rules clearly indicates that dismissal or removal is a punishment. This is imposed on an officer as a penalty. It involves loss of benefit already earned. The officer dismissed or removed does not get pension which he has earned. He may be granted a compassionate allowance but that. Under Article 353 of the Civil Service Regulations, is always less than the pension actually earned and is even less than the pension which he would have got had he retired on medical certificate. But an officer who is compulsorily retired does not lose any part of the benefit that he has earned.

On compulsory retirement he will be entitled to the pension etc. that he has actually earned. There is no diminution of the accrued benefit. It is said that compulsory retirement, like dismissal or removal, deprives the officer of the chance of serving and getting his pay till he attains the age of superannuation and thereafter to get an enhanced pension and that is certainly a punishment. It is true that in that wide sense the officer may consider himself punished but there is a clear distinction between the loss of benefit already earned and the loss of prospect of earning something more. …"

27. It is not the case of the petitioner that while imposing punishment of compulsory retirement, there was a specific order passed withholding the gratuity payable to 1st respondent. In the absence of any such order is being passed by petitioner, I am of the opinion that even Regulation 46 quoted by petitioner would not apply and that the Act would prevail over Regulation 46 even assuming for the sake of argument that petitioner can place reliance on the same.

28. Therefore I see no merit in the Writ Petition and it is accordingly dismissed with costs of Rs.2,000/- (Rupees Two Thousand only) to be paid by the petitioner to 1st respondent.

The petitioner is therefore directed to release the gratuity payable to the 1st respondent within four (04) weeks from the date of receipt of a copy of this order.

29. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 14-07-2017
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