

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-28514-2017 (O&M)

Date of Decision:-16.12.2017.

The Field General Manager, Punjab National Bank, Sector 17, Chandigarh

.....Petitioner

Versus

Deputy Labour Commissioner (Central) Appellate Authority Under
Payment of Gratuity Act, 1972 and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Saurav Verma, Advocate for the petitioner.

P.B. BAJANTHRI, J. (Oral)

On 15.12.2017, following order was passed:-

Learned counsel for the petitioner has not pointed out from the charge sheet that there is allegation relating to any loss has caused to the petitioner. He further relied on the disciplinary proceedings relating to framing of charge sheet till imposition of penalty of removal. Perusal of records it is evident that nowhere loss to the bank is proved in the inquiry so as to further order recovery of loss caused to the Bank. In the absence change of allege to have loss caused to the bank and its determination in the disciplinary proceedings any report prepared by the petitioner relating to allegations of financial loss cannot be accepted.

At this stage, learned counsel for the petitioner is hereby directed to produce relevant regulation governing the employees of the Bank insofar

as disciplinary action is concerned. So as to find out in a disciplinary proceedings more than one penalty could be imposed or not.

List this matter on 16.12.2017.

The appellate authority while confirming the controlling authority's order has passed the following order:-

“In view of the above, I am of the opinion that the appellant was not competent to forfeit the gratuity as it failed to pass an order of forfeiture. Merely issue of Show Cause Notice is a meaningless exercise until and unless the Show Cause Notice culminate into final order of forfeiture which was never issued. Failure to issue order of forfeiture by the bank is fatal to cause of the appellant.”

Today learned counsel for the petitioner relied on the Regulation No.46 of the Punjab National Bank (Officers') Service Regulations, 1979 to contend that petitioner has right to withhold gratuity amount if an officer is punished by imposing penalty of termination. In the present case, petitioner has imposed penalty of removal from service on the respondent-workman on 3.3.2015. Thus, under Regulation 46 of 1979 Regulations, petitioner-Bank are empowered to withhold gratuity amount which is due to the respondents. Regulation No.2 reads as under:-

2. Officers to Whom the Regulations Apply:-

(1) These regulations shall apply to all officers of the Bank and to such other employees of the Bank to whom they may be made applicable by the Competent Authority to the extent and subject to such conditions as such Authority may decide.

(2) They shall also apply to officers transferred/posted/deputed outside India except to

such extent as may be specifically or generally prescribed by the Competent Authority.

(3) They shall, however, not apply to employees appointed/engaged in any country outside India and permanently serving there.”

Since respondent No.2 ceased to be an Officer of the petitioner Bank w.e.f. 03.03.2015, the date on which his services were terminated, consequently, 1979 Regulations are not applicable to an employee who has been removed from service. In other words, employer and employee relationship ceases. Therefore, Regulation 46 of 1979 Regulations is not attracted in view of Regulation No.2. That apart petitioner has not charged respondent employee relating to loss caused to the petitioner-Bank so also there is no determination of loss caused in a disciplinary proceedings. Therefore, merely relying on report and show cause notice, petitioner cannot resort for withholding of gratuity amount which is due to the respondent-workman. Accordingly, petitioner has not made out a case so as to interfere with the controlling as well as appellate authority's order.

Petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

December 16, 2017.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.