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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 2504/2002 with CM No. 4350/2002

N.S.SRIKANTHAN ..... Petitioner

Through: Mr. S.N. Kaul, Adv.

versus

SYNDICATE BANK AND ORS. ..... Respondents

Through: Mr. A.B. Dial, Sr. Adv. with Mr. Kunal Anand, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

<u>O R D E R</u>

% 04.07.2017

1. The present petition has been filed by the petitioner with the following prayers:-

"In view of the facts and circumstances as explained above, it is therefore, most respectfully prayed that this Hon'ble Court may be pleased to;

a) quash the Regulation/Rule 46(e) of the Syndicate Bank Officers Service Regulations, 1979 as the same denies grant of gratuity in case of all termination of services by way of punishment which is contrary to the very object underlying Payment of Gratuity Act, 1972 and the provisions thereof and also the law laid down by the Hon'ble Supreme Court of India;

b) quash the office order of the respondents dated 11.1.2001 denying the petitioner leave encashment to which he is entitled in *law;*

c) quash the office orders of the respondents dated 11.8.2000, 14.12.2001, 17.4.2001 and other similar communications denying the petitioner gratuity to which he is entitled in law;

d) direct the respondents to release gratuity and leave encashment of the petitioner alongwith interest @ 24% per annum from the date it became due till the date of filing of the present suit;

e) award costs of the writ petition in favour of the petitioner and against the respondents; and

f) pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. It is the case of the petitioner that while working in Senior Management Grade-IV and posted at Lajpat Nagar Branch, New Delhi in the year 1999, he was suspended in contemplation of disciplinary proceedings. In the month of August, 1999 he was served with charge sheet for various irregularities in the matter of sanctioning of loans to various parties.

3. The charges against the petitioner were enquired into and the Inquiry Officer proved the charges against the petitioner. The Disciplinary Authority imposed the penalty of compulsory retirement. In the

departmental remedy availed by the petitioner before the Appellate Authority, he was unsuccessful.

4. On August 11, 2000 the petitioner was denied payment of Gratuity by the respondents on the ground that he had exposed the bank to financial loss. Similarly, on January 11, 2001, the respondent had refused the payment of leave encashment to the petitioner on the ground that he is not entitled to the same.

5. It is the submission of Mr. S.N. Kaul, learned counsel for the petitioner that the denial of Gratuity to the petitioner on the ground that the petitioner has exposed the bank to financial loss to the extent of 3 Crores is untenable, as exposing the bank to the financial loss without determining the actual loss, the Gratuity could not have been forfeited. He states, it is the case of the respondent Bank that the Gratuity has been forfeited in terms of the Syndicate Bank Officer Employee (Conduct) Regular, 1976 and Section 4(6) of the Payment of Gratuity Act, 1972. He would draw my attention to the aforesaid provisions. He states that on a reading of the aforesaid provisions, more specifically Section 4(6) of the Payment of Gratuity Act, 1972 it is very clear, that the termination of an employee because of negligence presupposes loss to the Bank, which in this case has not been

quantified. He also states out of 14 accounts, which were subject matter of the charge sheet, 5 accounts have been settled. According to him, even the other 9 accounts could have been settled, had the petitioner continued in the employment.

6. That apart, it is his submission, mere filing of recovery suits before the Civil Court/DRAT would not mean that the Bank has actually suffered loss. In other words, it is his submission that as the loans have been advanced against proper security, the Bank may recover the complete amount, which it is entitled to, in terms of the agreements between the parties. In that regard, he would rely upon the judgment of the Supreme Court in the case reported as ***AIR 1973 SC 2344 The Management of Tournamulla Estate v. Workmen*** and ***(2007) 1 SCC 663 Jaswant Singh Gill v. Bharat Coking Coal Ltd.*** and others in support of his contention.

7. Insofar as the claim for leave encashment is concerned, Mr. Kaul has drawn my attention to the letter of the respondents at page 114 of the writ petition to contend that the said request has been rejected by a bald and non speaking order. According to him, there are no Regulations, which contemplate forfeiture of leave encashment. He states, in the absence of any power to forfeit leave encashment, the respondents could not have done the

same. He presses the prayers as prayed for in the writ petition.

8. On the other hand, Mr. A.B. Dial, learned Senior Counsel appearing for the respondents would reiterate the stand taken by the respondents in their counter-affidavit, inasmuch as the petitioner having exposed the Bank to financial loss, inasmuch as 14 accounts have become NPA; which has compelled the Bank to initiate litigation against the parties and the expenses incurred by the Bank for initiating the litigation would itself reveal that the Bank has suffered the loss. He states that the said claims of the Bank in Civil Courts/DRAT are still pending adjudication. According to him, in the facts, the action of the respondents in forfeiting the Gratuity is justified.

9. Similarly, insofar as the claim of leave encashment of the petitioner is concerned, he by conceding that there are no Regulation(s), which contemplate forfeiture of leave encashment states that as the petitioner has exposed the respondents to financial loss, itself is a ground for forfeiting the leave encashment as well.

10. Mr. Dial also by fairly conceding that the show cause notice issued to the petitioner was not proper, inasmuch as the Bank should have specified the actual loss suffered by the Bank, so as to enable the petitioner make a proper representation, would also submit that liberty be granted to the Bank

now to issue a proper notice to the petitioner specifying the actual loss suffered by the Bank. He has placed before me the judgment of the Full Bench of the Punjab & Haryana High Court in ***Letters Patent Appeal No. 566/2012 decided on March 07, 2013***, to contend, that the issues raised in this petition are covered against the Bank.

11. Having heard the learned counsel for the parties, the issues, which arises for consideration is whether the respondents could have forfeited the Gratuity and the leave encashment of the petitioner. The issues as conceded by Mr. Dial are covered by the judgment of the Punjab & Haryana High Court referred above. I would like to reproduce the relevant paras of the judgment of the Full Bench of the Punjab & Haryana High Court relating to the issue of forfeiture of gratuity:-

> *"12. Two aspects arise for consideration, namely, - (a) whether gratuity can be withheld/forfeited under Regulation 46(1)(e) if the termination of service is by way of punishment of compulsory retirement; and (b) if it can be forfeited, then under what circumstances and whether it would be necessary to give proper hearing to the delinquent employee before forfeiting the gratuity.*
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> *13. Regulation 46 of the Officers' Regulations makes every officer eligible for gratuity in certain circumstances which include retirement, death, disablement, resignation and*

termination. However, Clause(e) states that if the termination of service is occasioned by way of punishment, then the officer will not be entitled to gratuity. The Division Bench in Ashwani Kumar Sharma (supra) held that this clause cannot apply to the case of compulsory retirement. That is the only reason given, but without any elaboration. We are afraid, we cannot accept this to be a justified reason, as it leads to wrong interpretation of Clause (e) of Regulation 46 of the Officers' Regulations.

14. We would like to emphasise that compulsory retirement is of two types. There can be an administrative order retiring an employee compulsorily from service when the employer finds that the employee has become deadwood. However, the compulsory retirement is also provided as one of the modes of punishment in the Disciplinary and Appeal Regulations, 1976 framed by the Bank. Whenever compulsory retirement is effected by way of penalty which is imposed after holding a regular enquiry, then the compulsory retirement leads to termination by way of punishment. Termination of service can result by various modes. It amounts to cessation of employment whereupon the employer-employee relation comes to an end. The purport of Regulation 46(1)(e) is very clear. Whenever it is a case of termination by any other mode than by way of punishment, gratuity is payable, but not when termination is occasioned by way of penalty on account of misconduct committed by an employee established in the regular departmental enquiry against such delinquent employee.

15. We are, therefore, of the opinion that Regulation 46(1) of the Officers' Regulations would not apply when termination is occasioned by way of compulsory retirement by way of punishment on account of misconduct proved against such an employee after regular departmental enquiry. To that extent, the judgment of Division Bench in Ashwani Kumar Sharma (supra) does not lay down correct law and is hereby overruled.

16. The next question is as to whether in all cases where the penalty of compulsory retirement is imposed, the gratuity is to be forfeited. Answer to this is to be found in Section 4(6) of the Payment of Gratuity Act, 1972. This sub-section reads as under:-

"(6) Notwithstanding anything contained in sub-section(1)

(a) the gratuity of an employee, whose services have been terminated for any act, wilful 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 may be wholly or partially forfeited,

(c) 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

(d) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provide that such offense is committed by him in the course of

his employment."

This sub-section gives the instances when the gratuity can be forfeited and the forfeiture can be whole or partial. We are concerned herein with Clauses (a) and (d). The gratuity can be forfeited if there is damage or loss suffered by the employer because of wilful omission or negligence of the employee which act led to his termination. In that case, the forfeiture has to be to the extent of damage or loss caused. The gratuity can also be forfeited if the misconduct by the delinquent employee constitutes an offence involving moral turpitude and when such an offence is committed by him in the course of his employment.

17. The Karnataka High Court in the case of M/s Bharath Gold Mines Ltd. v. The Regional Labour Commissioner (Central), Bangalore & Ors., reported in 1986 Lab.I.C. 1976 has held that before an employer takes steps to forfeit the entire gratuity, the employer has to take an independent decision after the termination of the service of an employee as to whether the gratuity payable should at all be forfeited and that decision must depend on the facts and circumstances of the case. Likewise, Bombay High Court in the case of Smt.Kamla Rameshchandra Sharma v. Maharashtra Rajya Wakhar Mahamandal, Pune, reported in 2009 (121) FLR 87 (DB) took the view that the penalty for recovery from pay of the whole or part of the pecuniary loss caused to the Corporation must be the actual pecuniary loss occasioned, by the misconduct of the employee. In that case the learned Bench noted that the penalty *imposed on the delinquent refers to future events, which may or may not result in causing of loss to the Corporation and in that case the loss had not been quantified.*

18. In the case of Shri Ramchandra S. Joshi v. Bank of Baroda, (Writ Petition No.636 of 2002) decided on 5th April, 2010, the Division Bench of Bombay High Court also noted in detail the interpretation of the expression "moral turpitude" given by the Courts, as appearing in Section 4(6)(d). We would like to reproduce the following discussion therefrom:-

"10. As we have noted earlier, the Payment of Gratuity act itself provides the circumstances under which an employer can forfeit gratuity which can be to the extent of the damage or loss suffered. Apart from that under Section 4(6)(d), gratuity can also be forfeited if services of such employees have been terminated for any act which constitutes an offence involving moral turpitude. As to what constitutes 'moral turpitude', we may gainfully reproduce from paragraphs 7 and 8 of the judgment of the Division Bench of the Karnataka High Court in M/s. Bharath Gold Mines Ltd. (supra), which has considered same definitions.

"7. Sri B.V. Acharya, learned counsel invited our attention to the relevant passage in Words and Phrases, Permanent Edition, Vol.27A at page 186. They read: "'Moral turpitude' is anything done contrary to justice, honesty, modesty or good morals. In re Williams. 167 P. 1149, 1152, 64 CKL 316.

xxx xxx xxx xxx

'Moral Turpitude' includes all acts done contrary to justice, honesty, modesty or good morals. Neibling v. Terry, 117 SW 2d 502 503 352 Mo.396, 152 A.L.R. 249" (Underlined by us)

Learned counsel submitted that the Court should decide as to whether an offence involved moral turpitude or not, in the light of the meaning given to those words as above.

8. From the above passage, it is clear that anything done contrary to justice, honesty, modesty or good morals involves moral turpitude. Dishonesty is one of the essential ingredients of the offence of theft. If there is no dishonesty in removing or taking a property belonging to another, it constitutes no offence of theft. Therefore, it is clear that when a person is found guilty of the charge of theft, it means, he has acted dishonestly and from this it follows that he has committed an offence involving moral turpitude."

11. In the case of The Management of Tournamulla Estate v/s Workmen, AIR 1973 SC 2344, before the enactment of the Gratuity Act, the Supreme Court noted that in Delhi Cloth & General Mills Co. Ltd. v/s Workmen, AIR 1970 SC 919, noted the object of having a gratuity scheme which is to provide a retiring benefit to workmen who have rendered long and unblemished service to the employer and thereby contributed to the prosperity of the employer, and therefore, it was not correct to say that no misconduct, however grave, may not be visited with forfeiture of gratuity. Various kind of misconducts were thereafter noted, which were (1) technical misconduct which *leaves no trail of indiscipline, (2) misconduct resulting in damage to the employer's property which might be compensated by forfeiture of gratuity or part thereof, and (3) serious misconduct such as acts of violence against the management or other employees or riotous or disorderly behaviour in or near the place of employment, which, though not directly causing damage, is conducive to grave indiscipline. The Court observed that the first should involve no forfeiture, the second may involve forfeiture of the amount equal to the loss directly suffered by the employer in consequences of the misconduct and the third will entail forfeiture of gratuity due to the workman. Thus, it would be clear that even before the Gratuity Act has come into force, the Supreme Court had noted that gratuity could be forfeited. Object of paying gratuity has been sufficiently set out in the judgment of the Supreme Court in the case of U. P. State Sugar Corporation Ltd. & Ors. v Kamal Swaroop Tondon, 2008 II CLR 563, where the Court observed as under:*

"It is well-settled that retiral benefits are earned by an 14 employee for long and meritorious services rendered by him/her. They are not paid to the employee gratuitously or merely as a matter of boon. It is paid to him/her for his/her dedicated and devoted work."

Reference was made to several judgments dealing with gratuity and the circumstances under which the gratuity could be forfeited."

19. In the present case, admittedly, after inflicting the punishment of compulsory retirement upon the respondent herein, a specific show cause notice was given before taking the decision to forfeit her gratuity. Thus, an independent decision is taken fulfilling this procedural requirement which is mandatory as held in M/s Bharath Gold Mines Ltd. (supra). But the next question is as to whether it satisfies the tests on which judicial review of such an order can be undertaken.

20. We have already reproduced the language of show cause notice dated 18.9.2008. It states that the "respondent had committed certain irregularities and because of those acts, bank was exposed to serious financial risks." While forfeiting the gratuity, the reason given was that acts of the respondent "involved loss of more than Rs.4.00 cr. for the bank." The contention of the learned counsel for the respondent was that in the show cause notice, no specific amount of alleged loss was quantified, which was mandatory requirement as per the judgment of the Bombay High Court in Smt.Kamla Rameshchandra Sharma (supra). Such a show cause notice was illegal as the loss had to be quantified. It was submitted that mention of this figure in the final order would be of no avail when the respondent was not given any opportunity to show cause against the same. Further, though the figure of `4 crores is mentioned in the final order, how this figure is arrived at is not disclosed by the competent authority. Learned counsel for the respondent also argued that no such figure was mentioned *in the charge-sheet. Even in the enquiry report submitted by the Enquiry Officer where the charges were proved, there was no finding of any loss which the appellant-Bank was exposed to because of the irregularities committed by the respondent in various accounts.*

21. Learned counsel for the appellants, on the other hand, submitted that it was a case where irregularities were committed in various accounts by granting loans of different amounts which was clearly stated in the charge-sheet.

22. After considering these arguments, we find that argument of the learned counsel for the respondent has to prevail. We have gone through charge-sheet as well as enquiry report. No doubt, in the charge- sheet as many as 24 accounts are mentioned where the respondent had given loans or other financial accommodation either beyond her powers or without obtaining proper securities. That would show that certain accounts were overdrawn. Even the operation of these accounts was not satisfactory. However, whether the appellant-Bank ultimately suffered loss and what was the actual loss is not reflected. No doubt, the irregularities committed by the respondent may have exposed the Bank to such losses. However, that is entirely different from loss having been actually suffered by the bank. Even if some accounts became bad and the Bank had to file suits for recovery concerning those accounts against the defaulting parties, that would not automatically lead to the conclusion that the loss/damage has been suffered. It is possible *that Bank is able to recover full money in those proceedings. Whether that happened in fact or not and whether loss is actually suffered or not is not discernible from either the charge-sheet or the enquiry report.*

23. It is for this reason that it was incumbent upon the appellant-Bank to mention specifically about the actual loss having been suffered, if it suffered, in the show cause notice itself with particulars of that loss in order to enable the respondent to meet the same. That has not been done even in the final order. Though the figure of `4 crores is given, in the final order, even that is not substantiated by giving particulars thereof. We are, therefore, of the opinion that the show cause notice or the final orders passed, forfeiting the gratuity, do not meet the legal requirements and have to be set aside.

24. The upshot of the aforesaid discussion would that though we disagree with the reasons given by the learned single Judge allowing the writ petition and also that Ashwani Kumar Sharma (supra) does not lay down correct law, insofar as present case is concerned, still the impugned order forfeiting the gratuity has to be set aside for the reasons given above. At the same time, since it is a procedural defect, liberty is given to the Bank to serve proper show cause notice indicating actual loss, if any, with particulars of the said loss and pass final orders after giving due opportunity of being heard to the respondent."

12. Insofar as the forfeiture of leave encashment is concerned, in that

regard also Mr. Dial has fairly pointed out the conclusion of the Full Bench of the Punjab & Haryana High Court to contend that the petitioner shall be entitled to the leave encashment. The reasoning given by the Full Bench of the Punjab & Haryana High Court is as under:-

> *"25. At the outset, we are forced to remark that reasons given in Ashwani Kumar Sharma (supra) are not legally correct, as the compulsory retirement by way of punishment is also treated as ordinary termination of service on which we have already given our decision hereinabove.*
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> *26. We have also reproduced Regulation 38 of the Officers Regulations, which deals with leave encashment. This regulation states that leave shall lapse in certain circumstances. Proviso thereto, however, provides an explanation and makes a provision for leave encashment in those cases where an officer "retires" from service. The question is as to whether this retirement would mean retirement on attaining the age of superannuation or retirement caused by other modes as well, including compulsory retirement. It cannot be disputed that compulsory retirement occasioned otherwise than by way of penalty would be covered by the proviso and leave encashment would be admissible as in that eventuality also, the officer "retires" from service. However, unlike Regulation 46 of the Officers' Regulations, the cases where the retirement comes by way of penalty of compulsory retirement, are not excluded.*

Therefore, when an officer "retires" from service, in whatever manner, he is eligible for leave encashment. In the case of O.P. Garg (supra), this issue was specifically dealt with by this Court in the following manner:

"The petitioner in the present case had been wrongly denied encashment of leave through a careless mis-interpretation of Regulation 38 and without considering its proviso. From the Regulation 38 it would be revealed that all leave lapses on resignation, retirement, death, discharge, dismissal or termination. What this means is that on the happening of any of the above events an officer cannot insist that he should be permitted to continue in service to the extent of leave which still stood to his credit. Since leave lapses, the concerned officer must leave service. Funnily leave of an officer who dies while in service also lapse. It seems the framers of regulation probably thought that a dead person may continue on leave till the expiry of the leave to his credit, unless a regulation was framed.

Be that as it may, it is the proviso to Regulation 38 which applies to the petitioner's case and has been actually discussed in Ashwani Kumar Sharma's case (supra). As regards payment of gratuity made to the petitioner of Rs. 2,17,351/- on August 16, 2001, learned counsel submitted that these amounts had been paid without interest and referred to the order Annexure P/7 dated December 29, 2003 regarding payment of simple interest @ 10% for the period July 27, 1999 to August 15, 2001 on the aforesaid gratuity amount. Although interest was not *paid to the petitioner at the time of release of the principal amount of gratuity on August 16, 2001, a sum of Rs. 20325/- was the second installment received by the petitioner on November 17, 2004 but the second installment was paid without interest. Therefore, the petitioner is entitled to 10% interest on this amount from the due date (July 17, 1999) till the actual payment made on November 27, 2004.*

In view of the above discussion, this petition is allowed. The petitioner shall be entitled to payment of emoluments for the period of privilege leave that he had earned (leave encashment) alongwith interest @ 10% from July 26, 1999 till date of payment."

13. I agree with the conclusion of the Full Bench of the Punjab & Haryana High Court referred above and hold, that the respondents could not have forfeited the Gratuity without determining the actual loss suffered by the Bank, and even on leave encashment Mr. Dial could not point out any Regulation of the Bank to forfeit the same and the compulsory retirement being species of retirement, as has been held by the Full Bench of the Punjab & Haryana High Court wherein it was observed "*Therefore, when an officer retires from service, in whatever manner",* the respondents could not have forfeited the leave encashment.

14. In view of the above discussion, it is ordered:-

(i) Insofar as the payment of Gratuity is concerned, the Bank shall be at liberty to issue a fresh show cause notice to the petitioner quantifying the actual loss, if any suffered by the Bank and seeking a reply to the said show cause notice from the petitioner and also giving him personal hearing, shall pass a speaking order. The aforesaid action shall be completed by the Bank within a period of three months as an outer limit from the date of this order.

(ii) The respondents shall release the leave encashment as per Rules with interest at the rate of 10% per annum from the date due till the date of payment, within two months from today.

The petition is disposed of.

CM No. 4350/2002

Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 04, 2017/*ak*