

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2009 OF 2010

B S Dhargalkar	]	
Indian Adult residing at	]	
B/402, Prem Apartments	]	
Borivli (W), Mumbai – 400 092	]	 Petitioner
versus		
Syndicate Bank,	]	
Maker Tower “E”	]	
2nd Floor, Cuffe Parade,	]	
Colaba, Mumbai – 400 005	]	 Respondent.

**Mr. Sanjiv Punalekar a/w Mr. Ashish Kanojia I/by PRS Legal for the
Petitioner.**

Mr. Piyush Shah a/w Mr. T R Yadav and Mr. Jay Vora for the Respondent

**CORAM : R. M. SAVANT &
NITIN W. SAMBRE, JJ.**

DATE : 24th OCTOBER 2018

ORAL JUDGMENT [R. M. SAVANT, J.]

1 The above Writ Petition has been admitted and is pending hearing
and final disposal.

2 By an order passed in Notice of Motion No.308 of 2018 the hearing
of the above Writ Petition was expedited and the Petition was accordingly taken
up for hearing today.

3 It is not necessary to burden this order with unnecessary details.
Suffice it would be to state that the Petitioner was working with the

Respondent-Bank as a Chief Manager in the Byculla Branch of the Respondent at the relevant time. The Petitioner was charge-sheeted on 01/09/2005 and the gravamen of the allegations against the Petitioner was that the Respondent-Bank's funds to the tune of Rs.1.89 crores were put to the risk of loss. The departmental proceedings initiated against the Petitioner were on the footing that a major penalty would be required to be imposed on the Petitioner if ultimately the charge is held to be proved against him. After going through the gamut of holding the Departmental Inquiry, in which the Petitioner was given an opportunity, the Inquiry Officer submitted his report to the Disciplinary Authority i.e. the General Manager (P) of the Respondent-Bank. The General Manager considered the report as also after following the procedure of issuing show cause notice to the Petitioner along with which the inquiry report was furnished to the Petitioner, it passed an order on 28/10/2006 holding that the charge was held to be proved against the Petitioner and imposed the punishment which is mentioned in the operative part of the order passed by the Disciplinary Authority which reads thus -

“For breach of Regulation No.3(1), read with Reg. No.24 of Syndicate Bank Officer Employees' (Conduct) Regulations, 1976, the entire management contribution of Provident Fund payable to Shri B. S. Dhargalkar be and is hereby forfeited with immediate effect, being part of financial loss caused to the Bank.”

However, prior to arriving at the said conclusion the Disciplinary Authority has

adverted to the material which has come on record and it is on the said basis that the charge was held to be proved against the Petitioner.

4 The Petitioner aggrieved by the order dated 28/10/2006 passed by the Disciplinary Authority challenged the same by way of an Appeal under the Service Regulations. The said Appeal was heard by the Executive Director of the Respondent-Bank who by the impugned order dated 05/09/2007 did not find any reason to interfere with the order passed by the Disciplinary Authority on the ground that the charge was proved against the Petitioner as held by the Disciplinary Authority. The Appellate Authority accordingly confirmed the punishment of forfeiture of the Respondent-Bank contribution to the Provident Fund. It is the said order dated 05/09/2007 passed by the Appellate Authority confirming the order passed by the Disciplinary Authority which is taken exception to by way of the above Writ Petition.

5 The learned counsel for the Petitioner Shri Sanjiv Punalekar would submit that having regard to the penalties and especially the penalty which can be imposed upon the delinquent under the caption of Major Penalty, forfeiture of the employer's contribution not being one of the penalties the order passed by the Disciplinary Authority as confirmed by the Appellate Authority is not sustainable. It was the submission of the learned counsel for the Petitioner that forfeiture if at all could take place only if the punishment of dismissal which is

one of the major penalties was to be imposed on the Petitioner. The learned counsel in support of the said contention would take us through the Service Regulation wherein the major penalties are provided. The learned counsel would contend that the gratuity payable to the Petitioner was also sought to be withheld by the Respondent-Bank on the self-same ground as the employer's contribution to the provident fund. However, on the Petitioner approaching the Controlling Authority under the Payment of Gratuity Act and the Controlling Authority passing an order the gratuity due to the Petitioner has been released. Based on the said order passed by the Controlling authority, it was the submission of the learned counsel for the Petitioner that the employer's contribution could not be forfeited by the Respondent-Bank for the self-same reason.

6 Per contra, the learned counsel appearing for the Respondent-Bank Shri Piyush Shah would support the orders passed by the Disciplinary Authority and the Appellate Authority. The learned counsel would contend that in the facts and circumstances of the present case where the Respondent-Bank was put to the risk of loss to the tune of Rs.1.89 crores, the punishment of forfeiture of the Respondent-Bank's contribution towards the provident fund is justifiable. The learned counsel would point out that the Petitioner had superannuated prior to the order dated 28/10/2006 passed by the Disciplinary Authority and it is in the said circumstances that the Disciplinary Authority deemed it fit to

impose only the punishment of forfeiture of the Respondent-Bank's contribution to the provident fund.

7 Having heard the learned counsel for the parties, we have bestowed our anxious consideration to the rival contentions. The question that arises before us is whether the Petitioner is entitled to the relief of the Respondent-Bank's contribution to the provident fund which has been forfeited by way of punishment imposed upon the Petitioner. It is required to be noted that the Petitioner was charge-sheeted and the allegation against the Petitioner was in respect of a financial impropriety committed by the Petitioner in respect of the Bank's funds as it was alleged against the Petitioner that the funds to the tune of Rs.1.89 crores of the Respondent-Bank were put to risk on account of the action of the Petitioner. The Disciplinary Authority as well as the Appellate Authority have held the charge to be proved against the Petitioner and the Disciplinary Authority therefore deemed it fit to impose the punishment of forfeiture the Respondent-Bank's contribution to the provident fund which was otherwise payable to the petitioner. As indicated above, the said punishment has been confirmed by the Appellate Authority.

8 In so far as the major penalties are concerned under the Regulations, one of the penalties which is contemplated is of dismissal from service. In the instant case it is required to be noted that the Petitioner had

superannuated on 30th September 2005 i.e. much prior to the order dated 28/10/2006 passed by the Disciplinary Authority. Hence though the charge was held to be proved against the Petitioner which can be said to be a serious charge on account of the said intervening event of the Petitioner having retired, the Disciplinary Authority held that the Petitioner's services are deemed to have ended on the date of his retirement i.e. on 30/09/2005 and accordingly imposed the punishment of forfeiture of the Respondent-Bank contribution to the provident fund. This was probably done by the Disciplinary Authority in view of the fact that the Petitioner had retired and therefore punishment of dismissal could not be imposed upon him. In a case where the charge is proved and the same qualifies for a major penalty like dismissal to be imposed, merely because the said punishment is not imposed the same would not take away the right of the Respondent to impose the punishment as imposed in the instant case.

9 In our view, in the peculiar facts of the present case where the Petitioner had retired prior to the Disciplinary Authority passing its order forfeiture of the provident fund which otherwise can be done if an order of dismissal is passed cannot be connected to a dismissal order. Forfeiture of the provident fund as the order itself discloses is on account of the loss caused to the Respondent-Bank. We are therefore unable to accept the contention of the learned counsel for the Petitioner that forfeiture of the provident fund could only have been done if the order of dismissal was to be passed against the

Petitioner.

10 In so far as the relief of release of the gratuity to the Petitioner is concerned, it is required to be noted that it was not a part of the punishment which has been imposed by the Disciplinary Authority on the Petitioner. The gratuity might have been withheld in view of the fact that disciplinary proceedings were pending against the Petitioner. It is on account of non-payment of the gratuity to the Petitioner, that the Petitioner had approached the Controlling Authority under the Payment of Gratuity Act. The Controlling Authority having regard to Section 13 of the said Act held that the gratuity payable to an employee cannot be withheld and accordingly directed release of the gratuity. However, prior thereto the Controlling Authority has also observed that the gratuity is a right which an employee is entitled to on putting in the years of qualifying service as contemplated under the said Act.

11 In our view, release of gratuity to the Petitioner under the Payment of Gratuity Act would not further the case of the Petitioner in so far as the forfeiture of the employer's contribution to the provident fund is concerned as the considerations for the same are different and would have to be different especially in the facts and circumstances of the present. At the cost of repetition we have to state that in the instant case the employer's contribution to the provident fund has been forfeited on the ground that loss has been caused to the

Respondent-Bank by putting the funds of the Respondent-Bank to the tune of Rs.1.89 crores to risk.

12 In that view of the matter, no relief can be granted to the Petitioner in the above Writ Petition. The above Writ Petition is accordingly dismissed. Rule is discharged with no order as to costs.

[NITIN W. SAMBRE, J]

[R. M. SAVANT, J]