

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
11.06.2018

Delivered on
21.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.464 of 2017

Mrs.Suganthi Gomez

... Appellant/3rd Respondent

versus

1. UCO Bank
Regional Office,
328, Thambu Chetty Street,
Chennai 1, Rep by its Chief Manager
...R1/Petitioner
2. The Appellate Authority
Under Payment of Gratuity Act, 1972 and
Regional Labour Commissioner (Central)
26, Haddows Road,
Shastri Bhavan, Chennai 6. ...R2/1st Respondent
3. The Central Authority
Under Payment of Gratuity Act, 1972 and
Regional Labour Commissioner (Central)
26, Haddows Road,
Shastri Bhavan, Chennai 6.3rd Respondent/2nd Respondent

Appeal filed against the order under clause 15 of letter patent passed by this Court dated 12.01.2007 passed in W.P.No.28185 of 2013.

W.P.No.28185 of 2013:

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. 148/2012 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 appellant : Mr.S.Saravanan

For 1st Respondent : Mr.Srinath Sridevan
R2 & R3 : No appearance

J U D G M E N T
(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

Challenge in this intra Court appeal is to the order of the learned Single Judge dated 12.01.2017 made in WP No.28185 of 2013, in and by which the Writ Petition filed by the respondent Bank challenging the order of the Appellate Authority under the Payment of Gratuity Act, 1972, viz. the Regional Labour Commissioner (Central) Chennai, in and by which, the Appellate Authority rejected the Appeal filed by the respondent bank was allowed.

2. Challenge in the Appeal was to the order of the Controlling Authority under the Payment of Gratuity Act, 1972, (Assistant Labour Commissioner) (Central) Chennai, directing payment of a sum of Rs.5,75,500/- alongwith 10% simple interest from the date it became due to till the date of payment within 30 days from the date of receipt of a copy of the order to the appellant herein.

3. The brief facts that led to the dispute are as follows:

The husband of the appellant Mr.P.J.Gomez was working as an Assistant Manager in the respondent Bank. While in service, Charges were framed against him for certain delinquencies on 24.02.2009 and disciplinary proceedings were initiated. Upon the conclusion of the disciplinary proceedings, the respondent Bank imposed a punishment of compulsory retirement from service. The delinquent officer, the husband of the appellant, did not chose to challenge the said punishment. Subsequently, on 26.03.2007, the respondent Bank passed an order purportedly under Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972, forfeiting the gratuity payable to the delinquent officer, viz, the husband of the appellant. The delinquent official had by his letter dated 16.04.2007, requested the Bank to reconsider the forfeiture of gratuity. The said request was also rejected by the Bank on 02.05.2007. After lapse of almost 4 years the appellant herein filed an application before the Controlling Authority under the Payment of Gratuity Act, 1972, in G.A.No.125 of 2011 seeking payment of gratuity.

4. The Bank resisted the said claim contending that Section 4(6)(b)(ii) authorises the Bank to forfeit the gratuity of an employee who has been found guilty of any misconduct involving moral turpitude and an order to that effect have been passed in 2007 itself, the application seeking payment of gratuity is not maintainable. It is worthwhile to mention at this juncture that

a show cause notice was issued to the delinquent official by the Bank on 04.04.2007 seeking his response to the proposal to forfeit his gratuity and the delinquent official Mr.P.J.Gomez had sent a reply on 16.04.2007. It was only after considering the said reply the order forfeiting the gratuity was passed by the respondent Bank.

5. The Controlling Authority, however, by its order dated 24.07.2012 allowed the application directing payment of gratuity. The Controlling Authority concluded that the services of the delinquent official were not terminated, but he was sent on compulsory retirement. Therefore, according to the Controlling Authority, the provisions of Section 4(6)(b)(ii) will not be attracted to a case compulsory retirement. Aggrieved the Bank preferred an Appeal in Appeal No.148 of 2012 before the Appellate Authority. The Appellate Authority also concurred with the findings of the Original Authority and concluded that the charge of falsification of records that was held to be proved cannot be classified as a misconduct involving moral turpitude, on the said finding the Appellate Authority dismissed the Appeal. The Appellate Authority also concluded that there was no separate enquiry before passing an order under Section 4(6) of the Payment of Gratuity Act, 1972. Aggrieved the respondent Bank moved this Court under Article 226 of the Constitution by filing the Writ Petition in WP No.28185 of 2013.

7. The learned Single Judge, who heard the Writ Petition, by an order dated 12.01.2017 concluded that the proved charges would amount to misconduct involving moral turpitude on the part of the delinquent official. The learned Single Judge also concluded that the word terminated "used in Section 4(6)" would only mean "any form of removal from service". On such conclusions, the learned Single Judge set aside the orders of the Authorities. However, taking note of the fact that the maximum gratuity allowable to the delinquent official Mr.P.J.Gomez was Rs.3,50,000/- as on the date, when he was compulsorily retired and the fact that the appellant was permitted to withdraw a sum of Rs.2,87,500/- for her medical expenses by an interim order made in the Writ Petition on 18.12.2014, the learned Single Judge permitted the appellant to withdraw a further sum of Rs.62,500/- being the difference between the gratuity admissible to the delinquent official and the amount that was already withdrawn by the appellant as the nominee of the delinquent official. It is this order of the learned Single Judge that is challenged in the present Appeal.

8. We have heard Mr.S.Saravanan, learned counsel appearing for the appellant and Mr.Srinath Sridevan, learned counsel

appearing for the 1st respondent. Respondents 2 and 3 who are the Authorities under the Payment of Gratuity Act, though served have not chosen to appear either in person or through counsel.

9. Mr.S.Saravanan, learned counsel appearing for the appellant would vehemently contend that the services of the husband of the appellant were not terminated by the Bank, therefore, the Bank cannot invoke the provisions of Section 4(6) of the payment of Gratuity Act, which enables the Bank to forfeit the gratuity payable to an employee in the event of the services of the employee having been terminated for any Act, which constitutes an offence involving moral turpitude. Mr.S.Saravanan, would also further contend that the charges which have been held to have been proved do not amount to an Act, which constitutes an offence involving moral turpitude.

10. Per contra, Mr.Srinath Sridevan, learned counsel appearing for the 1st respondent Bank would contend that the proved charges against the appellant are falsification of records and unauthorised misuse of the monies belonging to the customers in Bank. These acts, according to the learned counsel for the Bank would definitely amount to an offence involving moral turpitude. Arguing further Mr.Srinath Sridevan, learned counsel would contend that the word terminated used in Sub Section (6) of Section 4 of the Payment of Gratuity Act does not only mean a termination of service per se. According to him, it would include in its ambit any act by which the relationship of employer and employee is snapped.

11. In order to appreciate the rival contentions, it will be useful to extract certain provisions of the Payment of Gratuity Act, 1972. Section 2 Sub Section (q) of the Payment of Gratuity Act, 1972 defines the word "retirement" as follows:

2(q). "Retirement" means termination of the service of an employee otherwise than on superannuation.

Section 2(r) of the said Act defines the word "Superannuation" as follows:

2(r). "Superannuation" in relation to an employee means the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment"

Sub Section (1) of Section 4 of the Act, which provides of payment of gratuity reads as follows:

"4. Payment of Gratuity.- (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-

(a) on his superannuation, or

(b) on his retirement or resignation,

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

[Provided further that in case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominee or heirs is minor, the share of such minor, shall be deposited with the Controlling Authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority].

Explanation.- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement."

Sub Section (6) of Section 4 of the Act, reads as follows:

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

(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].

(i) 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

(ii) if the services of such employee have been terminated for any act which constitutes an offence

involving moral turpitude, provided that such offence is committed by him in the course of his employment."

12. A reading of Sub Section (6) of Section 4 of the Act shows that the employer has the power to forfeit the gratuity of an employee fully or partly if the services of such employee have been terminated for any, act which constitutes an offence involving moral turpitude provided that such offence is committed by him or her, in the course of its employment. So the essential conditions that must be shown to exist are a termination of service and the termination should have been for an act which constitutes an offence involving moral turpitude. If these two ingredients are shown to exist then the employer undoubtedly has the power to forfeit the gratuity of the delinquent employee. The contention of the learned counsel appearing for the appellant in this regard are two fold, the first part of his contention is that there has been no termination of the services on the other hand the punishment imposed on the employee is one of compulsory retirement and secondly, the proved charges do not amount to have an act which constitutes an offence involving moral turpitude on the part of the delinquent employee.

13. We have been taken through the charges that are framed and the conclusions of the Disciplinary Authority. As rightly pointed out by the learned Single Judge, the charges particularly the allegations 9 and 10 which have been extracted by the learned Single Judge would definitely show a dishonest intention on the part of the official to unjustly enrich himself. We are of the considered opinion that these acts coupled with the other charges which also show that the delinquent official had appropriated funds of the customers without Authority and had issued fake authorization slips particularly when he was on leave would definitely show that the delinquencies are in the nature offences involving moral turpitude. The term "Moral Turpitude" according to Black's Law Dictionary means "Conduct that is contrary to Justice, honesty or morality. At no stretch of imagination can it be said that the proved charges in this case do not amount to an offence involving "Moral Turpitude". We are therefore unable to accept the contention of the learned counsel for the appellant that the proved charges do not amount to act which constitutes an offence involving moral turpitude within a meaning of Section 4(6)(b)(ii).

14. The next contention of the learned counsel for the appellant is that unless it is shown that there was a valid order of termination of the service of the delinquent employee, the employer had no power to invoke Section 4(6) of the Act to

forfeit the gratuity. Of course, Section 4(6) uses the word terminated as a condition precedent to enable the employer to forfeit the gratuity payable to an employee. The question that would arise is as to the meaning that should be given to the word terminated in the context it is used. The words termination or terminated has not been defined in the Payment of Gratuity Act, but Section 4(1) which has been extracted above shows that gratuity is payable to an employee on termination of his employment after he has rendered a continuous service of five years

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

15. Clauses (a) and (c) do not stand attracted in the case on hand. Clause (b) makes gratuity payable to an employee on his retirement or resignation. Section 2(q) of the Payment of Gratuity Act, 1972, defines the word retirement as termination of service of an employee otherwise than on superannuation, therefore, a termination of the service of an employee otherwise than on superannuation would amount to retirement under the Act. While considering the scope of the definition of the word retirement defined under Section 2(q) of the Payment of Gratuity Act, the Hon'ble Supreme Court in *State of Punjab v. The Labour Court, Jullundur and others*, reported in AIR 1979 SCC 1981, had observed as follows:

"4. The second contention on behalf of the appellant is that retrenchment does not fall within section 4(1) of the Payment of Gratuity Act, under which gratuity is payable to an employee on the termination of his employment. The termination envisaged occurs either

"(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease."

5. Having regard to the definition of "superannuation" in Section 2(r) of the Act, it is clear that the case is not one under clause (a). Nor, admittedly, is it a case which falls under clause (c). As regards clause (b), it is not a case of resignation. The only question is whether it can be regarded under clause (b) as a case of retirement. The expression "retirement" has been defined by Section 2(q) to mean "termination of the service of an employee otherwise than on superannuation." The definition is framed in the widest

terms. Except for superannuation, any termination of service would amount to "retirement" for the purposes of the Act. Retrenchment is a termination of service. It is immaterial that the termination is occasioned by the need to discharge surplus labour...."

16. From the above observations of the Hon'ble Supreme Court it could be gathered that compulsory retirement would also amount to retirement within a meaning of Section 2(q) of the Act. The word terminated has been defined in P.Ramanatha Aiyar's Advanced Law Lexicon as "Brought or come to a close" in Black's Law Dictionary, the word terminate has been defined as "To put an end to; to bring to an end" and the word termination is shown to mean "The act of ending something The order of compulsory retirement passed by the Bank on 28.09.2006 undoubtedly puts an end to the employer-employee relationship between the delinquent official (husband of the appellant) and the Bank. Therefore, we are in entire agreement with the learned Single Judge, when he disagreed with the authorities under the Act and held that the word termination need not necessarily be a termination per se. As pointed out by the Hon'ble Supreme Court in State of Punjab v. The Labour Court, Jullundur and others, cited supra, the definition of the word retirement under Section 2(q) of the Act is in the widest possible amplitude and would taken within its sweep any form or mode of termination of service.

17. We are therefore unable to countenance the contention of the learned counsel for the appellant that the word termination used in Section 4(6) should be given a restricted meaning. In our considered opinion the word terminated used in Section 4(6) would mean and include any act by which the employer or the employee puts an end to the contract of an employment. We therefore see no reason to interfere with the judgment of the learned Single Judge. We find that the learned Single Judge has been magnanimous in allowing the appellant to withdraw a further sum of Rs.62,500/- and the Bank has also been charitable in not challenging the order of the learned Single Judge. For the foregoing reasons, the Writ Appeal is dismissed. However there will be no order as to costs.

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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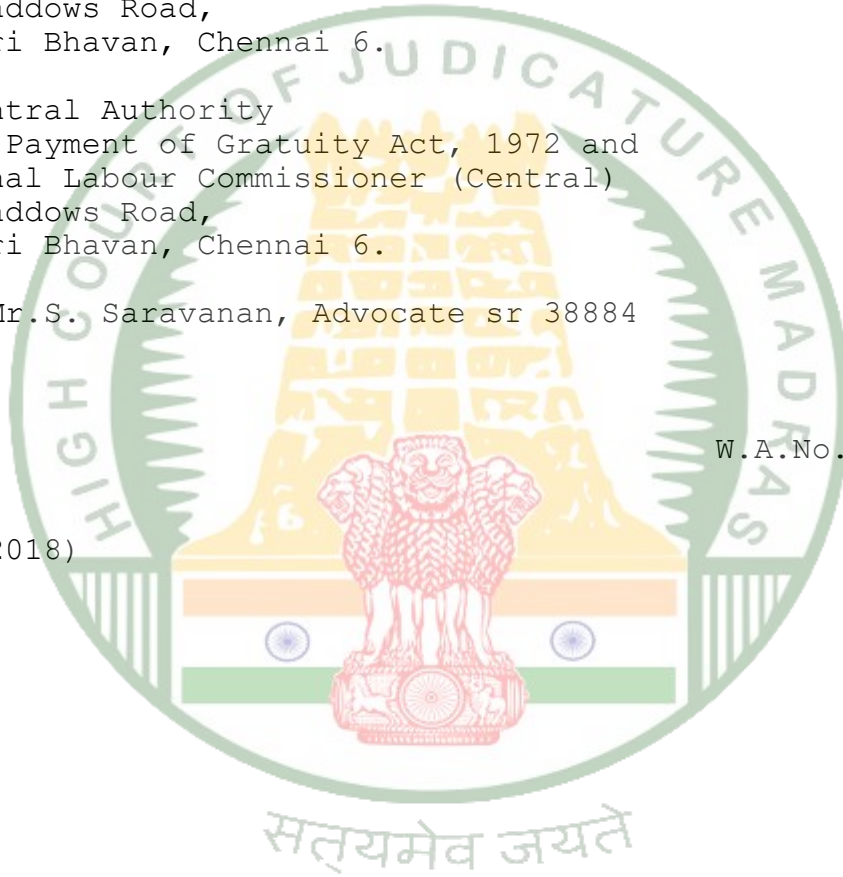
To

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+1 CC to Mr.S. Saravanan, Advocate sr 38884

W.A.No.464 of 2017

VBA(CO)
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