

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P. 1737 of 2014

K.R.Subbaiah

... Petitioner

Vs

1. The Chief Manager,
Indian Bank, Corporate Office,
HRM Department,
254-260, Avvai Shanmugam Road,
Royapettah, Chennai-600 014.
2. The Chairman and Managing Director,
Corporation Office,
Indian Bank Office, Royapettah,
Chennai-600 014.
3. The Manager,
Indian Bank Circle Officer,
Alandurai, Thanjavur Dt. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records pursuant to the order passed in HO/HRM/SEIT dated 12.09.2012 on the file of first respondent, quash the same and consequently direct the 1st respondent to disburse the gratuity and other legal dues.

For Petitioner : Mr.G.B.Saravanabhavan
For Respondents : Mrs.Rita Chandrasekar for
M/s. Aiyar and Dolia

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O R D E R

This Writ Petition has been filed challenging the order passed by the 1st respondent withholding petitioner's gratuity amount.

2. The case of the petitioner is that he was working as a Branch Manager in the 1st respondent bank. While he was in service, he has been charged with disciplinary proceedings for causing loss to the bank to the tune of Rs.11 lakhs. After

enquiry, he was removed from service in the year 1985. Simultaneously, a criminal case was also filed against the petitioner for an offence under Sec.5(1)(d) and 5(2) of the Prevention of Corruption Act, 1947 in C.C.Nos.2324/1996 and 2325/1996, which were ended in conviction and sentenced to undergo 6 months rigorous imprisonment and also to pay a fine of Rs.2000/-. The appeals filed by the petitioner in C.A. Nos.795, 796, 797 of 1996 were also dismissed confirming the conviction, however, the sentence was modified. Subsequently, the petitioner has submitted a representation to the 1st respondent requesting to disburse the payment of gratuity. Thereafter, the 1st respondent has passed the impugned order, thereby, withholding the gratuity payable to the petitioner under Sec.4(6)(b) (ii) of the Payment of Gratuity Act, 1972. Now, challenging the said order, the present Writ Petition has been filed by the petitioner.

3. Mr.G.B.Saravanabhavan, learned counsel appearing for the petitioner submitted that even though the petitioner was removed from service, the alleged loss caused by the petitioner has been repaid, the respondents cannot forfeit the gratuity amount. He has also relied upon the judgment of Hon'ble Supreme Court of India, in C.A.No.8251 of 2018. The learned counsel for the petitioner also submitted that even before passing the impugned order, no enquiry was held and no opportunity was given to the petitioner, which is mandatory. He has also relied upon the Judgment of Kerala High Court in the matter of P.K.Venkateswaran Vs. The Chairman and Managing Director, The Fertilisers and Chemicals Travancore Ltd., Ernakulam, in W.P.(C) No.31501 of 2005 dated 26.02.2016 and the Judgment of Bombay High Court in the matter of Bank of India Vs. R.V.Deshmukh in W.P.No.802 of 2007 dated 18.09.2014.

4. Mrs. Rita Chandrasekar, learned counsel appearing for the respondents submitted that the service of the petitioner has been terminated on the ground that he has misappropriated the funds of the Bank, and the criminal case was also ended in conviction, which involving in moral turpitude under Sec.4(6)(1) (b) of the Payment of Gratuity Act. Therefore, the gratuity amount is not liable to be paid to the petitioner. The learned counsel also submitted that in view of the above admitted fact, there is no necessary to conduct enquiry.

5. I have considered the rival submissions and perused the records carefully.

6. It is an admitted fact that the petitioner was terminated from service and he has been convicted under the Prevention of Corruption Act. Considering the said circumstances, the 1st respondent has passed the impugned order forfeiting the gratuity under Sec. 4(6)(b)(ii) of the Payment of Gratuity Act. But, the

impugned order has been passed without conducting any enquiry, and without issuing any notice to the petitioner. In similar circumstances, the Kerala High Court in the matter of P.K.Venkateswaran Vs. The Chairman and Managing Director, The Fertilisers and Chemicals Travancore Ltd., Ernakulam in W.P.(C) No.31501 of 2005 dated 26.02.2016 has taken a view that under Sec.4(6)(b)(ii) of the Act, a discretion has been given to the employer, hence, before passing any order, an opportunity of hearing must be given to the employee. The Bombay High Court in the matter of Bank of India Vs. R.V.Deshmukh in W.P.No.802 of 2007 dated 18.09.2014 has also taken a similar view holding that an enquiry is mandatory before passing the impugned order.

7. I am in full agreement with the view taken by the Kerala High Court as well as Bombay High Court. As the discretionary power is vested with the employer, the 1st respondent is bound to conduct an enquiry before passing any order withholding the gratuity. In the said circumstances, I am inclined to set aside the impugned order, and remanded back the matter to the 1st respondent. The 1st respondent is directed to conduct enquiry after issuing notice to the petitioner and pass suitable orders on merits and in accordance with law. The above exercise should be completed within a period of six weeks from the date of receipt of the copy of this order. The present Writ Petition stands disposed of with the above direction. No costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Chief Manager,
Indian Bank, Corporate Office,
HRM Department,
254-260, Avvai Shanmugam Road,
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Indian Bank Office, Royapettah,
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3. The Manager,
Indian Bank Circle Officer,
Alandurai, Thanjavur Dt.

+1 CC to Mr.G.B.Saravanabhavan, Advocate sr 79052.
+1 CC to M/s.Aiyar and Dolia, Advocate sr 79058.

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SP(22/01/2019)



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