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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-1533-2017
Date of Decision : October 22, 2018

Punjab National Bank and others

.... Petitioners.

Versus

Deputy Labour Commissioner (Central)
and another.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Saurav Verma, Advocate
for Mr. Akash Soni, Advocate,
for the petitioner.

Mr. B.B.Bagga, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari for quashing the impugned order dated 27.11.2015 (Annexure P/10) passed by respondent No.2, whereby he has illegally allowed the claim of respondent No. 3 for release of retiral benefits i.e., gratuity in clear violation of Section 4(6) of the Payment of Gratuity Act, 1972 (for short, “the Gratuity Act”) and Section 10(1)()b)(1) of Banking Regulations Act, 1949 (for short, “the 1949 Act”).

2. Facts relevant for the purpose of decision of this writ petition; that Subhash Chander Salgotra, respondent No.3 herein had joined

service on 1.1.1983 as a workman in New Bank of India, which was subsequently amalgamated with the petitioner-bank. Respondent No. 3 was issued a charge sheet dated 2.11.2006 for various irregularities committed by him while working at Branch Office, Sector 19, Chandigarh. He filed reply on 6.1.2007 to the said charge sheet which was found to be unsatisfactory and the Enquiry Officer was appointed to look into the veracity of the charges. However, before the conclusion of the disciplinary proceedings, FIR No. 176 dated 10.11.2016 under Section 489-B and 489-C of the Indian Penal Code was registered against respondent No. 3 for his illegal conduct of having possession of 33 fake currency notes of Rs.1000 denomination, which were recovered from his possession during the duty hours, while he was working as Cashier in the petitioner-bank. Respondent No. 3, vide judgment dated 28.1.2013 passed by learned Additional Sessions Judge, Chandigarh, was convicted and sentenced under section 489-C IPC to undergo rigorous imprisonment for a period of three years and fine of Rs.3000/-.

3. As per the petitioner-bank, the mandatory provisions of Section 10(1)(b)(1) of the 1949 Act, there is a clear cut prohibition upon the Bank to employ any person who has been convicted for an offence involving moral turpitude and for ready reference Section 10(1)(B)(1) of the 1949 Act is extracted below:-

> "10. **Prohibition of employment of Managing Agents and restrictions on certain forms of employment**
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> (1) No banking company-
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> (a) shall employ or be managed by a Managing

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agent; or

(b) shall employ or continue the employment of any person-

(i) who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by a criminal court of an offence involving moral turpitude; or

(ii) whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company:"

4. As per the above provisions, as respondent No.2 was convicted for an offence involving moral turpitude, petitioner-bank issued a show cause notice dated 18.1.2014 to him and sought response that as per above provisions of the 1949 Act and para No. 3(b) of Bipartite Settlement dated 10.04.2002, why his services be not terminated. He was given personal hearing on 30.1.2014 before the Disciplinary Authority. However, respondent No. 3 did not file any response to the notice, nor he had come present for personal hearing on 30.1.2004. Then, he was given another date for personal hearing for 18.2.2014 and on that date, he had filed reply and after considering the same and in terms of Section 10(1)(b)(1) of the the 1949 Act and Para No. 3(b) of the Bipartite Settlement, the the Disciplinary Authority vide order dated 27.3.2014 (Annexure P/4) imposed the punishment of dismissal from Bank's service upon respondent No.3 and the said order was sent to him by registered post/UPC on 12.04.2014 itself. However, the Controlling Authority under the Gratuity Act passed the

order for release of amount of gratuity vide impugned order dated 27.11.2015 (Annexure P/10). The petitioner-bank preferred appeal before the Appellate Authority under the 1949 Act, which was also dismissed and as such the present writ petition by the petitioner-bank before this Court.

5. Respondent No. 3 filed his written reply taking the plea that the orders of forfeiture of gratuity passed by the disciplinary authority, when the matter was pending before the Controlling Authority are nullity in eyes of law as per view taken by Hon`ble Apexs Court in **Jaswant Singh Gill Vs. Bharat Cooking Coal Ltd and others, 2007(1) SCC 663,** wherein it has been held that continuation of departmental proceedings for forfeiture of gratuity after termination of the employee are illegal as the gratuity becomes payable immediately upon termination of the service. On this point reliance was also placed on the judgments from Hon`ble Full Bench of this Court in **UCO Bank and others Vs. Anju Mathur, LPA No. 566 of 2012.**

6. At the time of arguments, learned counsel for the petitioner-bank contended that respondent no. 3 was facing serious charges of mis-conduct for which charge sheet was issued to him on 2.11.2006 and matter was being enquired by the Enquiry Officer. Meanwhile, FIR was registered against respondent No. 3 for commission of offence punishable under Sections 489-B and 489-C IPC for having conscious possession of 33 fake currency notes of the denomination of Rs.1,000/- while he was working as Cashier of the bank. On the basis of that and as per provisions of Section 10(1)(b)(1) of the relevant Regulations and as per Para No. 3(b) of the

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Bipartite Settlement, a show cause notice was issued and the Disciplinary Authority after considering the reply having been filed by respondent no. 3 on 18.2.2014, passed the order of dismissal from service. Thereafter, the order was passed for forfeiture of gratuity. In support of his arguments, reliance was placed on the decisions of Hon`ble Apex Court in **Y.P. Sarabhai vs. Union Bank of India and another, 2006(3) S.C.T. 138 and Beed District Central Co-op. Bank Ltd. vs. State of Maharashtra and others, 2006(4) S.C.T., 564** and judgments from Hon`ble Jharkhand High Court in **Ram Kumar Singh vs. M/s Bharat Cocking Coal Limited and others, W.P.(L) No.7326 of 2012, decided on 20.03.2013; Mahohar Singh Neech vs. Regional Labour Commissioner (Central) Dhanbad-cum-Appellate Authority and others, 2004 (4) J.C.R. 320; General Manager, Western Washery Zone, M/s Bharat Coking Coal Ltd. vs. Brajendra Kumaar Choubey, 2014 (3) JLJR 398; and** Hon'ble Gujarat High Court in **Munirudin Vajirudin Kazi vs. Municipal Commissioner and others, Special Civil Application No.17973 of 2014 decided on 24.09.2015 and Gujarat State Fertilisers and Chemical ltd. vs. Surendra T. Amin, 2005(1) LLJ 400.**

7. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that as the facts are not disputed, the main point involved in this case would be, Whether passing of order of dismissal and on the date the employee ceases to be an employee, whether such an order of forfeiture of gratuity could b e passed on a subsequent date?

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8. On the same ground, the Controlling Authority decided the claim of gratuity that respondent No. 3 was entitled to the payment of gratuity. The Controlling Authority vide impugned order, Annexure P/10, had observed that as per provisions of Section 4(b)(B2 read with Sections 13 and 14 of the Gratuity Act, payment on account of gratuity can be forfeited only if the workman had caused any loss to the employer and that loss is attributed to the workman and that loss has been quantified through a proper enquiry. But, in this case, the petitioner-bank has not been able to come out with a plea that any financial loss has been caused to it and how much was that loss. In the absence of that, as per provisions of Section 4(2) and Sections 13 and 14 of the Gratuity Act, the said amount could not be forfeited. Such a view as taken by Hon`ble Supreme Court in **Bank of Baroda vs. S.K. Kool (Dead) through Legal Representatives and another, 2014(2) S.C.C. 715; Jaswant Singh Gill vs. Bharat Coking Coal Ltd and others, (2007) 1 SCC, 663;** and a Division Bench of this Court in **Municipal Committee, Tohana vs. The Appellate Authority under the payment of Gratuity Act, 1972 and others, 1994(5) SLR 529.** More so, as the order dated 17.6.2015 (Annexure P/7) regarding forfeiture of gratuity was not passed at the time of award of punishment of dismissal from service on 27.3.2014 (Annexure P/4), and the said order was received on 30.9.2014 by respondent no.3, such an order of forfeiture of gratuity cannot be passed subsequently when respondent no.3 was not employee of the petitioner-bank because as per the provisions of Section 4 (1) of the Gratuity Act, the payment of gratuity on termination of his

employment is payable that may be on account of superannuation, retirement or resignation or death. Such a view as taken by Hon`ble Apex Court in **Jaswant Singh Gill's case (supra).**

9. Similar matter was also before Hon`ble Apex Court in **Bhagirathi Jena Vs. Board of Directors, OSFC, (1999) 3 SCC 666** wherein Hon`ble Apex Court observed as under:-

> "7. In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

10. In the light of the view taken by Hon`ble Apex Court, the judgments referred to and relied upon by learned counsel for the petitioner are distinguishable on facts and are of no help to the petitioner as in the present case, the dismissal order was passed on 27.3.2014 and the petitioner-bank initiated the process of forfeiture of gratuity by issuing show cause notice to respondent No.1 on 29.5.2015 (Annexure P/5) and as per view taken by the Hon`ble Supreme Court in **Jaswant Singh Gill's case (supra),** the order (Annexure P/7) has been passed on 17.6.2015 ordering forfeiture of gratuity amount payable to respondent No.3 .

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11. In view the above, the Controlling Authority under the Gratuity Act had rightly decided the claim of respondent No. 3 regarding gratuity and the the Appellate Authority has rightly dismissed the appeal preferred by the petitioner-bank.

12. Resultantly, the present writ petition is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

October 22, 2018.
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Whether speaking/reasoned? : Yes
Whether reportable? : Yes