

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12405 OF 2019

Maharashtra Gramin Bank Through its Chairman

VERSUS

Bharatibai Ramesh Kambale

WITH

CIVIL APPLICATION NO. 12139 OF 2019

IN

WRIT PETITION NO. 12405 OF 2019

Bharatibai Ramesh Kambale

VERSUS

Maharashtra Gramin Bank Through its Chairman

WITH

CIVIL APPLICATION NO. 12140 OF 2019

IN

WRIT PETITION NO. 12405 OF 2019

Bharatibai Ramesh Kambale

VERSUS

Maharashtra Gramin Bank Through its Chairman

WITH

WRIT PETITION NO. 9672 OF 2018

Maharashtra Gramin Bank Aurangabad Through Its Chairman

VERSUS

Bhujang Sheshrao Shikhare

WITH

WRIT PETITION NO. 9674 OF 2018

Maharashtra Gramin Bank Aurangabad Through Its Chairman

VERSUS

Bhujang Namdeoappa Kaware

WITH

WRIT PETITION NO. 9675 OF 2018

Maharashtra Gramin Bank Through Its Chairman

VERSUS

Vijay Madhukar Koleshwar

WITH

WRIT PETITION NO. 9676 OF 2018

Maharashtra Gramin Bank Aurangabad Through Its Chairman

VERSUS

Balasaheb Maruti Dhas

WITH

WRIT PETITION NO. 9739 OF 2018

Maharashtra Gramin Bank Aurangabad Through Its Chairman

VERSUS

Rajiv Vasantrao Kurundkar

WITH

WRIT PETITION NO. 10642 OF 2018

Maharashtra Gramin Bank Through Its Chairman

VERSUS

Arun Bhanudasrao Jadhav

WITH

WRIT PETITION NO. 10643 OF 2018

Maharashtra Gramin Bank Through Its Chairman

VERSUS

Gangadhar Babanrao Ingle

**WITH
WRIT PETITION NO. 10644 OF 2018**

Maharashtra Gramin Bank Through Its Chairman
VERSUS
Sheshrao Mahadu Pandhavale

**WITH
WRIT PETITION NO. 10645 OF 2018**

Maharashtra Gramin Bank Through Its Chairman
VERSUS
Santosh Anantrao Mundhalwadkar

**WITH
WRIT PETITION NO. 10646 OF 2018**

Maharashtra Gramin Bank Through Its Chairman
VERSUS
Shakuntala Baburao Mandharne

**WITH
WRIT PETITION NO. 10647 OF 2018**

Maharashtra Gramin Bank Aurangabad Through Its Chairman
VERSUS
Pradeep Prabhakarrao Chikshe

**WITH
WRIT PETITION NO. 10648 OF 2018**

Maharashtra Gramin Bank Aurangabad Through Its Chairman
VERSUS
Shivaji Kashinath Katke

**WITH
WRIT PETITION NO. 11344 OF 2018**

Maharashtra Gramin Bank Through Its Chairman

VERSUS

Gangaram Maroti Mundkar

WITH

WRIT PETITION NO. 11345 OF 2018

Maharashtra Gramin Bank Aurangabad Through Its Chairman

VERSUS

Shivraj Chandramappa Tenkale

...

Shri Pradeep L. Shahane a/w Shri Parag P. Shahane, Advocates for the petitioners.

Shri D.Y.Nandedkar, Shri V.S.Undre, Shri Vinod M. Vibhute, Shri S.K.Adikine and Shri W.N.Nayse, Advocates for the respondents in the respective petitions.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 16th December, 2019

Oral Order:

1 In all these matters, the petitioner bank/ management has challenged the judgments delivered by the Controlling Authority and the Appellate Authority under the Payment of Gratuity Act, 1972. Each of these respondents/ employees was subjected to disciplinary proceedings under the standing orders applicable to the petitioner bank. After the enquiry was concluded, they were awarded with punishments. Some challenged their dismissal from service. This Court has dismissed the

petitions of some workers challenging their dismissal. Two petitions filed by the respondents, namely, Balasaheb Maruti Dhas (WP/9676/2018) and Gangaram Maroti Mundkar (WP/11344/2018), challenging their dismissal, are pending before the Central Government Industrial Tribunal, Nagpur and one case filed by the respondent Arun Bhanudasrao Jadhav (WP/10642/2018), is pending before this Court in Writ Petition No.482/2016.

2 For ready reference, following are the details of the respondents/ employees as provided by the learned advocate for the petitioner Bank :-

WP No.	Respondent Name and Designation	Reason for Dismissal	Date of Dismissal	Date of filing application	Grounds
9672	Bhujang Sheshrao Shikhare (Cashier-cum-Clerk)	Unauthorizedly absent from 15.01.2002 to 31.03.2004	31.03.2004	05.11.2015	Delay of more than 11 years
9674	Bhujang Namdeoappa Kaware (Messenger)	Superannuated	31.08.2015	16.06.2016	Already paid gratuity of Rs.5,61,753/- at the time of superannuation which is accepted by Respondent. Delayed application for about 1 year.

9675	Vijay Madhukar Koleshwar (Officer)	Unauthorizedly dealing with the customer of the Bank/ borrowed money from the persons having dealings with the Bank. Acts detrimental to the interest of the Bank. Unauthorizedly absent from duty.	27.03.2004	15.10.2015	Dismissed for serious acts of misconduct of unauthorizedly dealing with the customers of the Bank and defrauding the Bank. Filed application after more than 11 years.
9676	Balasaheb Maruti Dhas (Cashier Incharge)	Cash shortage of 5 lacs (admitted). Dishonest and unfaithful behaviour which is an act of gross misconduct and breach of regulations. Not abiding with the directions/ procedure of the Bank which is act of gross misconduct. Act subversive to discipline and detrimental to the interest of the Bank, which is an act of gross misconduct.	03.01.2013	2015	Misappropriation of Rs.5 lacs admitted in writing. Forfeiture in Form "M" communicated on 09.01.2013. Acts of gross misconduct involving moral turpitude. Delay of more than 2 years.

9739	Rajeev Vasant Rao Kurundkar (Cashier Incharge)	Cash shortage of Rs.65,000/- (admitted). Dishonest and unfaithful behaviour which is an act of gross misconduct and breach of regulations. Act not abiding with the directions/ procedure of the Bank which is act of gross misconduct. Act subversive to discipline and detrimental to the interest of the Bank which is an act of gross misconduct.	29.05.2013	08.09.2015	Misappropriation of Rs.65,000/- admitted. Forfeiture in Form "M" communicated on 26.10.2013. Acts of gross misconduct involving moral turpitude. Delay of more than 2 years.
10642	Arun Bhanudas Rao Jadhav (Branch Manager)	Unauthorized purchase of cheques of Rs.2 lacs. Misappropriated bank funds of Rs.15,000/-. Not disbursed full loan of Rs.15,000/- for business to customer. Not followed Head Office instructions/ directions of the Bank carefully. Did not serve the Bank honestly and faithfully. Acted in a manner detrimental to the interest of the Bank.	09.08.2002	15.10.2015	Application filed after more than 13 years. Serious acts of misappropriation involving moral turpitude. Misappropriated amount of Rs.15,000/-. Unauthorized purchase of cheques of Rs.2 lakhs. Misconducts proved after enquiry.

10643	Gangadhar Babanrao Ingale (Branch Manager)	Not followed Head Office instructions/ directions of the Bank carefully. Did not serve the Bank honestly and faithfully. Acted in a manner detrimental to the interest of the Bank.	13.12.1999	19.04.2015	Dismissal confirmed by the High Court in WP No.330/2001 as per order dated 20.06.2002. Application filed after 15 years. Serious acts of misconduct involving moral turpitude.
10644	Sheshrao Mahadu Pandhavale (Messenger)	Superannuated	31.10.2014	22.02.2016	Already paid gratuity of Rs.4,47,710/- at the time of superannuation which is accepted by respondent. Delayed application for about 1 and 1/2 years. Interest not awarded by controlling authority and awarded in appeal of the Bank by the Appellate Authority.
10645	Santosh Anantrao Mudhalwadkar (Clerk)	Misappropriation of Bank funds. (admitted in enquiry). Serious acts of misconduct.	11.02.1997	16.11.2015	After more than 17 years application filed. Serious acts of misconduct of defrauding the Bank admitted by the respondent in enquiry. Form "M" forfeiture of gratuity issued.

10646	Smt.Shakuntala Baburao Mandharne (Officer)	Fraudulently withdrew amount of Rs.72,000/- by falsely making signatures. Fraudulently transferred the amount debited. Found to have involved into serious acts of misconduct of misappropriation of Bank funds in a fraudulent manner and defrauding the Bank.	02.09.1995	09.09.2015	Application filed after more than 20 years. Involved in serious acts of misconduct involving moral turpitude.
10648	Shivaji Kashinath Katke	Sanctioned advances on the basis of bogus 7/12 extracts to 29 borrowers and entire outstanding amount of Rs.13.06 was in jeopardy. Not served the Bank honestly and faithfully. Committed acts detrimental to the interest of the Bank. Not followed Head Office instructions/ directions/ office procedure of the Bank carefully. Remained absent from Headquarter overnight without obtaining prior permission from Competent Authority.	16.12.2008	15.10.2015	Dismissal confirmed by the Division Bench in WP No.1139/2010 vide order dated 10.04.2012. Delay of more than 7 years in approaching this Court. Involved in serious acts of misconduct involving moral turpitude.

11344	Gangaram Maroti Mundkar (Cashier)	Cash of Rs.24,000/- found less while inspection. Admitted less cash of Rs.24,000/- in writing. Dishonest and unfaithful behaviour which is an act of gross misconduct and an act subversive to discipline and detrimental to the interest of the Bank.	06.01.2014	2015	Serious acts of misconduct of misappropriation of the bank fund of Rs.24,000/-. Dishonest and unfaithful behaviour. Form "M" notice was issued on 06.01.2014. Involved into serious acts of misconduct involving moral turpitude.
11345	Shivraj Chandramappa Tenkale (Branch Manager)	556 loan documents were found to be barred and missing and defective thereby, huge amount of bank funds to the tune of more than 508 lacs turned totally unsecured and unrecoverable. Not served the Bank honestly and faithfully. Displayed gross negligence and indolence and acted in a manner detrimental to the interest of the Bank.	29.06.2015 (Retired)	14.10.2015	Serious acts of misconduct involving huge bank funds of Rs.508 lacs turned unrecoverable. Dishonest and unfaithful behaviour. Enquiry still pending. Involved into serious acts of misconduct involving moral turpitude.

3 The issues raised in these matters are as regards, whether, the misconduct proved against these respondents can be said to be an act amounting to moral turpitude, whether, their gratuity for moral turpitude

can be forfeited and whether, such a forfeiture at the behest of the employer is permissible only if such an employee is held guilty of moral turpitude in criminal proceedings.

4 One more issue has been raised which is limited to two employees, namely, Bhujang Namdeoappa Kaware (WP/9674/2018) and Sheshrao Mahadu Pandhavale (WP/10644/2018), who were messengers with the petitioner bank and though they were paid their gratuity, the period for which they were daily wagers of about five years and eight years, respectively, has not been considered.

5 Insofar as the issue of non payment of gratuity for the period of temporary employment is concerned, Shri Shahane, learned advocate for the petitioner bank, vehemently submits that these messengers used to work for about two to three hours in a day. They used to clean the place, fill in the drinking water in containers and serve cups of tea. They were not even working for half a day and therefore, it is urged that this period of temporary employment should not be reckoned for computing completion of five years of employment insofar as the eligibility for payment of gratuity is concerned.

6 It calls for no debate that even a part time employment or employees working for shorter durations or few hours in the work place, has to be considered as having worked in the employment of the employer. In the matter of *Balvant Mohan Badve vs. Ahmednagar*

Municipal Corporation, 2016 (3) Mh.L.J. 62, I have dealt with the issue as to whether, an employee, being temporary, could claim gratuity and whether, being permanent in employment, is the only qualifying criteria to hold a person entitled for gratuity. The said issue was formulated in paragraph 6, which reads as under :-

"6. *Mr.Barde submits that the respondent/Corporation preferred Appeal (PGA) No.4/2015 which was allowed by the impugned judgment dated 04/09/2015. The judgment of the Controlling Authority was quashed and set aside and the matter was remitted to the Labour Court for deciding the claim afresh. Grievance is that gratuity is payable to an employee after he completes 5 years in continuous employment. Whether he is a "temporary" or a "permanent" employee is not the criteria for deciding whether he is entitled for gratuity. Mr.Barde, therefore, submits that the impugned judgment is unsustainable.*"

7 After framing the above issue in ***Balvant Badve (supra)***, I have observed in paragraphs 11 to 14 as under :-

"11. *It is, therefore, apparent that any employee, whether he be a temporary or a permanent, he would be entitled for gratuity after 30 days of severing employer-employee relationship if he satisfies Section 2A and Section 4 of the Payment of Gratuity Act. There is no dispute about the tenure of service of the petitioner from 07/09/1985 till 01/04/2007 and the fact that he was a Civil Engineer as on the date of his retirement. There is no dispute even as regards his last drawn salary.*

12. *I find that the Industrial Court, by its observations in paragraph No.13 of the judgment on internal page Nos.11 and 12, has arrived at a self-contradictory conclusion. On the one hand, it has concluded that the*

service of the petitioner is not legalized and therefore he is not entitled for gratuity. On the other hand, it has concluded that the matter deserves to be remanded to the Controlling Authority for a fresh adjudication. Needless to state, these conclusions are perverse, erroneous and reflect non-application of mind.

13. *Even if it is presumed for the sake of presumption that the Government finally does not regularize the services of the petitioner, yet, he would be entitled for gratuity for having worked continuously and having fulfilled the requirement of Section 2A and Section 4 of the Payment of Gratuity Act. Non-payment of gratuity after 30 days from the date of severing employer-employee relationship entails interest as may be granted by the competent authority.*
14. *In the light of the above, this petition is allowed. The impugned judgment of the Industrial Court dated 04/09/2015, being perverse and erroneous, is quashed and set aside. The judgment of the Controlling Authority dated 09/03/2015 is sustained. Appeal (PGA) No.4/2015 filed by the respondent stands dismissed."*

8 In the case of ***Netram Sahu vs. State of Chhattisgarh and another, AIR 2018 SC 1545***, the Honourable Supreme Court dealt with the case in which, an employee had worked for twenty five years out of which, his initial 22 years were as a daily wager and he was a permanent employee for three years. It was concluded that he would be entitled for gratuity for the entire period of employment inclusive of his temporary service with the employer.

9 Considering the above, I find that the Controlling Authority has rightly granted the difference in payment of gratuity to Bhujang

Namdeoappa Kaware and Shesherao Mahadu Pandhavale. **In view thereof, Writ Petition Nos.9674/2018 and 10644/2018, being devoid of merit are, therefore, dismissed.**

10 In the case of Bhujang Sheshrao Shikhare (Writ Petition No.9672/2018), the said employee was alleged to be unauthorizedly absent from 15.01.2002 till 31.03.2004. Since he was alleged to be continuously absent, the petitioner bank issued a letter which carries the date 31.03.2004 by which, his services have been brought to an end by way of punishment. Neither any charge sheet was issued, nor was any enquiry conducted. It was only recorded that there was a meeting between the respondent employee along with the management on 29.03.2004 and that Shri Bhujang Shikhare had lost his mental balance since his wife had committed suicide. He had pleaded guilty for his unauthorized absenteeism and assured that no such absenteeism would occur in future. It is, thereafter, that he was removed from service on 31.03.2004 and such removal was not to operate as a disqualification for future employment.

11 As such, in the case of Bhujang Sheshrao Shikhare, no offence can be said to be proved which would amount to moral turpitude. His gratuity, therefore, cannot be forfeited, in view of *Jorsingh Govind Vanjari vs. Divisional Controller, Maharashtra State Road Transport Corporation, Jalgaon, 2016 (12) SCALE 511*, in which, the Honourable

Supreme Court has held in paragraph 17 as under:-

"17. *In order to deny gratuity to an employee, it is not enough that the alleged misconduct of the employee constitutes an offence involving moral turpitude as per the report of the domestic inquiry. There must be termination on account of the alleged misconduct, which constitutes an offence involving moral turpitude.*"

12 Shri Shahane, learned advocate for the petitioner bank, has canvassed the point of delay of eleven years caused by Bhujang Shikhare in approaching the Controlling Authority and the Controlling Authority has granted interest on the amount payable. Shri Shahane further submits that the employer is not at fault in not paying the gratuity since the employer was under the bonafide belief that Bhujang Shikhare is not entitled for gratuity as he was terminated from service on account of remaining unauthorizedly absent for more than two years.

13 This Court has dealt with an identical situation in the matter of ***Chandrabhaga Machindra Dudhade vs. Mahatma Phule Krushi Vidyapeeth, 2016 (6) ALL MR 357***. It is concluded in the said judgment in paragraphs 33 to 38 as under :-

"33. *Going by the scheme of the Payment of Gratuity Act and the Rules thereunder, an obligation is cast upon the Employer to make the payment of gratuity with promptitude. If the University was of the firm belief that these Workers are not entitled for gratuity, they could have intimated the said Workers knowing fully well that the provisions of the Payment of Gratuity Act would benefit those Workers who had worked for five years or*

more continuously. Having failed to do so, it would not, therefore, mean that the delay has been caused only by the Workers.

34. *The Payment of Gratuity Act strikes a balance. An option is also given to the Workers to make a claim if the Employer has not paid the gratuity or if they are not satisfied with the amount of gratuity paid. As such, the initial burden lay upon the University and failure to make the payment of gratuity, would then give the Workers an opportunity of raising a claim under the Act. In the peculiar backdrop as above, even if it is presumed that the delay is only at the end of the Workers, I do not find that the said delay could be termed as being so inordinate or deliberate so as to deprive the Workers of the gratuity amount.*
35. *This Court in the matter of Chief Executive Officer, Zilla Parishad, Beed vs. Assistant Labour Commissioner and Controlling Authority, **2014 (3) Mh.L.J. 639 : 2014 (3) All M.R. 134**, has considered the intent and object behind introduction of the Payment of Gratuity Act and has traced its history in which the Employer used to pay some amounts to their employees only to express gratitude for having served the factory or establishment for a long duration. Before the Act was introduced, it was an act of gratis. This judgment need not be enlarged on this issue by considering the fact that the Workers have given up the interest on the gratuity as noted above. Therefore, considering the judgment of this Court in the Transport Manager, Kolhapur Municipal Transport (*supra*), the claim for gratuity cannot be defeated only on the ground of delay.*
36. *The issue of interest has been strongly contested by both the sides. The submission of the University is that since they did not believe that they were required to pay the gratuity to these Workers, the denial of gratuity amount in these circumstances, should not entail any interest. The University would not be able to shoulder the burden of interest considering the number of workers involved in these cases as well as several other workers, who are said*

to be in larger number before the Industrial Court, Ahmednagar.

37. *As held herein above, since the Payment of Gratuity Act was a legal obligation cast upon the University, Section 7(3-A) becomes squarely applicable. The Workers have waived interest upto 2005. The entire gratuity amount, as assessed by the Controlling Authority, has been deposited by the University before the Appellate Authority on 16.01.2012. As such, the issue of interest will have to be considered only for the period from January, 2006 upto December, 2011, which is a period of six years.*
38. *Considering the fact that the University is not a private establishment or industry or a cash rich company as well as the fact that the Workers have been in litigation from 2006 till this date, over a period of 10 years, I deem it proper to grant interest at the rate of 6% per annum on the gratuity amounts as are held payable by the Controlling Authority for the period of six years from January, 2006 till December, 2011. Since the amounts have been deposited with the Appellate Authority in January, 2012, the said amounts must have generated interest and the said accumulated interest would also be payable to these Workers."*

14 The only difference in this case and ***Chandrabhaga Dudhade case (supra)*** is that the respondent Bhujang Shikhare did not move the employer for eleven years for seeking gratuity. Even if it is presumed that the petitioner management has willfully not paid the gratuity, Bhujang Shikhare could have approached the petitioner management earlier and demanded gratuity. He also was in slumber and the Controlling Authority has granted 10% interest per annum for a period of about 14 years when the Controlling Authority delivered it's judgment. As such, I find that the

view taken by me in *Chandrabhaga Dudhade (supra)* of partly blaming the employee for sleeping over his rights for which the rate of interest was reduced to 6%, is applicable in this case.

15 In the light of the above, **Writ Petition No.9672/2018 is partly allowed** by reducing the interest on the gratuity from 10% per annum to 6% per annum from 01.05.2004 when it became payable after one month of relieving Bhujang Shikhare on 31.03.2004. Consequentially, the management shall calculate the rate of interest at 6% per annum from 01.05.2004 till the date the amount is deposited with the Controlling Authority and the said amount shall then be withdrawn by Bhujang Shikhare. The amount equivalent to 4% interest for the said period shall be returned to the petitioner bank.

16 Insofar as Writ Petition Nos.9676/2018 (Balasaheb Maruti Dhas) and 10642/2018 (Arun Bhanudasrao Jadhav) and 11344/2018 (Gangaram Maroti Mundkar) are concerned, these employees are held guilty of misappropriation of large amounts. Departmental enquiries were conducted and the charges were proved. An order of forfeiture of gratuity was also passed. However, in these cases, the employees have challenged their dismissal and the matters of Balasaheb Maruti Dhas and Gangaram Maroti Mundkar are pending before the Central Government Industrial Tribunal, Nagpur and the matter of Arun Bhanudasrao Jadhav is pending before this Court in Writ Petition No.482/2016.

17 Since I am dealing with the issue of what would amount to moral turpitude and whether, a criminal case registered with the police station followed by conviction in the criminal case by the court of the competent criminal jurisdiction would be necessary or not, the decision would equally bind these three persons. However, I am keeping their Writ Petitions (to the extent of these three persons) pending in this Court since they are hopeful of succeeding in their pending proceedings against their dismissal. If their dismissal is upheld, the verdict of this Court as regards moral turpitude would bind them. However, if they succeed in getting their dismissal quashed and set aside, they are likely to be entitled for all service benefits.

18 Considering the above, **RULE, in Writ Petition Nos.9676/2018, 10642/2018 and 11344/2018.** The learned advocates waive service on rule in these three petitions. These three matters would be decided finally after the pending cases of these employees against their dismissal, are decided. Until then, these three respondents/ employees would be restrained from withdrawing any gratuity amount and the Controlling Authority shall invest the said amounts in fixed deposit receipts with any nationalized bank at the local place, initially for a period of three years and renew such investment until their cases are decided.

19 In the remaining matters, the issue raised is as to whether, the proved misconduct of the employees would amount to moral turpitude

and whether, it is necessary that they should be convicted by a court of criminal jurisdiction so as to be deprived of the gratuity, by way of forfeiture of gratuity.

20 In *Sarvjeet Chhotelal Tiwari alias S.C.Tiwari vs. Union of India, through General Manager, Central Railways, Mumbai and others, 2015 I CLR 24* (Bombay High Court- Division Bench- Coram : Naresh H. Patil & Ravindra V. Ghuge, JJ.), it was held in paragraphs 16 and 17 as under :-

"16. We neither have any hesitation nor any doubt in our mind that the misconduct proved to have been committed by the petitioner is of a grave and serious nature. We do not intend to enlarge this judgment by referring to several reported judgments of the Apex Court as well as many High Courts on the point that misappropriation of whatsoever nature, irrespective of whether it involves Rs.1/- or thousands, is a grave and serious misconduct. It is trite that such a misconduct could never be treated leniently on the ground that such a misconduct is of a minor nature. Quantum of the amount misappropriated is not the yardstick to be considered while awarding punishment in cases of misappropriation, theft, fraud etc.

17. It has been held by the Division Bench of this Court (Coram : Ranjana Desai & Roshan Dalvi, JJ) in the case of *Nilesh R Mandra V/s. Union of India & Others, 2008(4) ALL MR 789* , in paragraphs No.6, 7 and 8 as under :-

6. Though undoubtedly the overcharging is to a very limited extent, it is only with regard to that decoy passenger. It is in respect of a case in which the petitioner has been watched and caught. It leaves out the numerous instances when the petitioner may not have been watched and caught. Each passenger is a victim. Each passenger has consequently been cheated and defrauded to that

extent. The fact that the petitioner could overcharge a passenger whilst being under vigilance and scrutiny showed that the petitioner took advantage of either the ignorance or the illiteracy of the victim. It shows a dishonest attitude of the Government servant. It causes financial loss to the institution he serves. It results in criminal breach of trust between the third party contracting with the institution as also qua the petitioner in the service of that institution. It results in misappropriation of funds as it would cause unlawful loss to the third party and unlawful gain to the petitioner. In a given case, albeit to that limited extent, misappropriation of each small amount may cause unlawful loss to that extent to the institution and the corresponding unlawful gain to the petitioner by the use of such dishonest means and by misconducting himself.

7. It is in this light that it is a settled position in law through various judgments of the Apex Court that the quantum of the amount misappropriated, stolen or defrauded is not the yardstick to determine the extent of the punishment. No matter what is the amount the conduct betrays the trust of the institution in its worker. The institution, therefore, loses confidence in the worker. That institution, therefore, is entitled, upon proof of the misconduct, to remove such employee.

8. It is argued on behalf of the petitioner that it is a small act of a small man and the punishment is, therefore, disproportionate to his misconduct. We cannot persuade ourselves not to consider the victim's point of view. Just as the petitioner is a small man and has committed a small misconduct, his victim is an equally a small man. Rs.25/- matters to a passenger taking a second class daily ticket from Khadavli to Pune. Such victims would be expected to prefer a rate lesser even to that extent to make that small saving. It is only because of his illiteracy or the ignorance of the ticket value that he could be cheated, albeit to that extent. We must, therefore, not turn a nelson's eye to the victim's point of view. In this light, we must refer to the judgments of the Apex Court cited before us by the counsel for the respondents."

21 The Honourable Supreme Court has held, in the case of *Allahabad Bank and another vs. Deepak Kumar Bose (Bhola)*, 1997 I CLR 834, in paragraphs 9 to 12 as under :-

"9. What is an offence involving "moral turpitude" must depend upon the facts of each case. But whatever may be the meaning which may be given to the term "moral turpitude" it appears to us that one of the most serious offences involving "moral turpitude" would be where a person employed in a banking company dealing with money of the general public, commits forgery and wrongfully withdraws money which he is not entitled to withdraw.

10. This Court in *Pawan Kumar v. State of Haryana and another*, JT 1996(5) SC 155 = (1996) 4 SCC 17 at page 21 dealt with the question as to what is the meaning of expression "moral turpitude" and it was observed as follows:

"Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity".

11. This expression has been more elaborately explained in *Baleshwar Singh v. District Magistrate and Collector, Banaras*, AIR 1959 All. 71 where it was observed as follows:

"The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and weakness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act

and he still acts contrary to it and does so knowingly, his conduct must beheld to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man"

12. *In our opinion the aforesaid observations correctly spell out the true meaning of the expression "moral turpitude". Applying the aforesaid test, if the allegations made against the respondent are proved, it will clearly show that he had committed an offence involving moral turpitude and, therefore, the appellant had the jurisdiction to suspend him under the aforesaid clause 19.3. The High Court observed that there was nothing on record to suggest that the management had formed an opinion objectively on the consideration of all relevant material available against the petitioner that in the circumstances of the case the criminal acts attributed to the petitioner implied depravity and vileness of character and are such as would involve moral turpitude. It did not regard entering into a criminal conspiracy to commit the aforesaid offences as being an offence involving moral turpitude. We one, to say the least, surprised at the conclusion which has been arrived by the Allahabad High Court. There was material an received before the appellant, in the form of the report of the C.B.I./S.P.E., which clearly indicated the acts of commission and commissions, amounting to "moral turpitude" alleged to have been committed by the respondent. further more the respondent has been charged with various offences allegedly committed while he was working in the bank and punishment for which could extend upto ten years imprisonment (in case the respondent is convicted under Section I.P.C.)."*

22 The learned advocates appearing on behalf of the workers have relied upon the following judgments :-

- (a) ***Union Bank of India and others vs. C.G. Ajay Babu and another, Civil Appeal No.8251/2018 decided on***

14.08.2018, (2018) 9 SCC 529.

- (b) *Nanubhai Nichhabhai Desai vs. Deputy General Manager, UCO Bank and others*, 2017 (4) ALL MR 1 : 2017 (4) Mh.L.J. 271.
- (c) *Netram Sahu vs. State of Chhattisgarh and another*, AIR 2018 SC 1545.
- (d) *State of Jharkhand and others vs. Jitendra Kumar Srivastava and another*, AIR 2013 SC 3383.
- (e) *Ashok Munjappa Potphale and others vs. Chief Secretary, Union of India and others*, Writ Petition No.1347/2016 (Aurangabad Bench) decided on 17.02.2017.
- (f) *Jaswant Singh Gill vs. Bharat Coking Coal Ltd. and others*, 2007 (1) SCC 663.

23 In *Nanubhai Nichhabhai Desai* (supra), this Court dealt with the allegations against the employee and concluded in paragraphs 11, 12 and 13 that unless a case involving an offence is not proved by the management under its standing orders or by any court, as the case may be, there cannot be a conclusion that the employee is guilty of an offence, which amounts to a misconduct and involves moral turpitude.

24 In the State of *Jharkhand vs. Jitendra Kumra* (supra), the

Honourable Supreme Court concluded that after the completion of a departmental enquiry, it is permissible for the Government to withhold pension only if there is a finding by the enquiry officer that the employee has committed a grave misconduct in the discharge of his duties.

25 In *Jaswant Singh Gill (supra)*, the Honourable Supreme Court concluded that the gratuity can be forfeited partially or wholly when the service of the employee is terminated for any act which constitutes an offence involving moral turpitude provided that such an offence has been committed by him in the course of his employment.

26 The learned advocates appearing on behalf of the respondents/ employees, who were charged with misappropriation and their charges were proved and their gratuity was forfeited, place heavy reliance on the judgment delivered by the Honourable Supreme Court on 14.08.2018 in the *Union Bank of India vs. C.G.Ajay Babu (supra)*, especially on the conclusions in paragraphs 20, 21 and 22, which read as under :-

"20. In the present case, there is no conviction of the respondent for the misconduct which according to the Bank is an offence involving moral turpitude. Hence, there is no justification for the forfeiture of gratuity on the ground stated in the order dated 20.04.2004 that the "misconduct proved against you amounts to acts involving moral turpitude". At the risk of redundancy, we may state that the requirement of the statute is not the proof of misconduct of acts involving moral turpitude but the acts should constitute an offence involving moral

turpitude and such offence should be duly established in a court of law.

21. That the Act must prevail over the Rules on Payment of Gratuity framed by the employer is also a settled position as per *Jaswant Singh Gill (supra)*. Therefore, the appellant cannot take recourse to its own Rules, ignoring the Act, for denying gratuity.
22. To sum-up, forfeiture of gratuity is not automatic on dismissal from service; it is subject to sub-Sections (5) and (6) of Section 4 of The Payment of Gratuity Act, 1972."

27 While considering the judgment delivered in *Jaswant Singh Gill (supra)*, which is the foundation in *Union Bank of India vs. C.G.Ajay Babu (supra)*, my learned Brother (Justice S.C.Gupte) has held in *Laxman Balu Deualkar vs. Chief Executive Officer, Kolhapur District Central Co-op. Bank Ltd., 2018 III CLR 8*, in paragraphs 4, 5 and 6 as under :-

- "4. Section 4 of the Act provides for payment of gratuity. Gratuity is payable to an employee on the termination of his employment after he has rendered a continuous service for not less than five years. Clause (a) of Sub-section (6) of Section 4 provides that notwithstanding anything contained in sub-section (1), 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, is liable to be forfeited to the extent of the damage or loss caused. Clause (b) of Sub-section (6) provides for forfeiture of whole or partial gratuity (i) if the services of the employee are terminated for riotous or disorderly conduct or any other act of violence, or (ii) if the services of the employee have been terminated for any act which constitutes an offence involving moral turpitude, provided it is committed by him in the course

of his employment. On its plain terms, clause (b) refers to termination for any "act which constitutes an offence involving moral turpitude". The clause does not contemplate actual conviction of the employee concerned for an offence involving moral turpitude. Any act, which if proved, would constitute an offence, would be covered by the first part of the clause. Anything done contrary to justice, honesty, modesty or good morals involves moral turpitude. If the act constituting an offence is, thus, contrary to justice, honesty, modesty or good morals, it enables the employer to forfeit, wholly or partially, the gratuity payable to the concerned employee. There is nothing in the clause to suggest that actual conviction for an offence involving moral turpitude is a pre-condition for forfeiture of gratuity under it.

5. Sub-section (6) of Section 4, read as a whole, also does not lend itself to any such construction. Clause (a) of it provides for forfeiture of gratuity in case of termination inter alia for "any act, wilful omission or negligence causing any damage or loss" to the employer; whereas as Clause (b)(i) provides for forfeiture in case of termination for "riotous or disorderly conduct or any other act of violence". If these acts or omissions or conducts need not be proved in any court of law as a condition of forfeiture and can only be a matter of domestic inquiry, there is no basis for claiming that the act referred to in clause (b)(ii), namely, "act which constitutes an offence involving moral turpitude", must be proved in a criminal court of competent jurisdiction. The termination may well be based on proof of such act in a domestic inquiry. Besides, considerations of purposive interpretation also negate any such construction of clause (b). As noted by the Supreme Court in the case of *Management of Tournamulla Estate v. Workmen* (1973) 2 SCC 502, the object of a gratuity scheme is to provide retirement benefits to workmen who have rendered long and unblemished service to the employer and thereby contributed to the prosperity of the employer and therefore, it may not be correct to say that no misconduct, however grave, can be visited with forfeiture of gratuity or part thereof. Even in a recent case, [U.P. State Sugar Corporation Ltd. vs. Kamal Swaroop Tondon](#), AIR 2008

SC 1235 the Supreme Court has held that retiral benefits "are not paid to the employee gratuitously or merely as a matter of boon", but they are paid to the employee "for his/her dedicated and devoted work". In cases involving termination of an employee for misconduct, the law of gratuity, i.e. Section 4(6), makes a distinction between various acts of misconduct. There are acts or wilful omissions (i) which cause damage or 5 (1973) 2 SCC 502 6 AIR 2008 SC 1235 5 / 10 sat wp 9044-2017.doc loss to, or destruction of, property belonging to, the employer, (ii) which amount to riotous or disorderly conduct or any other act of violence, and (iii) which constitute an offence involving moral turpitude, each of which are visited with different consequences in the matter of forfeiture. In case of (i) the forfeiture is to the extent of damage or loss caused, whilst in case of (ii) and (iii) the forfeiture may be whole (or partial). These acts, in the first place, lead to termination of the employee and thereafter forfeiture of gratuity in the manner stated by law. If the termination on the ground of any of these acts is justifiable, the forfeiture may follow. If termination is justifiable by reason of the act proven in a domestic inquiry, there is no reason why a further proof of any of these acts in a court of competent jurisdiction may be necessary for applying the provisions of forfeiture of gratuity. No such proof is insisted upon in case of acts listed in (i) and (ii) above; and there is no legislative purpose in requiring such proof in case of acts mentioned in (iii) above.

6. A learned single Judge of our court in the case of *Bank of India vs. R.V. Deshmukh*, 2015 (1) Bom. C.R. 561, has considered the contention of the employee suffering forfeiture of gratuity. The learned Judge has held that there is no merit in the contention that the provisions of Section 4(6)(b)(ii) authorize forfeiture of gratuity only where an employee is convicted of an offence involving moral turpitude. "Neither the express wordings of the sub-section nor does the legislative intent", held the learned Judge, "support any such strained construction".

Honourable Supreme Court in *Jaswant Singh Gill (supra)*, in paragraphs

9, 10 and 11 as under :-

- "9. *Learned Counsel for the Petitioner relies on the judgment of the Supreme Court in the case of Jaswant Singh Gill (supra) and submits that forfeiture in case of clause (b) (ii) of sub-section (6) of Section 4 can only be ordered "if the employee has been convicted for an offence involving moral turpitude". No doubt, whilst discussing Section 4(6)(a) and (b) in this case, the Supreme Court does make a reference to conviction for an offence involving moral turpitude, but that is merely a stray sentence. It cannot be picked out of the context and made the basis for interpretation of a provision of law, which is clear in its plain meaning. The Supreme Court in the case of Jaswant Singh Gill was considering an order of forfeiture issued by the disciplinary authority of the employer. The forfeiture was ordered under disciplinary rules framed by the employer (called "Coal India Executives' Conduct, Discipline and Appeal Rules, 1978"). Rule 27 of those Rules provided for penalties including "recovery from pay or gratuity of the whole or part of any pecuniary loss caused to the company by negligence or breach of order or trust". The short question before the Supreme Court was, whether the provisions of Payment of Gratuity Act shall prevail over the rules framed by the company. The court held that the rules framed by Coal India Limited were not statutory rules and the provisions of the Act would prevail over these rules; the power to withhold gratuity contained in the rules was subject to the provisions of the Act. Whilst explaining how gratuity was a statutory right, the court set out a gist of the close-knit scheme of the Act providing for payment of gratuity and in doing so, made a reference to Clause (b) of Sub-section (6) of Section 4 of the Act, stating that it "provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude. Conditions laid down therein are also not satisfied." The court was clearly not considering the*

interpretation of Section 4(6)(b)(ii) of the Act to test whether or not conviction by a criminal court of competent jurisdiction was a condition precedent for forfeiture of gratuity under that provision.

10. *Relying on this judgment, High Court of Chhattisgarh in the case of Jitendra Kumar Shrivastava (supra) has held that in order to invoke Section 4(6)(b)(ii) of the Act to forfeit the amount of gratuity payable to an employee, the condition precedent is that the terminated employee should have been convicted for an offence for the time being in force and that offence must be an offence involving moral turpitude. The High Court has observed that unless the aforesaid conditions are fully established, mere termination or dismissal of an employee concerned would not ipso facto constitute an offence, that too an offence involving moral turpitude, so as to attract the provisions of Section 4(6)(b)(ii) of the Act. I am afraid I am unable to concur with the observations of the High Court of Chhattisgarh. The observations run counter to the plain terms of Clause b(ii) of sub-section (6) of Section 4 and, as I have observed above, the Supreme Court in Jaswant Singh Gill's case lays down no such proposition of law.*
11. *There is no substance in the submission that the employee cannot be made to face a second show cause notice or inquiry for forfeiture. It is no double jeopardy. The first show cause notice as also domestic inquiry was for termination of service; the second is to show cause why, in addition, gratuity should not be forfeited. The reason for forfeiture is nothing but termination on account of proven misconduct in pursuance of the first show cause notice and inquiry. The cause to be shown is whether or not this termination falls within the provisions of Section 4(6) of the Act. That is perfectly legitimate. The case of UCO Bank (supra) cited by learned Counsel is on an altogether different point. That was a case where the employee was terminated upon being found guilty of misconduct without quantifying the actual loss suffered by the employer as a result of such misconduct. The charges against the employee were (a) failure to protect*

the interest of the bank, (b) acts contrary to the instructions of the superiors and (c) failure to discharge duties with integrity. These charges were proved, but none mentioned actual loss caused to the bank. Thereafter, a separate inquiry was ordered in the same misconduct for proving and quantifying the loss with a view to forfeit gratuity. That was held impermissible by the court, holding that employee could not be subjected to two inquiries for the same misconduct."

29 In my view, considering the law referred to above, it is within the domain of the employer to enquire into the charges levelled against an employee. It is the employer's obligation to prove the charges so as to hold the employee guilty of the charges levelled upon him. In service jurisprudence, it is not the duty or obligation of the charge-sheeted workman to prove his innocence. The principle of onus probandi would exclusively apply to an employer who levels the charge of misconduct against the employee. The burden would never shift (**A.Raghavamma vs. A.Chenchamma, AIR 1964 SC 136**). It is the employer who has to prove the misconduct and thereafter, the employee would lead evidence to disprove the allegations levelled upon him by the employer. Eventually, if the charge is proved, it is for the employer to consider as to whether, the misconduct proved against an employee would amount to an act of moral turpitude, before passing an order of forfeiture of gratuity.

30 Once an employer proves the charges and the offence held to be committed by an employee appears to be involving moral turpitude to

any prudent man, an employer can then invoke Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972 so as to pass an order of forfeiture of gratuity. Section 4(6)(b)(ii) reads as under :-

- "4. *Payment of Gratuity :-*
- (6) *Notwithstanding anything contained in sub-section (i) :-*
- (a) *.....*
- (b) *the gratuity payable to an employee may be wholly or partially forfeited.*
- (i) *.....*
- (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."*

31 Considering the view expressed by my Brother (Justice S.C.Gupte) in ***Laxman Balu Deualkar (supra)*** and the law holding the field, I am also of the view that after an employer proves an offence in disciplinary proceeding against an employee, which involves moral turpitude, the employer is not required to go to the police station and initiate a proceeding for proving the said charge in a court having criminal jurisdiction.

32 The view taken in ***C.G.Ajay Babu (supra)*** would not apply to the cases in hand since, in the said case, there was a bipartite settlement in the appellant bank which provided for forfeiture of gratuity only if financial loss was caused to the bank on account of a misconduct, which led to the employee's dismissal. It was in this backdrop that the Honourable Supreme Court concluded, in ***C.G. Ajay Baba case (supra)***,

that recourse to Section 4(6) of the Payment of Gratuity Act, 1972 for forfeiture of gratuity was not possible as the bipartite settlement introduced special clauses and protected the workmen from forfeiture of gratuity until a financial loss was proved to have been caused to the employer.

33 It is strenuously canvassed that Section 4(6)(b) provides for forfeiting the entire gratuity or a portion of the gratuity. In the matter of *Bharath Gold Mines Limited vs. Regional Labour Commissioner, 1987 (1) CLR 189 : ILR 1986 Karnataka 2755*, the Karnataka High Court held that even a theft is an act having serious repercussions and a thief cannot be rewarded with payment of gratuity. The gratuity could be forfeited wholly or to the extent of the amount stolen, which is the prerogative of the employer.

34 In the case of *Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) vs. Secretary, Sahakari Noukarara Sangha, 2000(7) SCC 517 : AIR 2000 SC 3129*, the Honourable Supreme Court has held that an act of misappropriation is a grave and serious offence. The amount of money misappropriated is not decisive. The fact that a person has indulged in misappropriation, is sufficient to dismiss him from service since such a person does not deserve to remain in employment.

35 In *Kumaon Mandal Vikas Nigam Ltd.. vs. Girja Shankar*

Pant and others, 2001 (I) CLR 12 : (2001) 1 SCC 182 : AIR 2001 SC 24, the Honourable Supreme Court has concluded that a person guilty of misappropriation cannot be retained in employment.

36 The learned Division Bench of this Court has also taken a view in the matter of *P.R.Shele vs. Union of India and others, 2008 (2) Mh.L.J. 33* wherein, it was concluded that the misappropriation cannot be pardoned in any circumstances. The learned Division Bench of this Court in *Sarvjeet Chhotelal Tiwari (supra)* has also taken the same view.

37 As is evident from the chart reproduced above, the concerned respondents/ employees have committed grave and serious misconducts of misappropriating large amounts and have indulged in unauthorized and nefarious dealings with the customers of the bank by misusing their authority. These acts would undoubtedly amount to moral turpitude.

38 Section 4(6)(b), to the extent of partial deprivation of gratuity is concerned, could be invoked only if the employer is of the view that the amount misappropriated by the employee can be recovered from the gratuity amount and the management decides to pay the remainder gratuity amount to an employee. Gratuity cannot be forfeited for an offence of any magnitude until the said offence amounts to moral turpitude. Once it amounts to moral turpitude, it would be open to the employer to consider the gravity of such offence and the quantum of gratuity that would have normally been payable and the employer can

then take a decision as to whether, the gratuity could be partially forfeited.

39 Any banking institution operates on the trust and confidence of its customers, depositors or investors. If it finds that an offence committed by an employee is likely to affect such trust and confidence of its customers, the bank can adopt a strict stand and in case of moral turpitude, such management/ bank may consider forfeiting a part of the gratuity.

40 A loss caused to the employer due to the misconduct of the employee can also be a ground for partially forfeiting gratuity to the extent of the monetary loss caused, in the light of *U.P.State Sugar Corporation Ltd. and others vs. Kamal Swaroop Tondon, (2008) 2 SCC 41*.

41 In view of the above, as the concerned employees are guilty of misappropriation of different amounts, it will have to be left to the employer to decide whether, it desires to partly forfeit the gratuity amount to the extent of the misappropriation or adopt a strict stand of forfeiting the entire gratuity in order to send out a clear message that the misappropriation in the banking or financial institutions or for that reason in any establishment cannot be countenanced. Since the petitioner bank has already taken a stand in these matters that the gratuity amounts of the employees have to be forfeited, I do not find that such a decision could be

faulted.

42 In view of the above, it is evident that the Controlling Authority and the Appellate Authority under the Payment of Gratuity Act, 1972, have not decided these matters with proper application of mind. They granted gratuity amounts on misplaced sympathy and such misplaced sympathy would have no place in the justice dispensation system if the act committed by the employee amounts to moral turpitude and causes grave and serious consequences.

43 In the light of the above, **Writ Petition Nos.12405/2019, 9674/2018, 9675/2018, 9739/2018, 10643/2018, 10644/2018, 10645/2018, 10646/2018, 10647/2018, 10648/2018 and 11345/2018 are allowed.** The impugned judgments are quashed and set aside and the amounts deposited by the employer with the controlling authority can be withdrawn by the employer bank with accrued interest, after a period of six weeks from today.

44 The pending Civil Applications in these matters would not survive and stand disposed off.