

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**REVIEW PETITION NO.60 OF 2019
IN
WRIT PETITION NO.9044 OF 2017**

Shri Laxman Balu Deualkar	...	Petitioner
Versus		
The Chief Executive Officer		
Kolhapur District Central		
Co-op. Bank Ltd.	...	Respondent

.....

Mr. Prashant Chavan a/w Ms. Ruchi Patil i/b Mr. Ravindra R. Chile
for the Petitioner.

Mr. Tejpal S. Ingale for the Respondent.

.....

CORAM : S.C. GUPTE, J.

DATE : 8 NOVEMBER 2019

ORAL JUDGMENT

. This review petition seeks review of an order passed by this court whilst disposing of the writ petition herein. The writ petition challenged an order passed by Appellate Authority under Payment of Gratuity Act, 1972 ("Act"). The Petitioner, who was an ex-employee of the Respondent-bank, was chargesheeted for the misconduct of misappropriation of funds. After a duly conducted departmental enquiry, where the Petitioner was found guilty of the charge, his services were terminated on 6 July 1996 by giving one month's pay

in lieu of notice. The Petitioner complained of an unfair labour practice in respect of his termination. His complaint was dismissed by the Labour Court at Kolhapur. Thereafter, the Petitioner filed an application in form-I for payment of gratuity. Since gratuity was not paid despite that application, he preferred an application under Section 4 of the Act before the Controlling Authority. During the pendency of this application, a show cause notice was issued to him by the Respondent-bank for forfeiture of his gratuity. After considering the Petitioner's reply, by its notice dated 28 August 2008, the Respondent forfeited the gratuity payable to the Petitioner under Section 4(6)(b)(ii) of the Act. The controlling authority, vide its order dated 15 July 2005, allowed the Petitioner's application and directed the Respondent-bank to pay to the Petitioner a sum of Rs.1,05,404/- towards gratuity along with interest at the rate of 10 per cent per annum from the date of his application and till realization. This order was challenged by the Respondent-bank before the Appellate Authority under the Act. The appellate authority, by its judgment dated 9 December 2015, allowed the appeal and set aside the order of the controlling authority. The order of the appellate authority was challenged in a writ petition before this court. This court found no merit in the petition and dismissed the same. That order is sought to be reviewed.

2 The argument of the Petitioner that it was a pre-condition in order to invoke Section 4(6)(b)(i) of the Act for forfeiture of gratuity that the termination of the employee should have been on the ground

of an actual conviction for an offence involving moral turpitude, was not accepted by this court, whilst dismissing the petition. Subsequent to the passing of the order under review, a judgment has been delivered by the Supreme Court in the case of **Union Bank of India Vs. C.G. Ajay Babu**¹, which in terms has held that to be an offence within the meaning of Section 4(6)(b)(ii) of the Act, the alleged act on the part of the delinquent employee should be punishable under law. The court has held that this was absolutely in the realm of criminal law; it was not for the bank or any private authority to decide whether an offence had been committed; it was for the court alone to do so. The court has clearly laid down that under sub-section 6(b)(ii) of the Act, forfeiture of gratuity was permissible only if the termination of the concerned employee was for a misconduct which constituted an offence involving moral turpitude, and the employee was convicted accordingly by a court of competent jurisdiction. The court has held in unequivocal terms that the requirement of the statute was “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”. In the face of this categorical statement of law in **C.G. Ajay Babu’s** case, the conclusion of this court, as reflected in its order under review, that it was not necessary to establish an offence in a court of competent jurisdiction and accordingly, actual conviction of the delinquent employee was not a pre-condition for forfeiture of his gratuity under sub-section 6(b)(ii) of Section 4 of the Act, can be said

1 (2018) 9 Supreme Court Cases 529

to be vitiated by an error of law apparent on the face of the record. The case of **Jaswant Singh Gill Vs. Bharat Coking Coal Ltd.**², which was relied upon by the Supreme Court in **C.G. Ajay Babu**'s case, was considered by this court in the order under review. This court was, however, of the view, as it now turns out, mistakenly, that the observations of the Supreme Court in that case that clause (b) of sub-section (6) of Section 4 of the Act "provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated.....if he had been convicted for an offence involving moral turpitude" had to be seen in a proper context; the Supreme Court in **Jaswant Singh Gill**'s case was not considering interpretation of sub-section 6(b)(ii) of the Act or testing whether or not conviction by a criminal court of competent jurisdiction was a pre-condition for forfeiture of gratuity under that provision. Accordingly, the order passed in the writ petition on 14 June 2018 needs to be reviewed and recalled and the writ petition deserves to be allowed.

3 Learned Counsel for the Respondent is not right in submitting that the facts of the case before the Supreme Court in **C.G. Ajay Babu** case were different from the facts of the present case. The decision of the Supreme Court in **C.G. Ajay Babu** case was on the basis of a proposition of law regardless of particular facts of that case, such proposition being that forfeiture of gratuity under 4(6)(b)(ii) of the Act was permissible only if the termination was for a misconduct which

2 (2007) 1 SCC 663

constituted an offence involving moral turpitude, and where the employee was convicted on the basis of such offence by a court of competent jurisdiction. There being no case of actual offence or even prosecution for any such offence in a criminal court of competent jurisdiction in the present case, there is no warrant for forfeiture of gratuity under sub-section (6)(b)(ii) of Section 4 of the Act.

4 The Review Petition is, accordingly, allowed. The order of 14 June 2018 passed in the writ petition is recalled and set aside and the writ petition is allowed by quashing and setting aside the order of the Appellate Authority and restoring the original order of the Controlling Authority under the Act. The Petitioner will be entitled to gratuity in accordance with the order of the Controlling Authority. Learned Counsel for the Petitioner submits that he is agreeable to take the amount deposited by the Respondent before the Controlling Authority towards his gratuity and the interest accrued on that amount till it was withdrawn in pursuance of the order dated 14 June 2018. Learned Counsel submits that he does not pray for any interest post-withdrawal of the amount, since such withdrawal was in pursuance of an order passed by this court. The amount deposited by the Respondent together with accrued interest (as of the date of its withdrawal by the Respondent) shall accordingly be paid by the Respondent to the Petitioner within four weeks from today. If there is any delay on the part of the Respondent in payment of this amount beyond four weeks from today, the unpaid amount shall carry interest at the rate of 10 per cent per annum from the date of expiry

of four weeks and till payment or realization.

(S.C. GUPTE, J.)

**Rajesh V.
Chittewan**

Digitally signed
by Rajesh V.
Chittewan
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