IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18688-2015
Decided on: 29.04.2019

Brahmjit Rahanoo ....Petitioner

Versus

State Bank of India & others ...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Ankur Malik, Advocate, for the petitioner.

Mr.H.N.Mehtani, Advocate, for the respondents.

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G.S. SANDHAWALIA, J. (Oral)

The present writ petition, filed under Articles 226/227 of the Constitution of India, challenges the order dated 10.07.2008 (Annexure P-10) whereby the claim for payment of Gratuity has been rejected on account of the fact that the petitioner had misutilized his official position while in service of the Bank as Deputy Manager between the period from 11.07.2004 to 28.01.2006.

Resultantly, it was held that the acts of the petitioner whereby he had misutilized his position and borrowed money from the customers and allowed debts on different dates on account of unclear balance of one Lakhwinder Singh, had cast a shadow on his honesty and integrity and therefore, was an offence of moral turpitude. Thus, while falling back on Section 4 (6) (b) of Payment of Gratuity Act, 1972 (for short, the '1972 Act'), the amount had been withheld by placing reliance upon Regulation No.12 (2) of the State Bank of Patiala Employees Gratuity Regulations, 1970, on the ground that the services were terminated as a punishment due to misconduct.

The present petition has been opposed by the Bank on the ground that the order of compulsory retirement had been passed on 21.09.2007 (Annexure P-1), which was upheld in appeal on 28.11.2007 (Annexure P-2). Thereafter, CWP-3827-2014, which had been filed against the said order, had been dismissed on 29.04.2014 (Annexure P-4) on account of delay and latches, which order had been upheld in appeal before the Division Bench on 24.07.2014 (Annexure P-5) in LPA-1175-2014.

It is, accordingly, submitted by Mr.Mehtani that the present writ petition has been filed at a very belated stage, as such and therefore, the petitioner cannot now claim the gratuity amount.

In the considered opinion of this Court, the interest of the Bank can be protected qua the interest element, which can be paid towards the Gratuity amount, for the delay, as such, as the petitioner cannot gain for the delay in not approaching for his legal redressal against the impugned order dated 10.07.2008 (Annexure P-10), which suffers from legal infirmity. Merely because on an earlier occasion, he had been challenging the order of his compulsory retirement, which has been upheld before this Court, would not, as such, take away his right to challenge the order dated 10.07.2008, whereby his entitlement for gratuity has been withheld, as it is a separate cause of action. Therefore, the argument raised by Mr. Mehtani that the earlier litigation is, as such, binding upon the petitioner, would not detain this Court for much time.

The sole legal issue which, thus, arises is that once the petitioner has been compulsorily retired and no financial loss had been caused to the Bank, the Bank cannot withhold the gratuity amount. A perusal of the order of compulsory retirement dated 21.09.2007 (Annexure P-1) would go on to show that on account of the dealings of the petitioner while in service, it was found that it amounted to gross indiscipline and insubordination and that he had misused his official position for demanding and accepting financial advantages. Thus, on account of the shadow cast on his honesty and integrity, the petitioner had not stood upto the quality and quantity of devotion, honesty and integrity as is expected from a Bank Officer. Thus, he was compulsorily retired, in terms of Regulation 67(h) of the State Bank of Patiala (Officers) Service Regulation, 1979.

Relevant portion of the order of compulsory retirement reads as under:

> "4. It is thus apparent that Shri Rehanoo has misused his official position for demanding and accepting financial advantages and gratifications from the Bank's constituents and others, either for his personal use and/or for arranging credit facilities as per their requirements, which clearly cast a shadow on his honesty and integrity, sufficiently resulting in loss of confidence in him as he has not stood up to the quality and quantity of devotion, honesty and integrity expected of a Bank Officer. His acts of issuing cheques without adequate balance in his account is also unbecoming of a Bank Officer. Further, his conduct in parting with the branch cash keys and handing it to a member of subordinate staff and also remaining absent from duty without obtaining prior sanction, are all acts that tantamount to gross indiscipline and insubordination.

> In view of the gravity of misconduct committed by him and loss of faith in him, I, considering all facets of the charges leveled and proved/partly proved against him, on merits, am of the clear view that he does not deserve to be retained in the Bank's service. All concerned, and on dispassionate consideration on merits, I feel that ends of justice would be adequately met, if the penalty "compulsory retirement" in terms of Regulation 67 (h) of the State Bank of Patiala (Officers) Service Regulations 1979, be imposed on Shri Rehanoo. Accordingly, I order so. I further order that the period of his suspension be treated as period not spent on duty.
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> A copy of the orders passed herein be supplied to Shri Rehanoo."

A perusal of the above would go on to show that no financial loss or damage, as such, was caused on account of his acts for which the gratuity could be forfeited, to the extent of the damage/loss so caused. No finding had been recorded that the services were terminated on account of any act of the petitioner which constituted moral turpitude, wherein any financial loss has been caused to the Bank, within the meaning of Section 4(6)(b) of the 1972 Act.

It is important to note that Mr.Malik has contended that even the State Bank of Patiala (Payment of Gratuity to Employees) Regulations, 1970 provides the justification as to under which conditions Gratuity can be withheld. It is, accordingly, contended that only once the services were terminated by the Bank under Regulation 12(1)(vi) or in case of a termination by dismissal from service for any misconduct committed after 01.01.1966, forfeiture to the extent of such loss could be made of the gratuity. Relevant provisions read as under:

"7. No money of the Gratuity Fund shall be receivable by the Bank under any circumstances nor shall the Bank have any lien or charge on the Gratuity Fund.

8. Investment of Fund: All monies of the Gratuity Fund shall be invested by the Trustees in any securities for the time being authorised under the Income-Tax Act, 1961 or mentioned or referred to in clauses (a) to (e) of section 20 of the Indian Trusts Act, 1882 (2) of 1982 in such a manner that the monies so invested are payable both in respect of capital and of interest in India."

9. EXPENSES

All necessary expenses of management and other costs, charges and expenses to which the Trustees may be put in connection with the Gratuity Fund for any reasons whatsoever shall be borne by the Bank.

10. PAYMENT OF GRATUITY (TO BE MADE OUT OF THE FUND)

Any gratuity granted by the Bank to an employee or, in the event of his death before receipt of gratuity, to any other person or persons under the provisions of the succeeding Regulations shall be paid only in India to the employee, or such other person or persons, by the Trustees out of the Gratuity Fund.

11. CONDITIONS OF GRANT

Gratuity will be granted to an employee subject to the terms, conditions and other provisions contained in the succeeding regulations; but nothing in these Regulations shall be construed as conferring any right or benefit on any employee whose service in the Bank is governed by a contract expressly stipulating his service to be for a specified period, unless otherwise provided in such contract.

12. (1) When admissible

Gratuity will be granted to or in the case of an employee if :

(i) He dies while in service of the Bank; or

(ii) He becomes physically or mentally incapable of further service; or

(iii) He retires from the service after attaining the age of superannuation; or

(iv) He retires from the service with the permission of the Bank before attaining the age of superannuation; or

(v) He voluntarily resigns from the service of the Bank after 10 years of completed service; or

(vi) His service in the Bank is terminated by the Bank.

(2) Notwithstanding anything contained herein above

(a) No gratuity will be granted or in the case of an employee if he is or has been dismissed from service in the Bank for any misconduct committed by him prior to 1st January 1966;

(b) In case of termination of the service of an employee by dismissal for any misconduct committed by him after 1st January, 1966 involving financial loss to the Bank, there shall be forfeiture to the extent of such loss from the gratuity admissible to him otherwise under these Regulations.

Provided, however, that notwithstanding anything contained here-in-above, gratuity will be granted to or in respect of an employee governed by the State Bank of Patiala (Officers') Service Regulations, on

a) retirement

b) death,

c) disablement rendering him unfit for further service as certified by a medical officer approved by the Bank.

d) resignation after completion of ten years' of continuous service

e) termination of service in any other way except by way of punishment after completion of ten years' of service.

13. AMOUNT ADMISSIBLE

Without prejudice to the provisions of Regulation No.12 the amount of gratuity admissible to an employee shall be:

a) a sum of equal to one month's pay for each completed year of service in the Bank subject to a maximum of 15 month's pay and

b) an additional sum equal to half months' pay in respect of each completed year of service in the Bank in excess of 30 years.

Provided that if the amount of gratuity payable to an employee in accordance with the provisions of the payment of Gratuity Act, 1972 or any statutory modification thereof for the time being in force is higher than the amount of gratuity admissible to an employee determined in pursuance of clauses (a) & (b) here in above, the employee shall be entitled to be paid such higher amount payable to him in accordance with the provisions of the payment of Gratuity Act."

The above provisions, thus, would go on to show that the Regulations are similar to 1972 Act whereby under Section 4 (6), gratuity can be withheld subject to certain conditions. Sub-section (6) reads as under:

"4. Payment of Gratuity.-

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(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."

Mr. Mehtani could only submit that since order of compulsory retirement was on the basis of the misconduct, as such, therefore, the amount is liable to be withheld.

The Full Bench of this Court in **'UCO Bank and others Vs. Anju Mathur', 2013 (3) SCT 272**, while dealing with the similar issue also pertaining to the regulations of the said bank held that gratuity would be payable on retirement, death, disablement, resignation after completing ten years of continuous service or termination of service after 10 years service except by way of punishment. The distinction between compulsory retirement and termination was also noticed. It was noticed that compulsory retirement could be on account of an employee becoming deadwood and also by way of penalty after holding a regular inquiry and the same could also be on account of misconduct. Therefore, the gratuity could be withheld in such circumstances. However, while referring to the provisions of Section 4 (6), the issue of damage or loss caused by the employee because of willful omission and negligence, which act has led to termination, it was held that gratuity could be forfeited. Resultantly, the order passed for forfeiture of the gratuity without coming to any finding that any loss has been caused was set aside and liberty was given to the bank to serve proper show cause notice indicating actual loss, since the stand had been taken that a sum of Rs.4 crores was the loss, though which had not been substantiated by giving any particulars. The relevant portion of the said judgment reads as under:-

"12. Two aspects arise for consideration, namely, - (a) whether gratuity can be withheld/forfeited under Regulation 46(1) (e) if the termination of service is by way of punishment of compulsory retirement; and (b) if it can be forfeited, then under what circumstances and whether it would be necessary to give proper hearing to the delinquent employee before forfeiting the gratuity.

13. Regulation 46 of the Officers' Regulations makes every officer eligible for gratuity in certain circumstances which include retirement, death, disablement, resignation and termination. However, Clause(e) states that if the termination of service is occasioned by way of punishment, then the officer will not be entitled to gratuity. The Division Bench in Ashwani Kumar Sharma (supra) held that this clause cannot apply to the case of compulsory retirement. That is the only reason given, but without any elaboration. We are afraid, we cannot accept this to be a justified reason, as it leads to wrong interpretation of Clause (e) of Regulation 46 of the Officers' Regulations.

14. We would like to emphasise that compulsory retirement is of two types. There can be an administrative order retiring an employee compulsorily from service when the employer finds that the employee has become deadwood. However, the compulsory retirement is also provided as one of the modes of punishment in the Disciplinary and Appeal Regulations, 1976 framed by the Bank. Whenever compulsory retirement is effected by way of penalty which is imposed after holding a regular enquiry, then the compulsory retirement leads to termination by way of punishment. Termination of service can result by various modes. It amounts to cessation of employment whereupon the employer-employee relation comes to an end. The purport of Regulation 46(1)(e) is very clear. Whenever it is a case of termination by any other mode than by way of punishment, gratuity is payable, but not when termination is occasioned by way of

> penalty on account of misconduct committed by an employee established in the regular departmental enquiry against such delinquent employee.
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> 15. We are, therefore, of the opinion that Regulation 46(1) of the Officers' Regulations would not apply when termination is occasioned by way of compulsory retirement by way of punishment on account of misconduct proved against such an employee after regular departmental enquiry. To that extent, the judgment of Division Bench in Ashwani Kumar Sharma (supra) does not lay down correct law and is hereby overruled.
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> 16. The next question is as to whether in all cases where the penalty of compulsory retirement is imposed, the gratuity is to be forfeited. Answer to this is to be found in Section 4(6) of the Payment of Gratuity Act, 1972.
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> This sub-section gives the instances when the gratuity can be forfeited and the forfeiture can be whole or partial. We are concerned herein with Clauses (a) and (d). The gratuity can be forfeited if there is damage or loss suffered by the employer because of wilful omission or negligence of the employee which act led to his termination. In that case, the forfeiture has to be to the extent of damage or loss caused. The gratuity can also be forfeited if the misconduct by the delinquent employee constitutes an offence involving moral turpitude and when such an offence is committed by him in the course of his employment."

A perusal of the relevant portion of the order of compulsory retirement of the petitioner, which has been reproduced above, would show that the Bank suffered no financial loss, as such and therefore, on that account, gratuity could not have been withheld. Thus, withholding of gratuity would be permissible under Section 4(6) of the 1972 Act or in terms of the Regulations, which is not the case in the present circumstances. Gratuity has been time and again held to be a beneficial piece of legislation and, therefore, the order dated 10.07.2008 (Annexure P-10) suffers from infirmity and the same necessarily will have to be struck down.

The said view was also taken in the judgment of the Apex Court passed in **'Union of India and others Vs. C.G. Ajay Babu and another' 2018 (4) SCT 25.** Resultantly, by holding that under the bipartite settlement of the bank, it was only in the case of misconduct and because of financial loss caused there could be forfeiture of gratuity and recourse could not be taken as such by the bank to withhold the same. The issue of moral turpitude was also discussed that the conduct or the act which constitutes an offence, which would punishable under the law and once no criminal law had been set in motion forfeiture was not permissible. Reliance was placed upon the judgment passed in **'Jaswant Singh Gill v. Bharat Coking Coal Limited and others' 2006 (1) SCC 663** to come to the conclusion that the Act would prevail over rules on payment of gratuity framed by the employer and, accordingly, appeal filed by the bank against the directions to make the payment of gratuity was dismissed.

Resultantly, in view of the above discussion, the present writ petition is allowed, the impugned order dated 10.07.2008 (Annexure P-10) is quashed. A direction is issued to the respondents to pay the amount of gratuity due to the petitioner along with interest @ 8%

per annum from 02.09.2015 within a period of 2 months from the receipt of a certified copy of this order. However, the claim for interest for the delayed period, i.e., from 10.07.2008 till the date of filing of the present writ petition, i.e., 02.09.2015, is denied, in view of the peculiar facts and circumstances of the case.

29.04.2019 **(G.S. SANDHAWALIA)**
Sailesh/Naveen **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No