**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

203 **CWP No.7961 of 2015**
Decided on : 23.10.2019

Karam Singh

... Petitioner

Versus

Central Bank of India and another

... Respondents

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

Present: Mr. Vikas Singh, Advocate
for the petitioner.

Mr. Deepak Gupta, Advocate for
Mr. Mohinder Singh, Advocate for respondents

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition filed under Article 226/227 of the Constitution of India is to the order dated 23.07.2014 (Annexure P-8) whereby the respondent-Bank has forfeited the gratuity under Section 4 (6) (i) (a) and (b) of the Payment of Gratuity Act, 1972 (for short '1972 Act') and Rule 12 of the Central Bank of India Employees Gratuity Fund Rules, 1975 (for short '1975 Rules').

2. It is the case of the respondent-Bank as per the order that show cause notice had been served on 03.07.2014 (Annexure P-5) and the explanation had been called for and the petitioner had sought time vide letter dated 15.07.2014 (Annexure P-6). Therefore, on account of no objection, the gratuity was forfeited.

3. Counsel for the petitioner has placed reliance upon the

provisions of the abovesaid 1972 Act to submit that the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss could only be forfeited to the extent of the damage or loss so caused. It is submitted that the order as such does not fall within the ambit of a speaking order and, therefore, in the absence of the reasons, it is liable to be quashed. It is futher the case of the counsel for the petitioner that the petitioner was compulsory retired and it has been held that compulsory retirement as such is not a termination and, therefore, his case would not fall within the ambit of the said provisions. Reliance has also been placed upon Rule 12 of the 1975 Rules which also provides forfeiture of gratuity where there is a case of termination and loss is quantified.

4. Counsel for the respondent-Bank on the other hand has vehemently argued that loans had been sanctioned and on account of the loss as such, the gratuity had been forfeited. It was mandatory on account of the official having mis-used the powers of the Bank and having recklessly financed loans while being a Branch Manager and having acted beyond his delegated powers to put the Bank to a financial loss.

5. It is not disputed that on 14.03.2014 the petitioner was compulsory retired on account of various charges having been proved against him by the Inquiring Authority. A perusal of the punishment order as such would go on to show that on account of the charges being proved, the punishment was imposed. Though the reduction to lower scale in time scale had been proposed, but by giving consolidated

punishment of compulsory retirement under Regulation 4 (h) of Central Bank of India Officers Employees' (Discipline & Appeal) Regulations, 1976 (for short '1976 Regulations') final decision had been taken. The relevant part of the said order reads as under:-

> "On the basis of record of inquiry, written briefs of PO and Defence, submissions of CSO and findings of Inquiring Authority, I hold this charge as **Proved** and award the following punishment:-
>
> > "Reduction to a lower stage in the time scale of pay by one stage for a period of one year and he will not earn any increments during the period of such reduction and the reduction will have the effect of postponing the future increment of his pay" under Regulation 4 (f) of Central Bank of India Officers Employees' (Discipline & Appeal) Regulations, 1976, as amended upto date.
> >
> > In view of the charges proved, their gravity, charge wise punishment discussed above vis-a-vis submissions of CSO, I award the following consolidated punishment to CSO:-
> >
> > **"COMPULSORY RETIREMENT"** under Regulation 4 (h) of Central Bank of India Officers Employees' (Discipline & Appeal) Regulations, 1976, as amended upto date.
>
> The punishment is ordered accordingly."

6. The petitioner, thereafter, filed an appeal which was dismissed on 27.01.2015 (Annexure P-4), by observing as under:-

> "After going through the Inquiry records. I am of the opinion that punishment awarded by the Disciplinary Authority commensurate with the gravity of Charges proved against Shri Karam Singh/Appellant. Bank cannot afford such type of Acts on the part of Employees which are prejudicial to the interest to the Bank and ultimately affect the Bank's Business

besides tarnishing the image of the Bank. Hence the Appeal is devoid of any merit and my intervention is not warranted.

Based on the above, I affirm the Orders of Disciplinary Authority and confirm the Punishment imposed by the Disciplinary Authority upon Shri Karam Singh, the Appellant.

Thus the appeal is disposed off and ordered accordingly."

7. In the meantime, even before the appeal had been decided on 27.01.2015 (Annexure P-4) show cause notice dated 03.07.2014 (Annexure P-5) was issued for forfeiture on account of the irregularities committed by the petitioner which had resulted in financial loss. It is pertinent to notice that in the said notice there is no reference of any amount quantified regarding the alleged financial loss caused. The said notice reads as under:-

"To

Shri Karam Singh

H NO 1012, Block 11 Milap Nagar

Ambala City (Haryana) Pin Code- 132034

Whereas on account of irregularities committed by you which also resulted in the financial loss to the Bank necessary disciplinary proceedings were initiated resulting in Compulsory Retirement of your services vide order dated ZO/HRD/DAD/2013-14/1098 dated 14-03-2014.

In accordance with section 4 (6) of Payment of Gratuity Act, 1972 read with Central Bank of India Employees' Gratuity Fund Rules, 1975, the gratuity payable to you is liable to be forfeited.

> In view of above, the Board contemplates to take action and thus your are hereby called upon to reply to the notice within a period of Three days from the date of receiving the notice failing which, it shall be construed that you don't have any objection to forfeit the gratuity."

8. Vide request letter dated 15.07.2014 (Annexure P-6), the petitioner had prayed for some time to give proper reply and it is alleged that vide letter dated 21.07.2014 (Annexure P-7) he had given the explanation as such to the amounts, as loan of the Bank was secured and the Bank have a cheque of each and every borrower and guarantor till the account is NPA. It is further submitted that on account of the compulsory retirement he had superannuated 30 months earlier and he had no means of sustenance and in the absence of any financial loss, it would amount to double punishment to him.

9. As noticed, thereafter, the order of forfeiture dated 23.07.2014 (Annexure P-8) had been passed without the same containing any reasons as such. The order reads as under:-

> "In pursuant to your Compulsory Retirement from service, notice dated 03.07.2014 for forfeiture of gratuity was served upon you whereby explanation was called for as to why your gratuity shall not be forfeited you vide your letter dated 15.07.2014 seek one week time to give proper reply of above notice. Till date we have not received any reply from you. It construed that your don't have any objection to forfeit the Gratuity.
>
> Hence, Bank decides to forfeit your gratuity accordingly under section 4 (G) (aj/4 (6) (b) of Payment of Gratuity Act, 1972 and Rule 12 of Central Bank of India Employees

Gratuity Fund Rules, 1975."

10. A perusal of the above section would go on to show that the gratuity of an employee is liable to be forfeited on account of his service having been terminated and for the damage of loss caused to the employer and to the extent of the damage and loss caused. In the above neither any damage has been quantified and nor it had been quantified in the inquiry report also.

11. The argument of the counsel for the Bank that an opportunity shall thus be granted to the petitioner and the matter should be remanded is not liable to be accepted, in view of the judgment of the Apex Court passed in **'Mohinder Singh Gill and another VS. Chief Election Commissioner, New Delhi and others', AIR 1978 SC 851** that the order should be speaking order and cannot be supplemented at a subsequent stage in the written statement. The reasons had to be given in the impugned order and the silence in the same could be presumed that the respondents have no financial loss. The relevant portion reads as under:-

> "The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought ,out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (1) "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making

> the order of what he meant, or of what was in Ms mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

12. The said view was followed by the Apex Court in **'Dipak Babaria v. State of Gujarat', 2014 (3) SCC 502.**

13. Reliance can also be placed upon the judgment of the Full Bench of this Court in '**UCO Bank and others Vs. Anju Mathur' 2013 (3) SCT 272**, wherein similar issue came up for consideration as to whether the order of compulsory retirement would amount to termination and whether in the absence of any loss, the amount of gratuity could be forfeited. The Full Bench came to the conclusion that an order of compulsory retirement is of two types . One the employee has become a deadwood and of no use and secondly after holding a regular inquiry the retirement is by way of punishment. Regulation 46 (1) (e) of the UCO Bank (Officers') Service Regulations, 1979 provides that every officer shall be eligible for gratuity on retirement, resignation or termination of service by way of punishment after completion of 10 years of service and was also subject matter of consideration.

14. It was, accordingly, held that the termination order by compulsory retirement by way of punishment would amount to termination as such. It was further held that when gratuity is to be forfeited wholly or partly, the misconduct is to be proved and the amount has to be quantified. Resultantly, it was held that the order forfeiting the

gratuity did not meed the legal requirements and had to be set aside. However, an opportunity as such was given to the petitioner to serve proper show cause notice indicating actual loss, since the same had not been done in the final order, though a figure had been mentioned, which is not a case herein. The relevant portion of the said judgment read 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.
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> 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.
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> 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.

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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19. In the present case, admittedly, after inflicting the punishment of compulsory retirement upon the respondent herein, a specific show cause notice was given before taking the decision to forfeit her gratuity. Thus, an independent decision is taken fulfilling this procedural requirement which is mandatory as held in **M/s Bharath Gold Mines Ltd.** (supra). But the next question is as to whether it satisfies the tests on which judicial review of such an order can be undertaken.

20. We have already reproduced the language of show cause notice dated 18.9.2008. It states that the "respondent had committed certain irregularities and because of those acts, bank was exposed to serious financial risks." While forfeiting the gratuity, the reason given was that acts of the respondent

"involved loss of more than Rs.4.00 cr. for the bank." The contention of the learned counsel for the respondent was that in the show cause notice, no specific amount of alleged loss was quantified, which was mandatory requirement as per the judgment of the Bombay High Court in **Smt.Kamla Rameshchandra Sharma** (supra). Such a show cause notice was illegal as the loss had to be quantified. It was submitted that mention of this figure in the final order would be of no avail when the respondent was not given any opportunity to show cause against the same. Further, though the figure of `4 crores is mentioned in the final order, how this figure is arrived at is not disclosed by the competent authority. Learned counsel for the respondent also argued that no such figure was mentioned in the charge-sheet. Even in the enquiry report submitted by the Enquiry Officer where the charges were proved, there was no finding of any loss which the appellant-Bank was exposed to because of the irregularities committed by the respondent in various accounts.

21. Learned counsel for the appellants, on the other hand, submitted that it was a case where irregularities were committed in various accounts by granting loans of different amounts which was clearly stated in the charge-sheet.

22. After considering these arguments, we find that argument of the learned counsel for the respondent has to prevail. We have gone through charge-sheet as well as enquiry report. No doubt, in the charge- sheet as many as 24 accounts are mentioned where the respondent had given loans or other financial accommodation either beyond her powers or without obtaining proper securities. That would show that certain accounts were overdrawn. Even the operation of these accounts was not satisfactory. However, whether the appellant-Bank ultimately suffered loss and what was the actual loss is not reflected. No doubt, the irregularities committed by the respondent may have exposed the Bank to such losses. However, that is entirely different from loss

having been actually suffered by the bank. Even if some accounts became bad and the Bank had to file suits for recovery concerning those accounts against the defaulting parties, that would not automatically lead to the conclusion that the loss/damage has been suffered. It is possible that Bank is able to recover full money in those proceedings. Whether that happened in fact or not and whether loss is actually suffered or not is not discernible from either the charge-sheet or the enquiry report.

23. It is for this reason that it was incumbent upon the appellant-Bank to mention specifically about the actual loss having been suffered, if it suffered, in the show cause notice itself with particulars of that loss in order to enable the respondent to meet the same. That has not been done even in the final order. Though the figure of ₹ 4 crores is given, in the final order, even that is not substantiated by giving particulars thereof. We are, therefore, of the opinion that the show cause notice or the final orders passed, forfeiting the gratuity, do not meet the legal requirements and have to be set aside.

24. The upshot of the aforesaid discussion would that though we disagree with the reasons given by the learned single Judge allowing the writ petition and also that **Ashwani Kumar Sharma** (supra) does not lay down correct law, insofar as present case is concerned, still the impugned order forfeiting the gratuity has to be set aside for the reasons given above. At the same time, since it is a procedural defect, liberty is given to the Bank to serve proper show cause notice indicating actual loss, if any, with particulars of the said loss and pass final orders after giving due opportunity of being heard to the respondent."

15. It is relevant also to reproduce Clause 12 of the 1975 Rules, which also provides that the financial loss as such in case of termination is the basis on which the the forfeiture of the gratuity is to be to the extent

of financial loss only. The said clause reads as under:-

> "12. In case of termination of service of the member on account of proven misconduct, gratuity payable shall not be forfeited, accept where such misconduct causes financial losses to the Bank and in that case the forfeiture of the gratuity shall be to the extent of the financial loss only"

16. It is also to be noticed that under 1976 Regulations though compulsory retirement is one of the major penalties under Clause (f) of the Regulation 4, but termination of service is provided under Clause (h).

17. In such circumstances, the difference as such between the punishments is also apparent and the words used are 'termination of service' which is also a language of Section 4 of the 1972 Act. In such circumstances, the jurisdiction as of the respondent-Bank also to forfeit the gratuity on both accounts is lacking.

18. The Apex Court in **'Union of India & Ors. vs. CG Ajay Babu & Another', (2018) 9 SCC 529** while noticing the provisions of the 1972 Act, came to conclusion that forfeiture of gratuity could only be on account of misconduct which had caused financial loss to the Bank in view of the bipartite settlement of the Bank. It was further held that there was no criminal proceedings as such filed against the employee and therefore it was held that there was no justification for the forfeiture of Gratuity as the misconduct of acts which involved moral turpitude had to be duly established in the Court of law.

19. Resultantly, the impugned order dated 23.07.2014 (Annexure P-8) is not sustainable and the same is quashed. The respondent-Bank shall pay the amount of gratuity to the petitioner within

a period of 2 months from the receipt of the certified copy of this order alongwith interest @ 8% per annum from the date of dismissal of the appeal i.e. 27.01.2015 (Annexure P-4).

20. Needless to say that relief for leave encashment had also been prayed for and it has only been released on 25.02.2019 (Annexure P-10) during the pendency of the case, as stated in the replication also. The respondent-Bank is also become liable to pay interest on the amount of leave encashment from the date of the dismissal of the appeal, as the relief of payment of same alongwith interest had been prayed for. In case the amount is not paid within the prescribed period of two months, the interest rate will go up to 10% per annum.

21. The writ petition stands allowed, accordingly.

(G.S. SANDHAWALIA)
JUDGE

OCTOBER 23, 2019
Naveen

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No