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

LPA No.1821 of 2018 (O&M)
Date of Decision :11.04.2019

Sarva Haryana Gramin Bank (SHGB), Head Office, Rohtak

......Appellant

Versus

Rajpal Singh Sangwan

...... Respondent

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE**

Present : Mr. G.S.Bajwa, Advocate with
Mr. R.K.Vashishtha and Ms. Charanjeet Kaur, Advocates
for the appellant.

Mr. Sanjeev Kodan, Advocate for the respondent.

KRISHNA MURARI, CHIEF JUSTICE (Oral):

This *intra court* appeal, under clause X of the letters patent, is directed against the interim order dated 23.10.2018, passed by the learned Single Judge directing the appellant to release gratuity along with interest @ 6% per annum to the respondent-petitioner.

Undisputed facts relevant for the purpose for adjudication of the controversy required to be noticed are limited.

During the pendency of the disciplinary proceeding initiated against the respondent-petitioner he was retired on attaining the age of superannuation on 29.04.2017. Learned Single Judge after analyzing the regulation known as **PUDUVAI BHARATHIAR GRAMA BANK (Officers and Employees) Service Regulations, 2010 (Annexure-P6),** governing the service conditions of the employees of the bank and particularly Regulations 45 and 72 came to the conclusion that the gratuity cannot be withheld and the same is liable to be paid to the respondent-petitioner.

Learned counsel for the appellant vehemently contends that in view of the provisions of Regulation 45 no post retiral benefits are liable to be paid during the continuance of the disciplinary proceedings. Regulation 45 read as under:-

> **"45. Disciplinary proceedings after retirement.-(1) An officer or employee who is under suspension on a charge of misconduct and who attains the age of superannuation, shall be deemed to be in service even after the age of superannuation for the specific purpose of continuation and conclusion of the disciplinary proceeding and issue of final orders thereon.**
>
> **(2) The officer or employee who is under suspension shall not be eligible for any subsistence allowance for the period beyond the date of superannuation.**
>
> **(3) The officer or employee against whom disciplinary proceeding has been initiated shall cease to be in service on the date of superannuation but the disciplinary proceeding shall continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof.**
>
> **(4) The officer or employee against whom disciplinary proceedings has been initiated shall not receive any pay and/or allowances after the date of superannuation and also not be entitled for the payment of retirement benefits till the proceeding is completed and final order is passed thereon except his own contribution to Contributory Provident**

Fund (CPF).

Explanation: For the purposes of this regulation, the normal retirement benefits such as encashment of privilege leave and Gratuity may be withheld till the completion of the disciplinary proceeding and passing of final order by the Competent Authority and the release of benefits shall be as per the final order of the Competent Authority."

A perusal of the aforesaid regulation goes to show that an officer or an employee shall be deemed to continue in service till conclusion of the disciplinary proceeding even if retired on attaining the age of superannuation during the pendency of such proceedings and he shall not be entitled to receive any pay or allowances after the date of superannuation as also the retirement benefits till the proceeding is completed and final order is passed thereon.

Learned counsel for the appellant in order to buttress his submission laid much stress on the explanation to Regulation 45 quoted here-in-above. According to him the gratuity was withheld in exercise of powers conferred upon the employer-bank. In view of the explanation to Regulation 45, the learned Single Judge has committed a manifest error of law in issuing the interim direction for making payment of the same as disciplinary proceeding is still pending. In order to resolve the controversy it is relevant to visit Regulation 72 as well, which reads as under:-

"72 Gratuity.- (1) An officer or employee shall be eligible for payment of gratuity either as per the provisions of the Payment of Gratuity Act, 1972 (39 of 1972) or as per sub-regulation (2), whichever is higher.

(2) Every officer or employee shall be eligible for gratuity

on,-

(a) retirement,

(b) death,

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

(d) resignation after completing 10 years of continuous service, or

(e) termination of service in any other way except by way of punishment after completion of 10 years of service:

Provided that in respect of an employee there shall be no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only.

(3) The amount of gratuity payable to an officer or employee shall be one months pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 month's pay:

Provided that where an officer or employee has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years:

Provided further that in respect of an officer the gratuity is payable based on the last pay drawn:

Provided also that in respect of an employee pay for the purposes of calculation of the gratuity shall be the average of the basic pay (100%), dearness allowance and special allowance and officiating allowance payable during the 12 months preceding death, disability, retirement, resignation or termination of service, as the case may be."

A perusal of the aforesaid provisions goes to show that in no case forfeiture of gratuity can be made except in case where the misconduct causes financial loss to the bank and in that case to that extent only.

At this stage, learned counsel for the appellant vehemently contended that proviso to Regulation 72 is applicable only in respect of an employee and not an officer. The distinction between employee and an officer has been sought to be drawn by pointing out that everywhere in Section 72, the word 'officer' or 'employee' has been used, and thus, there are two different cadres and the regulation intended the provision to apply only in case of an employee and not an officer and since the respondent-petitioner falls in the category of an officer, hence, the proviso does not stand attracted in this case. In our considered opinion, the argument is fallacious and liable to be rejected. There seems to be no rational to carve out a distinction in respect of an employee or officer only in respect of forfeiture of gratuity. Such an interpretation given to the proviso would make it arbitrary, unreasonable and liable to be hit by Articles 14 and 16 of the Constitution of India. Consequently, the proviso has to be read down in a manner so as to save it from the vice of arbitrariness and the word 'officer' has to be read in the said proviso especially when in Regulation 72, dealing with the gratuity, everywhere the word officer or employee has been used.

We find no justifiable reason to carve out a difference between an employee or officer in payment of forfeiture of gratuity.

Having interpreted the provisions of the proviso in the above manner we now proceed to analyze as to whether in the case in hand where the respondent-petitioner is facing disciplinary charges can the gratuity be withheld?

A perusal of the charge sheet goes to show that in none of the article of charges there is even any allegation of causing any financial loss to the bank. Once the article of charges do not contain any allegations in respect of the financial loss to the bank it is more than apparent that the petitioner cannot be held guilty of the same. Once he cannot be held guilty of the same, we see no reason to withhold the gratuity till conclusion of the disciplinary proceeding.

In view of the above facts and analysis we find no infirmity in the view taken by the learned Single Judge and directing the appellant-respondent-bank to release the gratuity to the respondent-petitioner along with interest @ 6% per annum. Thus, the appeal is devoid of merit and accordingly stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

11.04.2019
Manoj Bhutani

Whether speaking/reasoned Yes/No
Whether reportable Yes/No