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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 24.01.2019

Pronounced on : 13.02.2019

+ W.P.(C) 439/2018 & CM APPLN. 1854/2018

SHRI SURENDRA

..... Petitioner

Through Mr.Ravi Bassi, Adv. with Mr.Sanyam
Malik & Mr.Nitin Kumar, Adv.

versus

SYNDICATE BANK

..... Respondent

Through Mr.Puneet Taneja, Adv. with
Ms.Laxmi Kumari, Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner seeks direction thereby setting aside impugned order dated 18.10.2017 of the Appellate Authority, constituted under the Payment of Gratuity Act, 1972, vide which Administrative order dated 05.03.2016 of respondent bank forfeiting the gratuity of the petitioner has been upheld. Further seeks direction thereby directing to restore order dated 12.06.2017 of the Controlling Authority vide which the controlling Authority, constituted under the Payment of Gratuity

Act, 1972, directed the respondent “to pay the applicant a sum of ₹10,00,000/- (Rupees Ten Lac) as gratuity along with simple interest @ 10% per annum on the said amount as per section 7 (3-A) of the Payment of Gratuity Act, 1972 from the date it became payable i.e. 12.10.2015 (date of compulsory retirement) till the date when it is actually paid to the applicant.”

2. Counsel appearing on behalf of the petitioner submits that the petitioner had joined the respondent bank on 21.08.1982 and had worked in various branches/offices. He was compulsorily retired from the service on 12.10.2015. Till his compulsory retirement, he had put in 33 years and 2 months of continuous service without any break whatsoever. Hence, the petitioner had become eligible to receive full gratuity, as per the provisions of section 4 of the Payment of Gratuity Act, 1972.

3. However, the petitioner was served with charge sheet dated 03.11.2014 under the provisions of Syndicate Bank Officer Employees (Discipline & Appeal) Regulations, 1976. The respondent bank conducted an enquiry into the matter and the Disciplinary Authority vide its order dated 06.10.2015 imposed the punishment of compulsory retirement from the services of the bank with immediate effect.

4. It is further submitted that the petitioner was not alleged to have committed any offence, much less offence involving moral turpitude, either in the charge sheet or in the orders of the Disciplinary and Appellate Authorities. He was merely charged with misconduct on the basis of allegation of certain irregularities, as enlisted in the provisions of Regulations, 1976 mentioned above.

5. To strengthen of his arguments, has relied upon the case of ***Jaswant Singh Gill Vs. Bharat Coking Coal Ltd. and Ors.: 2007(4) ALT 23(SC)*** whereby the Hon'ble Supreme Court held as under:-

“10. The Act provides for a closely neat scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. As noticed hereinbefore, sub-section (6) of Section 4 of the Act contains a non- obstante clause vis-a-vis sub-section (1) thereof. As by reason thereof, an accrued or vested right is sought to be taken away, the conditions laid down thereunder must be fulfilled. The provisions contained therein must, therefore, be scrupulously observed. Clause (a) of Sub-section (6) of Section 4 of the Act speaks of termination of service of an employee for any act, willful omission or negligence causing any damage. However, the amount liable to be forfeited would be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or damage. It was not found that the damages or loss caused to Respondent No. 1 was more than the amount of

gratuity payable to the appellant. Clause (b) of Sub-section (6) of Section 4 of the Act also 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. Termination of services for any of the causes enumerated in Sub-section (6) of Section 4 of the Act, therefore, is imperative.”

6. Counsel further submits that neither the Disciplinary nor the Appellant Authority has power to convict a person. The similar issue came before the Hon’ble Supreme Court in the case of ***The Divisional Personnel Officer, Southern Railway and Ors. Vs. T.R. Chellappan and Ors.***: AIR 1975 SC 2216 whereby the Supreme Court held as under:-

“..... The words where any penalty is imposed in Rule 14(i) should actually be read as ‘where any penalty is imposable’, it because so far as the disciplinary authority is concerned it cannot impose a sentence. It could only impose a penalty on the basis of the conviction and sentence passed against the delinquent employee by a competent Court. Furthermore the Rule empowering the disciplinary authority to consider circumstances of the case and make such Orders as it deems fit clearly indicates that it is open to the disciplinary authority to impose any penalty as it likes. In this sense, therefore, the word ‘penalty’ used in Rule 14 (i) of the Rules of 1968 is relatable to the penalties to be imposed under the Rules rather than a penalty given by a criminal Court.

10. Another important aspect of the matter is that a criminal Court after conviction does not impose any penalty but passes a sentence whether it is one of fine, or

imprisonment or whipping or the like. The Penal Code has been on the statute book for a large number of years and the rule-making authority was fully aware of the significance of the words 'conviction' and 'sentence' and if it really intended to use the word 'penalty' as an equivalent for 'sentence', then it should have used the word 'sentence' and not 'penalty'.....”

7. Learned counsel appearing on behalf of the petitioner submits that the respondent has not made any criminal complaint, thus, the petitioner has never been prosecuted by any court of law and question of conviction does not arise. It is submitted that no loss caused to the bank, therefore, the loss has not been quantified. The petitioner has been compulsorily retired after the departmental inquiry but allegation of moral turpitude has never been levelled against the petitioner nor proved in the said departmental inquiry. However, the impugned order dated 05.03.2016 passed by the disciplinary authority has been confirmed by the appellate authority vide its order dated 18.10.2017.

8. In the counter affidavit filed by the respondent, it is stated that the present petition is not maintainable as the appellate authority has passed the reasoned order and has rightly come to the conclusion that forfeiture of gratuity is in accordance with the provision of section 4 (6)(b)(ii) of the Act as the acts of misconduct proved against the petitioner amount to moral

turpitude and has been punished by the disciplinary authority by way of disciplinary proceedings and prior conviction by criminal court is not mandated for invocation of section 4(6)(b)(ii) of the Act.

9. Learned counsel appearing on behalf of the respondent bank submitted that the petitioner was working as Branch Manager at Mainpuri Branch during the period between 03.11.2008 to 28.06.2011 and while working there, he sanctioned various credit facilities to certain parties without conducting due diligence such as not verifying the CIBIL report, not obtaining confidential opinion from the existing bankers etc., without assessing the requirement properly and without obtaining the required details/documents and without conducting pre-sanction visits. The petitioner sanctioned/enhanced credit facilities to clear the overdues in other accounts of the parties and fresh loans have been sanctioned when the existing loans were overdue/irregular. He failed to conduct proper post sanction visit/follow up/monitoring. The petitioner in order to avoid slippage in the said quality, transferred amounts held in the untallied collection accounts to overdue/irregular loans and subsequently got credited the amount back by debiting to the parties account thereby temporarily misappropriated the amounts lying in the collection accounts. Accordingly,

the petitioner in this process violated the guidelines of the bank and undue official favour was extended to the party's at the cost of the bank and the bank was exposed to the risk of financial loss to the extent of ₹ 139.97 lakh. Thus, the petitioner failed to take all possible steps at the time to ensure and protect the interest of the bank and discharge duty with utmost dignity, honesty and devotion and diligence and acted in a manner unbecoming of an officer employee and thereby contravened regulation No.3(1) and regulation No.24 of the Syndicate Bank Employees (Conduct) Regulations 1976.

10. He further submitted that conviction by a Trial Court and termination or dismissal of the services is not required to forfeit the gratuity. The same can be forfeited if the employee has committed an offence of moral turpitude as is in the present case. The case mentioned above of the petitioner is amount to moral turpitude.

11. To strengthen his argument, counsel for the respondent has relied upon a judgment of Himachal Pradesh High Court in the case of ***Madan Lal Sharma vs. H.P. Khadi and Village Industries Board: 2013 LAB.I.C. 1007*** wherein in para 20 of the said judgment, it is held that according to section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972, the gratuity payable to an

employee may be wholly or partially forfeited, 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. It is further observed that the expression “misconduct” covers a large area of human conduct. On the one hand, the habitual late attendance, habitual negligence and neglect of works: on the other hand, riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline, wilful insubordination or disobedience. Misconduct falling under several of these latter heads of misconduct may involve no direct loss or damage to the employer, but would render the functioning of the establishment impossible or extremely hazardous. Thus, learned counsel submits that in the present case, the case of the petitioner constitutes the offence of moral turpitude.

12. Counsel for the respondent has also relied upon the judgment of this Court in *Food Corporation of India vs. UOI & Ors.* in *W.P.(C) 7350/2009* dated 03.08.2015 whereby it is held that the term ‘moral turpitude’ is somewhat vague by its very nature because it involves examination of an action in the light of the existing moral norms. Unlike legal norms, moral norms are somewhat unformulated. They can change from time to time,

from society to society and even from individual to individual. Hence, it is quite possible that an action which may be violative of moral norms in one society may appear acceptable to another. One can only judge the action in any given case in the light of what one considers to be the prevailing moral norms of the society in which such action has taken place. Accordingly, held the gratuity was rightly forfeited.

13. I have heard the counsel for the parties.

14. In the case of *Madan Lal Sharma (supra)*, the petitioner therein was terminated from the services which is one of the ingredients of section 4 mentioned above.

15. In the case of *Food Corporation of India (supra)*, huge recovery of ₹1,90,000/- was recovered out of gratuity amount and remaining amount of ₹1,94,000/- was paid to the employee. However, in the present case, neither any recovery has been made from the petitioner nor terminated from the services. Thus, the case relied upon by the respondent is not applicable in the facts and circumstances of this case.

16. Thus, the opinion of the appellate authority is contrary to as has been decided in case of *Jaswant Singh Gill (supra)* whereby it is held that the amount liable to be forfeited would be only to the extent of damage caused.

In the case in hand, the disciplinary authority has not quantified the loss or damage. The provisions contained in sub-clause 6 of Section 4 mentioned above be scrupulously observed. Clause 6 of the section 4 speaks of termination of service of employee for any act. However, the gratuity amount liable to forfeit would be only to the extent of damage or loss caused. In addition, if employee is convicted for moral turpitude or terminated from service.

17. In the present case, admittedly, the petitioner has not been prosecuted by any of the criminal court which has power to convict or punish the accused. It is further admitted that no loss caused to the bank, therefore, not quantified. Even in the charge, there is no allegation of moral turpitude, thus, the opinion of the disciplinary authority and the appellate authority is contrary to the view taken by the Hon'ble Supreme Court in case of *Jaswant Singh Gill (supra)* and *T R Chellappan (supra)*.

18. In view of the above discussion and the settled law, I hereby set aside the impugned order dated 18.10.2017 of the appellate authority vide which the administrative order dated 05.03.2016 of respondent bank forfeited the gratuity of the petitioner.

19. Consequently, I hereby restore the order dated 12.06.2017 of the

controlling authority.

20. In view of the above, the petition is, accordingly, allowed.

CM APPL. No.1854/2018

21. In view of the order passed in the present writ petition, this application has been rendered infructuous and is, accordingly, disposed of such.

FEBRUARY 13, 2019
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(SURESH KUMAR KAIT)
JUDGE



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