IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2736 OF 2020

Chairman/Chief Executive Officer,
Sangli District Primary Teachers
Co-op. Bank Ltd. Sangli
Annasaheb Patewale Marg, Sangli ..Petitioners

v/s.
Babasaheb Mahadev Patil
At Post Morale (Ped)
Taluka Tasgaon, Dist. Sangli. ..Respondent

Mr. Umesh Mankapure for the Petitioners.
Mr. Sandeep Mutalik for the Respondent No.1.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 14th OCTOBER, 2020.

JUDGMENT.

1. Rule. Rule made returnable forthwith. With consent heard finally at the stage of admission.

2. The Petitioner herein has challenged the order dated 11.2.2020 passed by learned Member of the Industrial Court at Sangli, in Appeal (PGA) No.3 of 2018. By the impugned order, the Appellate Authority has dismissed the Appeal and has thereby confirmed the order dated 02.08.2018 of the Controlling Authority under the Payment of Gratuity Act, 1972, directing release of the amount of gratuity with interest from 21.5.1999 till

realization of the amount.

3. The brief facts necessary to decide the Petition are as under. The Respondent was working as a Branch Manager in Ramanandnagar Branch of the Petitioner Bank. It was alleged that while in service, the Respondent had misappropriated an amount of Rs.32,97,520/-. An inquiry was conducted and he was found guilty of the charge. Resultantly, vide Order dt. 21.5.1999 the services of the Petitioner came to be terminated. An inquiry was initiated for fixing responsibility for the monetary loss caused to the Petitioner Bank. The authorized Officer has passed an Order under Section 88 of the Maharashtra Co-operative Societies Act requiring the Respondent to pay to the Petitioner Bank a sum of Rs.32,97,520/-.

4. The Petitioner filed a Dispute Case in the Co-operative Court for recovery of the said amount. During the pendency of the said Application, the Respondent requested the Petitioner Bank for payment of gratuity. The Petitioner having declined to pay the gratuity amount, the Respondent filed an application under

Section 4 of the Payment of Gratuity Act. The Petitioner contested the said claim inter alia contending that the gratuity amount is liable to be adjusted towards the amount misappropriated by the Respondent. By order dated 2.8.2018, the Controlling Authority under the Act directed the Petitioner to pay to the Respondent an amount of Rs.1,39,042/- towards gratuity with interest at the rate of 10% per anum from the due date till realization of the amount. The Petitioner Bank challenged this order in Appeal PGA No.3 of 2018. By the impugned order, the Appellate Authority has dismissed the appeal mainly on the ground that the Petitioner is not entitled to withhold the amount without issuance of notice and passing an order of forfeiture in accordance with the provisions of Section 4(6)(b)(ii) of the Payment of Gratuity Act. This order is under challenge in the present petition.

5. Shri Mankapure, learned Counsel for the Petitioner, contends that the Respondent has been held guilty of misappropriation of an amount of Rs.32,97,520/- in the course of the employment. He submits that services of the Respondent were terminated for an act constituting an offence involving moral turpitude. He therefore

contends that under Section 4(6) (b) (ii) of the Payment of Gratuity Act, 1972, the Petitioner has discretion to forfeit the amount of gratuity.

6. Shri Mutalik, learned counsel for the Respondent submits that the Respondent has rendered continuous service w.e.f. 20.05.1966. The services of the Respondent having been terminated, it was the duty of the Petitioner to determine and pay the amount of gratuity so determined within a period of 30 days from the date on which the gratuity became payable. He submits that the Petitioner has neither determined the gratuity nor forfeited the same and as such the Petitioner has no unfettered right to withhold the gratuity.

7. Before adverting to the contentions raised by the learned Counsel for the respective parties, it is apposite to refer to Section 4(1) and 4(6) and Section 7 of the Payment of Gratuity Act, 1972 which read thus :-

> *" **4. Payment of Gratuity :- (1)** Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than*

five years :-

(a) on his superannuation, or

(b) on his retirement or resignation,

(c) on his death or disablement due to accident or disease.

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement.

xxx

(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 offense involving moral turpitude, provided that such offense is

committed by him in the course of his employment.

7. Determination of the amount of Gratuity :-

(1) *A person who is eligible for payment of gratuity under this Act or any person authorized, in writing to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.*

(2) *As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.*

(3) *The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.*

(3-A) *If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government* *from time to time for repayment of long-term deposits, as that Government may, by notification specify: Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.]* ”

8. A plain reading of these provisions would indicate that gratuity is payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years. The gratuity becomes payable on his superannuation, retirement/resignation or upon his death or disability due to an accident or disease. Section 7 casts an obligation on the employer to quantify the amount of gratuity and to pay the amount of gratuity within 30 days from the date it becomes payable. Sub Section 6 of Section 4, which commences with a non-obstante clause, provides for forfeiture of gratuity. Under clause (a) of Sub Section 6 gratuity can be forfeited in case of termination of services for any act, willful omission or negligence causing any damage or loss to the employer or destruction of the property belonging to the employer. Under this clause gratuity can be

forfeited only to the extent of the damage or loss so caused. Whereas, sub clause (b) of sub Section 6 contemplates forfeiture of gratuity, either wholly or partially, under two situations viz. (i) where services are terminated for riotous or disorderly conduct or for any other act of violence. (ii) where services are terminated for any act in the course of the employment, which constitutes an offence involving moral turpitude, committed in the course of the employment.

9. In ***Allahabad Bank and anr. v/s. Deepak Kumar Bhola 1997 (4) SCC 1*** the Hon'ble Apex Court has explained the meaning of the expression 'moral turpitude' as under:-

" 8. What is an offence involving "moral turpitude" must depend upon the facts of each case. But whatever may be the meaning which may be given to the term "moral turpitude" it appears to us that one of the most serious offences involving "moral turpitude" would be where a person employed in a banking company dealing with money of the general public, commits forgery and wrongfully withdraws money which he is not entitled to withdraw.

9. This Court in Pawan Kumar vs. State of Haryana & Anr. (1996) 4 SCC 17 dealt with the question as to what is *the meaning of expression "moral turpitude" and it was observed as follows :*

" 'Moral turpitude' is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity".

This expression has been more elaborately explained in Baleshwar Singh v. Distt. Magistrate and Collector, AIR 1959 All. 71 wherein it was observed as follows :

"The expression 'Moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man"

10. In our opinion the aforesaid observations correctly *spell out the true meaning of the expression "moral turpitude". ....”*

10. In ***Laxman Balu Deualkar v/s. The Chief Executive Officer, Kolhapur District Ceontral Co-operative Bank Ltd. in Writ Petition No.9044 of 2017,*** learned Single Judge of this Court has held that clause (b) of sub section 6 of Section (4) refers to termination for any "act which constitutes an offence involving moral turpitude". The clause does not contemplate actual conviction of the employee concerned for an offence involving moral turpitude and that such termination and consequent forfeiture of gratuity may well be based on proof of such act in a domestic enquiry.

11. Reverting to the facts of the present case, it is not in dispute that the Respondent was working as a Branch Manager in Ramanand Nagar Branch of the Petitioner Bank. Disciplinary proceedings were initiated against the Respondent specifically on the charge of misconduct involving misappropriation of the funds of the Bank. The services of the Respondent have been terminated w.e.f. 25.05.1999 upon such charge being proved in a

departmental enquiry. There can be no dispute that misappropriation of the bank funds by the bank Manager is an act which constitutes offence involving "moral turpitude". Therefore the Petitioner had discretion to forfeit the gratuity amount under clause(b)(ii) of sub section 6 of section 4 of the Payment of Gratuity Act.

12. It is pertinent to note that right to gratuity is a statutory right. The employer has right to forfeit the gratuity of an employee only in the eventualities provided under sub-Section (6) of Section 4 of the Payment of Gratuity Act. Needless to state that the exercise of discretion to forfeit gratuity can never be unfettered and unguided but has to be exercised in fair and reasonable manner and in accordance with the procedure established by law. In ***Jaswant Singh Gill vs. M/s. Bharat Coking Coal Ltd. and Ors., (2007) 1 SCC 663,*** the Hon'ble Supreme Court has held that when an accrued or vested right is sought to be taken away by resorting to sub-section 6 of Section 4 of the Act, the conditions laid down thereunder must be fulfilled and the provisions contained therein must be scrupulously observed. It is

also pertinent to note that the Division Bench of this Court in the case ***Ramchandra S. Joshi vs. Bank of Baroda 2010-iv-LLJ-119 (Bom.)*** has observed that though Section 4(6) of the Act does not specifically provide for a show cause notice in the matter of forfeiture of gratuity, considering that forfeiture of gratuity involves a civil liability and has civil consequences, the principles of natural justice have to be followed and opportunity must be given to the employee to give his say as to why gratuity should not be forfeited.

13. In the present case, the services of the Respondent no.1 were terminated w.e.f. 25.05.1999. The termination order does not make any reference to forfeiture of gratuity. It is also not in dispute that the Petitioner had neither issued a show cause notice nor passed a specific order for forfeiture of gratuity for an act involving moral turpitude. It is thus evident that the Petitioner has withdeld the gratuity without complying with the principles of natural justice and without initiating proceedings for forfeiture of gratuity. The action of withholding the gratuity, which is not in accordance with the procedure established by law, cannot be

countenanced. Upon consideration of totality of the circumstances, there is no reason to interfere with the impugned order.

14. At this stage, learned counsel for the Petitioner submits that the Bank intends initiating forfeiture proceedings and hence prays that the Respondent may be refrained from withdrawing the gratuity amount deposited before the Appellate Authority.

15. The Respondent shall not withdraw the amount for a period of eight weeks. It is made clear that this Court has not expressed any opinion on legality, validity or propriety of the action proposed to be taken by the Bank.

15. Under the circumstances, the Petition is devoid of any merits and is accordingly dismissed with no order as to costs. Rule is discharged.

. This order will be digitally signed by the Private Secretary /Personal Assistant of this Court. All concerned will act on production, by Fax or E-Mail, of a digitally signed copy of this order.

Prasanna P. Salgaonkar

Digitally signed by Prasanna P. Salgaonkar
Date: 2020.10.22 17:43:13 +0530

(ANUJA PRABHUDESSAI, J.)