IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2020

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.15037 of 2018
and
WMP No.17805 of 2018

1.The Field General Manager,
Central Bank of India,
Zonal Office,
48/49, Montieth Road,
Egmore,
Chennai 600 008.

2.The Chairman and Managing Director,
Central Bank of India,
Central Office,
Chandermukhi Building,
Nariman Point,
Mumbai 400 021. ...Petitioners

Vs.

1.The Appellate Authority under the Payment of Gratuity Act and Deputy Chief Commissioner of Labour,
Shastri Bhawan, Chennai.

2.The Controlling Authority under the Payment of Gratuity Act and Regional Labour Commissioner (Central),
Madurai.

3.S.Valarmathi ...Respondents

WEB COPY

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari to call for the records in G.A.No.26 of 2017 on the file of the first respondent and to quash the order dated 23.03.2018 made therein partly confirming the order of the second respondent dated 30.06.2017 in G.A.No.10 of 2016.

https://hcservices.ecourts.gov.in/hcservices/

For Petitioner : Mr.B.Thilak Narayanan

For Respondents: Mr.A.Veeramani for R1 and R2 CGSC
Mr.G.Raja Ganapathy for R3

O R D E R

This writ petition is filed challenging the order of the first respondent dated 23.03.2018, partly confirming the order of the second respondent dated 30.06.2017.

2. The case of the petitioner Bank is as follows:

One L.Sanjeevi Rayar, husband of the third respondent herein joined the service of the petitioner Bank on 25.01.1982 as an Agricultural Field Officer. He was accorded promotion. While he was working as Senior Manager at Srirangam Branch and Trichy Cantonment Branch, it was found that he committed serious lapses of irregularities, omissions and commissions, involving moral turpitude, while sanctioning loans and causing substantial financial loss to the bank. Therefore, disciplinary action was initiated by issuing charge sheet dated 17.12.2014. Departmental enquiry was conducted by following due procedure. After considering the report and findings of the Enquiry Officer, the Disciplinary Authority by order dated 30.05.2015, imposed punishment of dismissal from service on the said employee. An appeal preferred against the said order before the Appellate Authority was dismissed on 16.11.2015. A notice dated 17.12.2015 was issued to the said employee by the Bank to show cause as to why his gratuity should not be forfeited. The employee gave an explanation dated 21.12.2015. After considering the said explanation, an order dated 14.01.2016 was passed recommending forfeiture of gratuity payable to the said employee. In the meanwhile, the employee filed an application under Section 7(7) of the Payment of Gratuity Act before the Controlling Authority viz., the second respondent. Pending enquiry of the aforesaid procedures, the employee viz., L.Sanjeevi Rayar died on 27.01.2016. Thereafter, the said claim petition was pursued by his wife viz., the third respondent herein. The second respondent on an erroneous view of facts and law allowed the claim vide order dated 30.06.2017, by directing the petitioner to pay the gratuity amount of Rs.16,73,929/- along with penal interest at the rate of 10% p.a. Challenging the said order, the Bank preferred an appeal before the second respondent, who in turn passed the impugned order dated

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

23.03.2018 partly confirming the order of the second respondent thereby restricting the payment of gratuity as Rs.10 lakhs.

3.The third respondent filed a counter affidavit, wherein it is stated as follows:

The third respondent's husband has given an explanation on 21.12.2015, denying all the charges and questioned the illegality committed by the Bank in forfeiting the gratuity. However, the Senior Regional Manager of the Bank without adhering to the principles of natural justice committed grave illegality by overlooking the objections raised by the third respondent's husband and passed a non speaking order dated 14.01.2016 to forfeit the gratuity. The Bank did not conduct the departmental enquiry inconsonance with the principles of natural justice before forfeiting the gratuity. The quantum of loss has not been clearly established. The second respondent, on due consideration of facts and circumstances and settled legal position, has ordered to pay the gratuity amount along with penal interest. Likewise, the Appellate Authority has framed correct questions and appropriately answered in favour of the third respondent's husband. For forfeiture of gratuity, the employer ought to conduct separate enquiry to conclude whether the employee concerned had really involved in the process of loss and such quantum of loss is to be determined. The petitioner Bank had failed to establish the quantum of purported loss or damage caused by the third respondent's husband by means of any enquiry.

4. Learned counsel appearing for the petitioner submitted that both the respondents 1and 2 have passed the impugned orders only on the ground that the petitioner Bank did not conduct any enquiry to find that the husband of the third respondent was responsible for the losses and the quantum thereof as well as the said conduct would amount to moral turpitude. Therefore, he submitted that an opportunity may be given to the petitioner Bank to conduct such enquiry within the time frame fixed by this Court so as to enable the Bank to arrive at such findings.

5. On the other hand, the learned counsel for the third respondent submitted that admittedly, no enquiry was conducted before passing the forfeiture order and therefore, it clearly violates the principles of natural justice. He further submitted that even otherwise, purpose of remitting the matter back to the petitioner Bank for conducting an enquiry will not be met out, since the employee viz., the husband of the third respondent died as early as on 27.01.2016. He further submitted that even otherwise, in view of the decision of the Apex Court made in Union Bank of India and others vs. C.G.Ajay Babu and

https://hcservices.ecourts.gov.in/hcservices/

another in Civil Appeal No.8251 of 2018 dated 14.08.2018, the petitioner Bank is not entitled to forfeit the gratuity on the allegation that the husband of the third respondent involved in the misconduct, which is an offence involving moral turpitude, unless such misconduct was construed as an offence and tried by the competent Court of law followed by conviction by such Court for such offence. He also submitted that the Central Bank of India, in a reply to the RTI application submitted by one Balamurugan, has informed through their reply dated 12.06.2019, that with effect from the date of the Apex Court Judgment, the Bank follows the decision of the Court in respect of forfeiture of gratuity involving moral turpitude and that the gratuity is not being forfeited for involvement in moral turpitude with effect from the date of the Apex Court Judgment. Therefore, he submitted that the present writ petition is liable to be dismissed.

6. Heard both sides. Perused the materials placed before this Court.

7. The husband of the third respondent was an employee of the petitioner Bank. No doubt, he was dismissed from service based on certain charges levelled against him found to have been proved in the domestic enquiry. Pursuant to the dismissal of the said employee, the Bank resorted to forfeit the gratuity. Accordingly, a show cause notice dated 17.12.2015 was issued to the said employee. He gave an explanation on 21.12.2015 and questioned the action of the Bank in contemplating to forfeit the gratuity. However, the petitioner Bank, admittedly did not conduct any enquiry and on the other hand, passed an order for forfeiture of the gratuity. Both the respondents 1 and 2 have rightly found that such forfeiture, without following due process of law, cannot be sustained. The amount of loss has to be quantified and such loss should have been ascertained, also by establishing that such loss was due to the misconduct of the employee, which is an offence involving moral turpitude. Admittedly, in this case, no such exercise was done by the petitioner Bank. Now, the learned counsel for the petitioner seeks for an opportunity to do such exercise. I do not think that the said request can be considered at this length of time, more particularly, when the admitted fact remains that the very employee viz., husband of the third respondent died as early as on 27.01.2016. Therefore, it is of no use to remit the matter back to the Bank for conducting an enquiry. Even assuming that the employee is alive and the matter can be remitted back to the Bank for conducting such enquiry, in view of the decision of the Apex Court in Union Bank of India and others vs. C.G.Ajay Babu and another, I do not think that such enquiry will have any

https://hcservices.ecourts.gov.in/hcservices/

impact on the present matter, when admittedly the husband of the third respondent viz., employee of the petitioner Bank was admittedly not tried for the offence involving moral turpitude by the criminal court and convicted.

8. At this juncture, it is useful to refer to the observations made by the Apex Court in the above said decision in Union Bank of India and others vs. C.G.Ajay Babu and another in Civil Appeal No.8251 of 2018 dated 14.08.2018 at paragraphs 17, 18, 19 and 20 as follows:

> "17. 'Offence' is defined, under The General Clause Act, 1897, to mean "any act or omission made punishable by any law for the time being in force".
>
> 18. Though the learned Counsel for the appellant-Bank has contended that the conduct of the respondent-employee, which leads to the framing of charges in the departmental proceedings involves moral turpitude, we are afraid the contention cannot be appreciated. It is not the conduct of a person involving moral turpitude that is required for forfeiture of gratuity but the conduct or the act should constitute an offence involving moral turpitude. To be an offence, the act should be made punishable under law. That is absolutely in the realm of criminal law. It is not for the Bank to decide whether an offence has been committed. It is for the court. Apart from the disciplinary proceedings initiated by the appellant-Bank, the Bank has not set the criminal law in motion either by registering an FIR or by filing a criminal complaint so as to establish that the misconduct leading to dismissal is an offence involving moral turpitude. Under sub-Section (6)(b)(ii) of the Act, forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, and convicted accordingly by a court of competent jurisdiction.
>
> 19. In Jaswant Singh Gill v. Bharat Coking Coal Limited and others, it has been held by this Court that forfeiture of gratuity either wholly or partially is permissible under sub-Section (6)(b)(ii) only in the event that the termination is on account of riotous or disorderly conduct or any other act of violence or on account of an act constituting an offence involving moral turpitude when he is convicted. To quote paragraph-13:

https://hcservices.ecourts.gov.in/hcservices/

"13. The Act provides for a close-knit 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 herein, sub-section (6) of Section 4 of the (2007) 1 SCC 663 Act contains a non obstante clause vis-à-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, wilful 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 1 was more than the amount of gratuity payable to the appellant. Clause (b) of sub-section (6) of Section 4 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."

20. In the present case, there is no conviction of the respondent for the misconduct which according to the Bank is an offence involving moral turpitude. Hence, there is no justification for the forfeiture of gratuity on the ground stated in the order dated 20.04.2004 that the "misconduct proved against you amounts to acts involving moral turpitude". At the risk of redundancy, we may state that the requirement of the statute is not the proof of misconduct of acts involving moral turpitude but the acts should constitute an offence involving moral turpitude and such offence should be duly established in a court of law."

9. Further, it is to be noted that the petitioner Bank themselves has given a reply in an RTI Application that gratuity

https://hcservices.ecourts.gov.in/hcservices/

is not being forfeited for involvement in moral turpitude with effect from the date of judgment of the Hon'ble Supreme Court. The said communication is extracted hereunder:

"Mr.Balamurugan MS,
202, Tower, 33, Unihomes 1,
Uniworld City, Nallambakkam,
Chennai, Pin 600 048.

Sub: Application dated 14th May, 2019 of Mr.Balamurugan MS under Right to Information Act, 2005 received by us on 21st May, 2019.

This refers to your online RTI Application dated 14th May, 2019 received by us through RTI MS portal on 21.05.2019. We have gathered information from Retiral Benefits Department and based on information received from them, the sought information is furnished hereunder:
1.With effect from the date of judgment of the Apex Court, we follow the decision of the Hon';e Court in respect of forfeiture of gratuity involving moral turpitude.
2.No
3.Gratuity is not being forfeited for involvement in moral turpitude with effect from the date of judgment of the Hon'ble Supreme Court.

The applicant may file appeal against this reply before the Appellate Authority within 30 days of receipt of this letter. The name and address of the First Appellate Authority are given below:

Shri S.R.Dash,
General Manager-Operations/Appellate Authority,
Central Bank of India, Operations Department,
Central Bank Building, 2nd Floor,
M.G.Road, Fort, Mumbai 400 023.

(P.C.Bariwa)
Dy.General Manager-HRD/CPIO)"

10. In view of the above stated facts and circumstances, I do not find any reason to interfere with the order passed by the first respondent, modifying the order of the second respondent. Accordingly, the writ petition fails and the same is dismissed. The petitioner Bank is directed to comply with the order of the first respondent within a period of four weeks from the date of receipt of a copy of this order. It is stated that the said sum has already been deposited by the petitioner Bank before the controlling Authority. If that be the case, it is open to the third respondent to withdraw the same from the said authority.

https://hcservices.ecourts.gov.in/hcservices/

Since the interest is also ordered by the Appellate Authority, the petitioner Bank shall pay such interest at the rate of 10% from the date when the gratuity became payable. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vri

To
1.The Appellate Authority under the Payment of Gratuity Act
and Deputy Chief Commissioner of Labour,
Shastri Bhawan, Chennai.

2.The Controlling Authority under the Payment of Gratuity Act and
Regional Labour Commissioner (Central),
Madurai.

Copy to:

1.The Field General Manager,
Central Bank of India,
Zonal Office,
48/49, Montieth Road,
Egmore,
Chennai 600 008.

2.The Chairman and Managing Director,
Central Bank of India,
Central Office,
Chandermukhi Building,
Nariman Point,
Mumbai 400 021.

+1cc to M/s.A.Veeramani, Advocate SR.9092
+1cc to M/s.T.M.Hariharan, Advocate SR.9084
+1cc to M/s.G.Raja Ganapathy, Advocate SR.8841

W.P.No.15037 of 2018

VSN.II(CO)
CB(10/02/2020)

सत्यमेव जयते
WEB COPY

https://hcservices.ecourts.gov.in/hcservices/