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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2793 OF 2014

The Chairman
Maharashtra Gramin Bank,
Head Office, Shivaji Nagar,
Nanded

...PETITIONER

VERSUS

- 1) Sheshrao s/o Dnyandeo Gore,
Age 57 years, Occ. Nil,
R/o 'Krushisampada',
Sahyog Colony, Ring Road,
Latur
- 2) The Controlling Authority
Under Payment of Gratuity Act, 1972
& Assistant Labour Commissioner (C),
Ramnagar, Chandrapur,
Maharashtra State
- 3) The Appellate Authority
Under P.G. Act, 1972 &
Regional Labour Commissioner (C),
CGO Complex, Block-C,
Ist Floor, Seminary Hills,
Nagpur – 6 (M.S.)

... RESPONDENTS

.....
Shri M.M. Patil Beedkar, Advocate for petitioner
Shri R.D. Biradar, Advocate for respondent No.1
Shri Y.G. Gujarathi, A.G.P. for respondents No.2 & 3
.....

WITH

WRIT PETITION NO.3908 OF 2014

Maharashtra Gramin Bank,

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Head Office, Shivaji Nagar,
Nanded, through its Chairman

...PETITIONER

VERSUS

- 1) Vasant s/o Narsingrao Hadule
Age Major, Occ. Nil,
R/o C/o Shri D.R. Ambedkar,
Sahyog Colony, Near Shanimandir,
Ring Road, Latur, Tq. & ist. Latur.
- 2) The Controlling Authority
Under Payment of Gratuity Act, 1972
& Assistant Labour Commissioner (C),
Ramnagar, Chandrapur,
Maharashtra State
- 3) The Appellate Authority
Under P.G. Act, 1972 &
Regional Labour Commissioner (C),
CGO Complex, Block-C,
Ist Floor, Seminary Hills,
Nagpur – 6 (M.S.)

... RESPONDENTS

**(Respondents No.2 & 3 deleted as per
order dated 18/7/2018)**

.....
Shri M.M. Patil Beedkar, Advocate for petitioner
Shri R.D. Biradar, Advocate for respondent No.1
.....

WITH

WRIT PETITION NO.3910 OF 2014

Maharashtra Gramin Bank,
Head Office, Shivaji Nagar,
Nanded, through its Chairman

...PETITIONER

VERSUS

- 1) Dayanand s/o Wamanrao Waghmare
Age Major, Occ. Nil,

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R/o Triratna Ajnikar Niwas,
Bank Colony, Vikram Nagar,
Tq. & Dist. Latur (M.S.)-413531

2) The Controlling Authority
Under Payment of Gratuity Act, 1972
& Assistant Labour Commissioner (C),
Chandrapur, Maharashtra State

3) The Appellate Authority
Under P.G. Act, 1972 &
Regional Labour Commissioner (C),
CGO Complex, Block-C,
Ist Floor, Seminary Hills,
Nagpur – 6 (M.S.)

... RESPONDENTS

**(Respondents No.2 & 3 deleted as per
leave granted by the Hon'ble Court
on 22/12/2015)**

.....
Shri M.M. Patil Beedkar, Advocate for petitioner
Shri R.D. Biradar, Advocate for respondent No.1
.....

CORAM : R. G. AVACHAT, J.

Date of reserving order : 17th February, 2021

Date of pronouncing order : 3rd March, 2021

ORDER:

These three Writ Petitions are being decided by
this common order since common questions of facts and law
arise therein.

2. The Maharashtra Gramin Bank (Bank), Nanded is
the petitioner in all these petitions. The respondent No.1 in

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all these petitions (respondents) were officials of the Bank. The respondent No.2 in all these petitions is the Controlling Authority under Payment of Gratuity Act, 1972 (for short the Act of 1972) while respondent No.3 is the Appellate Authority under the Act of 1972.

3. The respondents were subjected to separate departmental enquiries. Charges framed against them have been proved. The respondents, therefore, came to be dismissed from service. The orders of their dismissal from service have attained finality. The details thereof are as under:-

W.P. Number	Respondent's name and designation	Reason for dismissal/ termination	Date of dismissal/ termination	Date of filing application for payment of gratuity
2793/ 2014	Sheshrao Dnyandeo Gore, Branch Manager	Defalcation and misappropriation of funds	17/12/2003	8/12/2011
3908/ 2014	Vasant Narsingrao Hadule, Branch Manager	Raising funds for his Union, Collecting / accepting amounts from customers/ borrowers of the Branch in cash and then depositing the said amount in his own name and sending the same to the Accounts of his Union	9/3/2012	17/9/2012

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3910/ 2014	Dayanand Wamanrao Waghmare, Manager	Defalcation and misappropriation of Bank funds by making fictitious entries in the name of various Account holders and misuse of official power for personal gain	12/7/2012	13/7/2012
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4. The respondents preferred applications for payment of gratuity. The Bank resisted the applications on the ground that the respondents have been terminated from service since the acts committed by them were of moral turpitude. The contentions raised by the Bank were negated by the controlling authority under the Act of 1972. The controlling authority, vide its order dated 10/4/2013, 28/2/2013 and 28/3/2013 directed the Bank to pay the respondents the amount of gratuity. The Bank preferred appeals to the appellate authority. The appellate authority dismissed the appeals vide judgments and orders dated 13/2/2014, 4/3/2014 and 10/3/2014.

5. Shri M.M. Patil Beedkar, learned counsel for the Bank would submit that, the definition of the term 'moral turpitude' is wide enough. The acts committed by the respondents on account of which they have been dismissed

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from service constitute moral turpitude. According to learned counsel, for forfeiture of the gratuity on account of any act which constitutes an offence involving moral turpitude, such employee need not be prosecuted in the Court of law. Learned counsel placed reliance on the judgment of this Court in Writ Petition No.12405/2019 and other connected petitions, decided on 16/12/2019. According to learned counsel, this Court has interpreted the judgment of the Apex Court in case of Union Bank of India Vs. C.G. Ajay Babu reported in **(2018) 9 SCC 529**. He would further submit that, the parties to the judgment in Writ Petition No.12405/2019 were the present Bank and its employees. These Writ Petitions, therefore, need to be decided in terms of the judgment and order passed in the said Writ Petitions, otherwise there would be conflict of decisions. He, therefore, urged for allowing the Writ Petitions.

6. Shri R.D. Biradar, learned counsel for the respondents would, on the other hand, submit that, for forfeiture of amount of gratuity under Section 4(6)(b)(ii) of the Act of 1972, the services of such employees must 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. Learned

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counsel has relied on the judgment of the Apex Court in Ajay Babu's case (supra).

7. Section 4(6)(b)(ii) of the Act of 1972 reads as follows :-

“4. Payment of gratuity -

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6. Notwithstanding anything contained in sub-section (1)-(b) the gratuity payable to an employee [may be wholly or partially forfeited]-

(i)

(ii) if the services of such employee have been terminated for any act which constitute an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.”

8. The amount of gratuity payable to the respondents herein, is sought to be forfeited on the ground contained in Section 4(6)(b)(ii) of the Act of 1972. The respondents have been dismissed from service for the reasons stated in column No.3 of the table given in paragraph No.3 above. Their dismissal has attained finality as they have been unsuccessful in the proceedings initiated for challenging their dismissal.

9. Section 4(6)(b)(ii) of the Act of 1972 empowers an employer to forfeit gratuity wholly or partially in case the services of such employee have been terminated for any act, which constitutes an offence involving moral turpitude, provided such offence is committed by him in the course of his employment.

10. In case of C.G. Ajay Babu (supra), the Apex Court observed :-

“16. Under sub-section 6(a), also the gratuity can be forfeited to only to the extent of damage or loss caused to the Bank. In case, the termination of the employee is for any act or willful omission or negligence causing any damage or loss to the employer or destruction of property belonging to the employer, the loss can be recovered from the gratuity by way of forfeiture. Whereas under sub-Clause (b) of sub-section (6), the forfeiture of gratuity, either wholly or partially, is permissible under two situations ; (i) in case the termination of an employee is on account of riotous or disorderly conduct or any other act of violence on his part, (ii) if the termination is for any act which constitutes an offence involving moral turpitude and the offence is committed by the employee in the course of his employment. Thus, sub-Clause (a) and sub-Clause (b) of sub-Section (6) of Section 4 of the Act operate in different fields and in different circumstances. Under sub-Clause (a), the forfeiture is to the extent of damage or loss caused on account of the misconduct of the employee whereas under sub-Clause (b), forfeiture is permissible either wholly or partially in totally different circumstances. Sub-Clause (b) operates either when the termination is on account of – (i) riotous or (ii) disorderly or (iii) any other act of violence on the part of the employee, and under Sub-Clause (ii) of sub-Section (6)(b) when the termination is on account of any

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act which constitutes an offence involving moral turpitude committed during the course of employment.

17. *Offence is defined, under The general Clauses 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.”*

11. In the present case, the respondents have not been prosecuted for the misconduct which is alleged to be an offence involving moral turpitude. True, this Court in Writ Petition No.12405/2019 has observed :-

“29. In my view, considering the law referred to above, it is within the domain of the employer to enquire into the charges leveled against an employee. It is the employer’s obligation to prove the charges so as to hold the employee

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guilty of the charges leveled upon him. In service jurisprudence, it is not the duty or obligation of the charge-sheeted workman to prove his innocence. The principle of *onus probandi* would exclusively apply to an employer who levels the charge of misconduct against the employee. The burden would never shift (**A. Raghavamma vs. a. Chenchamma, AIR 1964 SC 136**). It is the employer who has to prove the misconduct and thereafter, the employee would lead evidence to disprove the allegations leveled upon him by the employer. Eventually, if the charge is proved, it is for the employer to consider as to whether, the misconduct proved against an employee would amount to an act of moral turpitude, before passing an order of forfeiture of gratuity.

30. Once an employer proves the charges and the offence held to be committed by an employee appears to be involving moral turpitude to any prudent man, an employer can then involve Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972 so as to pass an order of forfeiture of gratuity. Section 4(6)(b)(ii) of the Act of 1972 reads as follows :-

“4. Payment of gratuity -

(6) Notwithstanding anything contained in sub-section (i) :-

(a)

(b) the gratuity payable to an employee may be wholly or partially forfeited.

(i)

(ii) 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.

31. Considering the view expressed by my Brother in **Laxman Balu Deulkar** (*supra*) and the law holding the field, I am also of the view that, after an employer proves an offence in disciplinary proceeding against an employee, which involves moral turpitude, the employer is not required to go to the police station and initiate a proceeding for proving the said charge in a court having criminal jurisdiction.

32. The view taken in **C.G. Ajay Babu** (*supra*) would not

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*apply to the cases in hand since, in the said case, there was a bipartite settlement in the appellant Bank in which provided for forfeiture of gratuity only if financial loss was caused to the Bank on account of a misconduct, which led to the employee's dismissal. It was in this backdrop that the Hon'ble Supreme Court concluded, in **C.G. Ajay Babu's case (supra)** that recourse to Section 4(6) of the Payment of Gratuity Act, 1972 for forfeiture of gratuity was not possible as the bipartite settlement introduced special clauses and protected the workmen from forfeiture of gratuity until a financial loss was proved to have been caused to the employer.*

12. It has been informed that, an application has been moved for review of the judgment in Writ Petition No.12405/2019 and connected petitions and the Court has issued notice thereon.

13. This Court (at Nagpur bench), in Writ Petition No.6006/2016 has, relying on the judgment of the Apex Court in C.G. Ajay Babu's case, held :-

“21. Hence, it becomes very clear that the Hon'ble Supreme Court did lay down its opinion regarding Section 4(6)(b)(ii) of the said Act, while deciding the specific question framed in the facts and circumstances of that case. Therefore, the said opinion of the Hon'ble Supreme Court is binding on this Court.”

14. Moreover, this Court (Principal Seat), relying on the judgment in C.G. Ajay Babu's case, has reviewed its judgment and order in Writ Petition No.9044/2017.

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15. In my view, the Apex Court in C.G. Ajay Babu's case, has interpreted provisions of Section 4(6)(b)(ii) of the Act of 1972. Following the said judgment, it needs to be observed that, the amount of gratuity payable to the respondents herein is not liable to be forfeited, since they have not been held by a Court of competent jurisdiction, to have committed an act, for which their services have been terminated, constituting an offence involving moral turpitude.

16. The Writ Petitions, therefore, fail. The same are dismissed. Rule is discharged.

**(R. G. AVACHAT)
JUDGE**

fmp/-