IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7838 OF 2018

The Divisional Controller,
Maharashtra State Road Transport
Corporation/MSRTC,
Division - Ahmednagar … Petitioner
Versus
Shridhar Baburao Lokhande … Respondent

WITH
WRIT PETITION NO. 7840 OF 2018

The Divisional Controller,
Maharashtra State Road Transport
Corporation/MSRTC,
Division - Ahmednagar … Petitioner
Versus
Ramchandra Shankar Shinde … Respondent

WITH
WRIT PETITION NO. 7875 OF 2018

The Divisional Controller,
Maharashtra State Road Transport
Corporation/MSRTC,
Division - Ahmednagar … Petitioner
Versus
Kusum Gavaram Kanase … Respondent

WITH
WRIT PETITION NO. 7876 OF 2018

The Divisional Controller,
Maharashtra State Road Transport
Corporation/MSRTC,
Division - Ahmednagar … Petitioner
Versus
Hirabai Balasaheb Jare … Respondent

WITH
WRIT PETITION NO. 8106 OF 2018

The Divisional Controller,
Maharashtra State Road Transport
Corporation/MSRTC,
Division - Ahmednagar … Petitioner
Versus
Sayyed Asgar Akabar … Respondents

....

Mr. Bhausaheb S. Deshmukh, Advocate for petitioner
Mr. Parag V. Barde, Advocate for respondents

....

CORAM : R. G. AVACHAT, J.

DATED : 20th JANUARY, 2021

PER COURT :-

. This order governs disposal of these five writ petitions under Article 227 of the Constitution of India, since common question of facts and law arise therein.

2. The challenge in all these writ petitions is to the judgment and order passed by the Industrial Court, setting aside the orders passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (for short 'the Act of 1972'), directing forfeiture of gratuity payable to the respondents herein.

3. Facts:-

The Maharashtra State Road Transport Corporation (MSRTC) is the petitioner in all these writ petitions. The respondents were its employees as 'Conductors'. They were found to have misappropriated some amount collected from the passengers. Departmental Enquiries were, therefore, initiated against all of them. Charges framed against them were proved. The Divisional Traffic Superintendent-cum-Competent Authority (the Competent Authority), Ahmednagar, therefore, dismissed them from service. Later on, the Divisional Controller, MSRTC, Ahmednagar passed an order of forfeiture of gratuity payable to the respondents. Meanwhile, the respondents had moved Assistant Labour Commissioner-cum-Controller under the Act of 1972, for release of gratuity in their favour. The Controller allowed their applications and directed the petitioner – MSRTC to pay the amount due and payable to the respondents along with 10% interest thereon. The MSRTC challenged those orders in appeals before the Industrial Court, Ahmednagar, which modified the orders to the extent of rate of interest and date from which would become payable. The MSRTC has, therefore, preferred these writ petitions.

4. Shri Deshmukh, learned Advocate appearing for the petitioner - MSRTC would submit that both the Courts below had allowed the gratuity/case of the respondents on the ground that the show cause notice was not issued to them before forfeiting the amount of gratuity. The applications for release of gratuity amount were filed after a period of about 7/8 years from the date of dismissal. The MSRTC produced the copy of show cause notice before the Industrial Court during hearing of the appeals. This Court, in Writ Petition No. 9096 of 2016 (The Divisional Controller, MSRTC vs. Govind Sambhaji Hanumante), has found forfeiture of gratuity amount to be justified on account of charge of misappropriation found to be proved in departmental enquiry. The Court held that the conduct was nothing short of a moral turpitude. The reliance on the judgment delivered by the Apex Court in the case of ***Union Bank of India and Ors. vs. C. G. Ajay Babu and Anr.*** - ***AIR 2018 SC 3792*** has been distinguished by this Court in the case of ***Maharashtra Gramin Bank Vs. Bharatibai Ramesh Kambale and Ors – 2019 DGLS (Bom.) 1747.*** In the case of ***C.G. Ajay Babu (supra)***, there was bipartite agreement between the bank and the employees about forfeiture of gratuity only in case of financial loss was caused to the bank on

account of misconduct. In the present case, action of dismissal on account of moral turpitude and financial loss caused on account of fraud and misconduct by the respondents, has been proved. The order of dismissal on this ground has been sustained before the Labour and the Industrial Court. The learned Advocate, therefore, urged for allowing the writ petitions.

5. Mr. Parag Barde, learned Advocate appearing for the respondents herein, would submit that the amount of gratuity has been forfeited on the ground of respondents having been involved in the offence of moral turpitude. According to him, Section 4(6)(b)(ii) of the Act of 1972 has been interpreted by the Apex Court in he case of ***C.G. Ajay Babu (supra).*** No FIR had been registered against the respondents for misappropriation of funds nor complaint had been filed to take to its logical conclusion. The amount of gratuity, was therefore, not liable to be forfeited. Learned Advocate would further submit that before an order regarding forfeiture of gratuity is passed, the concerned employee is required to be given an opportunity of hearing, so has not happened in this case. Order regarding forfeiture has been passed along with the order of dismissal. Later on, the notice was issued to the respondents to show cause as to why the

same should not be forfeited. According to the learned Advocate, no interference with the impugned orders, are therefore, called for.

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

> *"4. **Payment of gratuity-***
> *1 …*
> *2 …*
> *3 …*
> *4 …*
> *5 …*
> *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."*

7. The amount of gratuity payable to the respondents herein, is sought to be forfeited on the ground of their conduct being moral turpitude and thereby caused damage to the interest of the MSRTC. It is reiterated that the respondents have been dismissed from service on account of having been found to have misappropriated the amount of fare collected from the passengers travelling in MSRTC buses. Their dismissal has attained finality as they have been unsuccessful in the proceedings initiated for challenging the dismissal.

8. Section 4(6)(b)(ii) of the Act of 1972 empowers on 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.

9. The Apex Court, in the case of ***C.G. Ajay Babu (supra)*** has held/observed thus:

> "*S. 4(6)(a) and S.(6)(b) of 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 any act which constitutes an offence involving moral turpitude committed during the course of employment. It is not the conduct of a person involving moral turpitude that is required for forefeiture 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. ....*"

10. Admittedly, the MSRTC has neither filed First Information Report nor lodged any complaint, alleging the respondents to have misappropriated the money. The amount of gratuity payable to the respondents is therefore not liable for forfeiture under the aforesaid provision. Similar view has been taken by this Court in Writ Petition No.6006 of 2016 (Nagpur Bench), decided on 29.01.2020.

11. Learned Advocate for the petitioner has relied on the judgment of this Court in the case of ***Maharashtra Gramin Bank (supra)*** and submitted that the judgment of the Apex Court in ***C.G. Ajay Babu's*** case has been distinguished therein. According to the learned Advocate, there was a bipartite agreement between the bank and the employee.

12. Learned Advocate for the respondents would submit that an application for review of the judgment in ***Maharashtra Gramin Bank (supra)*** has been filed and the Court has been pleased to issue notice therein.

13. In my view, since the Apex Court in ***C.G. Ajay Babu's case***, has interpreted the provision of Section 4(6)(b)(ii) of the Act of 1972, I have to follow the same to observe that the amount of gratuity payable to the respondents is not liable to be forfeited, since they have not been held by a Court of competent jurisdiction to have committed an offence of misappropriation, criminal breach of trust or any other offence which may be termed to be a moral turpitude.

14. The writ petitions, therefore, fail. The same are dismissed.

[R. G. AVACHAT, J.]

SMS