

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5120 OF 2021

Kishanrao Vithalrao Bagale

... Petitioner

VERSUS

The Union of India and others

... Respondents

...

Mr. G.R. Syed, Advocate for petitioner;

Mr. R.B. Bhosale, Standing Counsel for respondent no. 1;

Mr. P.N. Kalani, Advocate for respondent no. 2

...

CORAM : DIPANKAR DATTA, CJ.

AND

SMT. VIBHA KANKANWADI, J.

DATE : NOVEMBER 16, 2022

ORAL JUDGMENT (Per DIPANKAR DATTA, CJ.) :

1. The petitioner is a 'dismissed' officer employee of the Bank of Baroda. He has invoked the writ jurisdiction of this Court on 2nd March, 2021 seeking a direction on the bank to release admissible gratuity in his favour.

2. Disciplinary proceedings were initiated against the petitioner under Regulation 6 of Bank of Baroda Officers' Employees' (Discipline and Appeal) Regulations, 1976 (hereinafter "**the 1976 Regulations**", for short) for alleged acts of omission and commission while he was discharging duty

as Manager, Amalner branch, Nagpur region, resulting in financial loss to the bank. In a duly convened enquiry, the petitioner was found guilty of all the charges and was ultimately dismissed from service by an order of the disciplinary authority dated 17th January, 2011. The order of the disciplinary authority clearly records that because of reckless lending by the petitioner, the bank was likely to suffer financial loss to the tune of Rs.166 lakh. The order was carried in appeal by the petitioner. The appellate authority, however, did not find any reason to disagree with the order of the disciplinary authority and, therefore, proceeded to dismiss the appeal vide order dated 19th March, 2012. In the meanwhile, after dismissal from service, the petitioner had applied for gratuity. The claim for gratuity was rejected by the Authorized Officer of the bank by an order dated 28th May, 2011. The reason for forfeiture of gratuity was attributed to the wrongful acts of the petitioner which ultimately led to his dismissal. The said order dated 28th May, 2011 and a subsequent order dated 15th January, 2019 refusing to revoke the former order are under challenge in this writ petition.

3. As can be noticed from the above narration of facts, the petitioner has instituted this petition under Article 226 of the

Constitution more than 10 years after the claim for gratuity was initially rejected by the bank.

4. Mr. Syed, learned advocate for the petitioner has referred to the provisions of the Payment of Gratuity Act, 1972 (hereinafter "**the Act**", for short), to contend that the petitioner is entitled to gratuity and that the bank had erred in refusing his claim. Our pointed attention is drawn to section 4 of the Act together with the decision of the Supreme Court reported in **(2010) 10 SCC 338 (Rajan Sandhi P. Vs. Union of India and Another)** in support of the submission that the bank erroneously refused gratuity to the petitioner.

5. Having heard Mr. Syed, we find no reason to call upon the respondents to answer.

6. We propose to decide the petitioner's claim on merits although we could have dismissed the writ petition only on the ground of unexplained delay.

7. Gratuity has always been regarded as a reward for good, efficient and faithful service for a considerable period of time. Where, however, an employee is dismissed from service for proved misconduct, question of rewarding him with payment of gratuity does not arise unless, of course, the service regulations so provide.

8. For the purpose of an appropriate decision on this writ petition, we had the occasion to look into the 1976 Regulations under which the petitioner was proceeded against as well as the provisions of the Act.

9. In terms of regulation 4(j) of the 1976 regulations, an order of dismissal could be passed by the disciplinary authority upon the charges levelled against the delinquent officer employee being proved and it is provided that such dismissal shall ordinarily be a disqualification for a future employment. We have not come across any express provision in the 1976 Regulations relating to forfeiture of gratuity upon an order of dismissal being passed. At the same time, Mr.Syed has not shown us any provision of any other service regulations of the bank which entitles a dismissed employee to receive gratuity. He has, undoubtedly, made the Act the sheet anchor of the petitioner's claim.

10. In the absence of any provision entitling a dismissed officer employee to receive gratuity either under the 1976 Regulations or any other service regulations, we have considered section 4 of the Act. Sub-sections (1) and (6) of section 4 having been referred to by Mr. Syed, we quote the same hereinbelow:

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, or
- (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:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation.: For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he, was capable of performing before the accident or disease resulting in such disablement.

...

(6) Notwithstanding anything contained in subsection (1), -

(a) the gratuity of an employee, whose services have been terminated for any act, willful 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 offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.”

11. Sub-section (4) ordains that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years in any of the three contingencies as in clauses (a) to (c). However, termination of the petitioner’s employment did not take place either on (a) his superannuation or (b) on his retirement or resignation, or (c) on his death or disablement. Termination took effect because of the order of dismissal from service. In that view of the matter, the petitioner has no right to claim gratuity under sub-section (1).

12. Turning attention to sub-section (6) of section 4, it is clear that sub-section (6) would override sub-section (1) in view of the *non-obstante* clause contained therein. However, sub-section (6) also does not come to the rescue of the petitioner in view of the prohibition contained in clause (a) thereof.

13. We have found from the order of the disciplinary authority that as a result of reckless lending activities on the part of the petitioner, the bank was likely to suffer loss of Rs.166 lakh. If at

all the petitioner had served the bank till the age of attaining superannuation, the amount of gratuity payable to him would not have been more than the loss which the bank was likely to suffer by reason of his proved acts of omission/commission amounting to misconduct. Question of forfeiture of gratuity to the extent of loss suffered by the bank, therefore, does not and cannot arise.

14. It has been argued by Mr. Syed that the amount of Rs.166 lakh arrived at by the bank, is not a definite figure. Nothing, however, turns on it. At the enquiry, the bank was required to prove the delinquency of the petitioner. We have read the order of the disciplinary authority. It lists 51 transactions during the tenure of the petitioner which became sticky and some of the relevant accounts were classified as 'Non-Performing Asset', resulting in the possibility of the bank suffering huge losses. We have also noted that the disciplinary authority had kept in mind that being a bank manager, the petitioner was the custodian of public money but had acted in breach of the trust reposed in him. We also find from the appellate order dated 19th March, 2012 that upon consideration of the petitioner's grounds of appeal, a finding was returned that a loss of approximately Rs.166 lakh has been suffered by the bank due to the proved

acts of omission/commission of the petitioner. In any event, the exact amount of financial loss suffered by the bank due to the reckless lending activities of the petitioner was not required to be arrived at in the enquiry. It was only a tentative figure that was required to be arrived at, since proceedings under the extant laws could result in recovery of the debts of the borrowers. We, therefore, see no reason to nullify the decision of the bank to deny gratuity to the petitioner on the ground that Rs.166 lakh is not a definite but only an approximate figure. In cases such as these, even an approximate figure of the loss likely to be suffered would suffice to forfeit gratuity.

15. We have also looked into the decision in *Rajan Sandhi P.* (supra). There, the appellant was a journalist. He was employed in a newspaper publishing company but had been dismissed from service. The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 were applicable to the appellant. The Court, upon noticing the provisions of the Act as well as the Working Journalists Act, had the occasion to observe as follows:

“8. It may be seen that there is a difference between the provisions for denial of gratuity in the Payment of Gratuity Act and in the Working Journalists Act. Under the Working Journalists Act gratuity can be denied if

the service is terminated as a punishment inflicted by way of disciplinary act, as has been done in the instant case. We are of the opinion that Section 5 of the Working Journalists Act being a special law will prevail over Section 4 (6) of the Payment of Gratuity Act which is a general law. Section 5 of the Working Journalists Act is only for working journalists, whereas the Payment of Gratuity Act is available to all employees who are covered by that Act and is not limited to working journalists. Hence, the Working Journalists Act is a special law, whereas the Payment of Gratuity Act is a general law. It is well settled that special law will prevail over the general law, vide G.P. Singh's Principles of Statutory Interpretation', Ninth Edition, 2004 pp. 133, 134.

9. The special law, i.e., Section 5(1)(a)(i) of the Working Journalists Act, does not require any allegation of proof of any damage or loss to, or destruction of, property, etc. as is required under the general law, i.e., the Payment of Gratuity Act. All that is required under the Working Journalists Act is that the termination should be as a punishment inflicted by way of disciplinary action, which is the position in the case at hand. Thus, if the service of an employee has been terminated by way of disciplinary action under the Working Journalists Act, he is not entitled to gratuity."

16. We have failed to comprehend how the aforesaid declaration of law is applicable to the facts and circumstances of the present case for grant of relief to the petitioner. The fact situation was entirely different there. The Court held that the Working Journalists Act, being the special law, would override the general law, i.e., the Act. Nowhere, do we find any declaration of law that despite causing financial loss to the

employer, the employee upon being dismissed from service would be entitled to gratuity.

17. No case for interference has been set up. For the reasons aforesaid, we have no hesitation in upholding the decision of the bank in denying gratuity to the petitioner. The writ petition is dismissed, but without costs.

[SMT. VIBHA KANKANWADI, J.]

[CHIEF JUSTICE]

arp/