

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1572 OF 2022

PETITIONERS :-

1. The Chairman and Managing Director, Bank of Maharashtra, Central Office, Lokmangal, 1501, Shivaji Nagar, Pune – 411005.
2. The General Manager (HRM), Bank of Maharashtra, Central Office, Lokmangal, 1501, Shivaji Nagar, Pune – 411005.
3. The Deputy General Manager, Financial Management and Accounts, Bank of Maharashtra, Central Office, Lokmangal, 1501, Shivaji Nagar, Pune – 411005.

...VERSUS...

RESPONDENTS :-

1. Shri Kishore S/o Shankarrao Khadatkhar, R/o. 1301, Konark Apartment, Khare Town, Dharampeth, Nagpur – 440010.
2. Appellate Authority under Payment of Gratuity Act, 1972 & Deputy Chief Labour Commissioner (Central), CGO Complex, Block 'C', 1st Floor, Seminary Hills, Nagpur – 440006.
3. Controlling Authority under the Payment of Gratuity Act, 1972 & Assistant Labour Commissioner (Central), CGO Complex, Block 'C', 1st Floor, Seminary Hills, Nagpur – 440006.

Ms Renuka R. Puranik-Nalamwar, counsel for the petitioners.
Mr.S. R. Badana, counsel for respondent No.1.
None for respondent Nos.2 and 3.

CORAM : MANISH PITALE, J.

CLOSED ON: 21.07.2022.

PRONOUNCED ON: 19.08.2022.

J U D G M E N T

Heard.

2. Rule. Rule made returnable forthwith. The writ petition is heard finally with the consent of the learned counsel for the rival parties.

3. The petitioners are officials of the Bank of Maharashtra. The respondent No.1 was an employee of the said Bank and hence, the petitioners are being referred to collectively as the petitioner-employer. The respondent Nos.2 and 3 are formal parties, being the Appellate and Controlling Authorities under the provisions of the Payment of Gratuity Act, 1972 (hereinafter referred to "Act of 1972").

4. The question that arises for consideration in this petition is, as to whether respondent Nos.2 and 3 were justified in holding in favour of respondent No.1 on the question of entitlement towards payment of gratuity under the provisions of the Act of 1972. The petitioner-employer has raised twofold grounds challenging the impugned orders. Firstly, that the orders passed by the Controlling Authority as well as the Appellate Authority were without jurisdiction, as they did not have territorial jurisdiction to consider the grievance of respondent No.1. Secondly, that the petitioner-employer had correctly forfeited the gratuity payable to the respondent No.1 under section 4(6)(a) of the Act of 1972.

5. Before considering the said grounds of challenge raised on behalf of the petitioner-employer, it would be appropriate to briefly refer to the facts leading to filing of the present writ petition. The respondent No.1 joined the petitioner-employer on 19/02/1979 as a directly recruited officer. He was later promoted in the Middle Management Grade in Scale II on 30/08/1988 and thereafter, to the Senior Management Grade Scale-III on

01/07/1995 and further to the Senior Management Grade Scale-IV on 01/01/2003. The petitioner-employer issued a memo on 30/10/2019 levelling six charges against the respondent No.1 for having committed acts of omission and commission during the period between 12/08/2003 to 15/07/2006, when the respondent No.1 was working in the capacity of Chief Manager at New Alipur, Kolkata. A departmental enquiry was conducted against the respondent No.1 on the basis of the aforesaid charges. Upon the respondent No.1 denying the charges, the process of leading evidence was undertaken and eventually, enquiry report was submitted, wherein the respondent No.1 was found guilty of charge Nos.1 to 5, while charge No.6 was held as not proved. After issuing show cause notice to the respondent No.1 and considering his response to the same, by order dated 14/09/2011, the Disciplinary Authority imposed the punishment of compulsory retirement on respondent No.1. Accordingly, the respondent No.1 stood compulsorily retired from the service of the petitioner-employer with effect from 22/09/2011.

6. Aggrieved by the said order, the respondent No.1 filed an appeal before the Appellate Authority but, the appeal was rejected by order dated 14/02/2012, passed by the Appellate Authority, thereby confirming the aforesaid punishment of compulsory retirement imposed on respondent No.1. On 06/10/2012, the petitioner-employer sent a notice to the respondent No.1 at his address at Nagpur, where he had settled after being compulsorily retired, stating that notice regarding forfeiture of gratuity was enclosed. Along with this document, notice rejecting the claim of payment of gratuity in Form-M, as per the Act of 1972 and Rules framed thereunder, was enclosed. The said document stated that the claim of gratuity of the respondent No.1 was found to be inadmissible, as the respondent No.1 had caused loss to the Bank to the extent of Rs.69.72 Lakhs plus unapplied interest thereon, on account of his misconduct.

7. Aggrieved by the said action of the petitioner-employer in denying payment of gratuity, the respondent No.1 filed application under section 7 of the Act of 1972, before the respondent No.3-Controlling Authority at Nagpur, for payment of

gratuity. The petitioner-employer opposed the prayers made by the respondent No.1 before the Controlling Authority. By order dated 07/12/2015, the Controlling Authority held in favour of respondent No.1 and directed the petitioner-employer to pay amount of Rs.10,00,000/- towards gratuity to the respondent No.1 along with interest for delayed period at the rate of 10% per annum from 22/09/2011 till the actual date of payment. The Controlling Authority found that the petitioner-employer was not justified in forfeiting the gratuity payable to respondent No.1.

8. Aggrieved by the said order of the Controlling Authority, the petitioner-employer filed appeal before the respondent No.2-Appellate Authority at Nagpur. In this appeal, the petitioner-employer had not raised any ground regarding territorial jurisdiction of the Controlling Authority. Yet, the Appellate Authority, in its order dated 11/04/2016, on its own, took up the question of territorial jurisdiction for consideration. The Appellate Authority rendered a finding that since the respondent No.1 was lastly employed with the petitioner-employer at Pune, the Controlling Authority at Nagpur did not have

territorial jurisdiction to entertain the application filed by the respondent No.1. Only on this basis, the Appellate Authority set aside the order of the Controlling Authority, with liberty to the parties to approach the appropriate Authority under the provisions of the Act of 1972. The Appellate Authority did not give any findings on the merits of the matter.

9. Aggrieved by the said order of the Appellate Authority, the respondent No.1 was constrained to file Writ Petition No.4627 of 2016. By judgment and order dated 08/02/2021, this Court partly allowed the writ petition, holding that the Appellate Authority had committed a serious mistake in allowing the appeal of the petitioner-employer on the ground of jurisdiction, without affording an opportunity to the respondent No.1 to meet the question of jurisdiction. Accordingly, the order of the Appellate Authority dated 11/04/2016, was set aside and the parties were directed to appear before the Appellate Authority on 08/03/2021, granting liberty to the petitioner-employer to file an application for amendment to raise the question of jurisdiction with the respondent No.1 being entitled to file a reply thereto. It

was directed that the Appellate Authority would proceed expeditiously in the matter, considering that the respondent No.1 was a senior citizen.

10. Consequent to the matter being remitted to the Appellate Authority, the petitioner-employer amended its appeal to raise the question of territorial jurisdiction, to which the respondent No.1 responded. By the impugned order dated 16/12/2021, the Appellate Authority, dismissed the appeal. The Appellate Authority held that since the objection regarding territorial jurisdiction not raised in the original proceedings before the Controlling Authority, the said objection was without any merit. On merits of the matter, the Appellate Authority found that other than referring to the findings in the departmental enquiry, the petitioner-employer had not given any details regarding alleged financial loss caused by the respondent No.1. It was further held that the petitioner-employer never issued any show cause notice to the respondent No.1 before proceeding to forfeit his gratuity, which was unjustified. Accordingly, the order of the Controlling Authority stood confirmed.

11. Aggrieved by the impugned order passed by the Appellate Authority, the petitioner-employer filed the present writ petition, wherein notice was issued and the respondent No.1 waived notice through counsel representing him. The petition was taken up for final disposal at admission stage, considering the fact that the respondent No.1 is a senior citizen.

12. Mrs. Renuka Puranik-Nalamwar, the learned counsel appearing for the petitioner-employer, vehemently submitted that the Appellate Authority had misinterpreted the order dated 08/02/2021, passed by this Court in Writ Petition No.4627 of 2016, whereby the matter was remitted to the Appellate Authority. It was submitted that the Appellate Authority ought to have decided the question of territorial jurisdiction on merits, instead of holding that the said question could not be raised by the petitioner-employer in appeal, because the same was not raised in the original proceedings before the Controlling Authority. It was further submitted that the said aspect of territorial jurisdiction went to the very root of the matter, because in terms of the notification issued under section 3 of the Act of 1972, the

application filed by the respondent No.1 under section 7 of the Act of 1972, could have been entertained only by the Controlling Authority at Pune, as the last place of employment of the respondent No.1 was at Pune. It was submitted that therefore, the orders passed by the Controlling Authority and Appellate Authority at Nagpur were completely without jurisdiction.

13. On the merits of the matter, the learned counsel appearing for the petitioner-employer submitted that the Authorities below failed to properly appreciate the exercise of power by the petitioner-employer under section 4(6) of the Act of 1972. It was submitted that in the facts of the present case, section 4(6)(b)(ii) of the Act of 1972 was not invoked by the petitioner-employer and yet, the Authorities below had commented upon the same while holding against the petitioner-employer.

14. It was submitted that the gratuity payable to the respondent No.1 was forfeited under section 4(6)(a) of the Act of 1972 for the financial loss caused to the petitioner-employer due

to misconduct of respondent No.1. Attention of this Court was invited to the findings rendered in the enquiry report, pursuant to the departmental enquiry initiated against respondent No.1. It was submitted that the figures of financial loss suffered by the petitioner-employer were stated in detail in the said report and therefore, section 4(6)(a) of the Act of 1972, was invoked by the petitioner-employer read with the Payment of Gratuity (Maharashtra) Rules, 1972, and notice rejecting claim of gratuity was duly issued under Form-M of the said Rules. It was submitted that the Authorities below erred in appreciating the material placed on record, while holding against the petitioner-employer.

15. The learned counsel placed reliance on judgment of the Hon'ble Supreme Court in the case of **Union Bank of India and others v. C. G. Ajay Babu and another**, reported in (2018) 9 SCC 529. On this basis, it was submitted that the writ petition deserved to be allowed.

16. On the other hand, Mr. S. R. Badana, learned counsel appearing for the contesting respondent No.1, submitted that the

Appellate Authority was justified in observing that failure to raise question of territorial jurisdiction in the original proceedings indicated that the petitioner-employer was not justified in raising the same in appeal. Reference to section 21(1) of the Code of Civil Procedure, 1908 (CPC) was justified in the impugned order passed by the Appellate Authority. It was submitted that therefore, the objection of territorial jurisdiction, was correctly rejected. On the aspect of alleged misinterpretation of the order of this Court while remitting the matter, it was submitted that this Court had merely granted an opportunity to the petitioner-employer to raise such an objection pertaining to territorial jurisdiction and that the aforesaid question was not decided either way by this Court. It was further submitted that since the respondent No.1 was a retired employee, who had settled at Nagpur and his pension was deposited in a Bank at Nagpur for the past ten years, in terms of the law laid down by the Hon'ble Supreme Court in the case of **Shanti Devi Alias Shanti Mishra. v. Union of India and others**, reported in (2020) 10 SCC 766, the principle of "*forum convenience*" was relevant. The learned counsel relied upon the said judgement wherein it was held that

in cases of retired employees, the place where they settle and their pension is being deposited, is the place where proceedings can be initiated for relief.

17. As regards the merits of the matter, it was submitted that the petitioner-employer had admittedly not issued any show cause notice to the respondent No.1 before forfeiting gratuity. The notice rejecting claim of gratuity under Form-M, as per the said Rules was in the nature of a decision, prior to which the petitioner-employer ought to have put the respondent No.1 to notice, affording him an opportunity to demonstrate that forfeiture of gratuity was not justified on facts. Merely by placing reliance on the contents of the enquiry report was not sufficient, particularly when the respondent No.1 had already suffered punishment of compulsory retirement on the basis of the findings in the enquiry report. On this basis, it was submitted that the writ petition deserved to be dismissed.

18. Heard the learned counsel appearing for the rival parties. As noted above, twofold grounds have been raised on

behalf of the petitioner-employer in the present writ petition, concerning the question of territorial jurisdiction and the aspect of the right of the petitioner-employer, in the facts of the present case, to forfeit gratuity payable to respondent No.1.

19. On the first aspect of territorial jurisdiction, it is an admitted position that the petitioner-employer did not raise any such objection in the original proceedings before the Controlling Authority at Nagpur. It was not even raised in the appeal before the Appellate Authority. Yet, the Appellate Authority, on its own, without any pleading or ground raised on behalf of the petitioner-employer, took up the question of territorial jurisdiction and by the order dated 11/04/2016, set aside the order of the Controlling Authority, only on the said ground of territorial jurisdiction. This Court set aside the said order and remitted the matter back to the Appellate Authority. A perusal of the judgment and order dated 08/02/2021, passed by this Court in Writ Petition No.4627 of 2016, would show that the petitioner-employer is not justified in contending that since liberty was granted to the petitioner-employer to raise the question of territorial jurisdiction by way of

amendment before the Appellate Authority, the said Authority was bound to decide the said question on merits. All that this Court had permitted was an opportunity by way of amendment to the petitioner-employer to raise the question of territorial jurisdiction, along with liberty to the respondent No.1 to file reply to such objection of jurisdiction.

20. Therefore, the Appellate Authority was well within its powers to consider even the question as to whether the aspect of territorial jurisdiction could be raised for the first time in appeal. The effect of failure to raise such an objection regarding territorial jurisdiction in the original proceedings, could certainly be considered by the Appellate Authority along with its effect in terms of the settled position of law. This Court is of the opinion that reliance placed on section 21(1) of the CPC and the three essential conditions stated in the impugned order by the Appellate Authority was justified. Such an objection of territorial jurisdiction could have been raised at the earliest possible opportunity and a consequent failure of justice ought to have been demonstrated, for the Appellate Authority to have considered the question of

territorial jurisdiction. No error can be attributed to the Appellate Authority in holding that the issue of territorial jurisdiction was devoid of merit, as the objection of territorial jurisdiction was not raised by the petitioner-employer at the first instance in the original proceedings before the Controlling Authority.

21. Even otherwise, this Court finds substance in the contention raised on behalf of respondent No.1 that the Controlling Authority at Nagpur had jurisdiction by applying principle of "*forum convenience*" as reiterated by the Supreme Court in the aforesaid judgment in the case of **Shanti Devi Alias Shanti Mishra. v. Union of India** (supra). A perusal of the notification dated 16/10/2014, issued by the Competent Authority under section 3 of the Act of 1972, would show that area of jurisdiction of the Controlling Authority is specified. Section 3 of the Act of 1972, specifically empowers the Competent Authority to appoint Controlling Authorities, who shall be responsible for administration of the Act for specific areas.

22. In the present case, although the last place of employment of the respondent No.1 was Pune, the notice rejecting

claim for payment of gratuity dated 06/10/2012 was served on the respondent No.1 at his address at Nagpur. It is an admitted position that upon being compulsorily retired, the respondent No.1 settled at Nagpur and that he holds a bank account wherein his pension for the last ten years is being deposited in a Bank at Nagpur. Therefore, there could be no impediment in the respondent No.1 invoking jurisdiction of the Controlling Authority at Nagpur, for seeking relief under the provisions of the Act of 1972. In the facts of the present case, the principle of “*forum convenience*” emphasized upon by the Supreme Court in the case of **Shanti Devi Alias Shanti Mishra. v. Union of India** (supra) does apply, particularly because the plight of senior citizens seeking redressal of their grievances has been specifically addressed by the Supreme Court in the said judgment. Even though the said judgment concerns invoking writ jurisdiction by a retired employee, in the facts of the present case, particularly when the notice rejecting claim of payment of gratuity, was served on the respondent No.1 at Nagpur, this Court is of the opinion that the objection regarding territorial jurisdiction was without any merit and therefore, it was correctly rejected by the Appellate Authority.

23. Insofar as the merits of the matter are concerned, it would be appropriate to refer to section 4(6) of the Act of 1972. It reads as follows:

“4. Payment of Gratuity.– (1).....

(2).....

(3).....

(4).....

(5).....

(6) Notwithstanding anything contained in sub-section (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.”

24. A perusal of the above quoted provision shows that it provides for contingencies wherein gratuity payable to an employee can be forfeited. While considering the aforesaid provision, the Supreme Court, after referring to an earlier

judgment, in the case of **Union Bank of India v. C. G. Ajay Babu**

(supra), held as follows:

“15. 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 wilful 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, clause (a) and clause (b) of subSection (6) of Section 4 of the Act operate in different fields and in different circumstances. Under clause (a), the forfeiture is to the extent of damage or loss caused on account of the misconduct of the employee whereas under clause (b), forfeiture is permissible either wholly or partially in totally different circumstances. 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 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.”

25. The petitioner-employer in the present case is justified in contending that in the facts of the present case, gratuity was not forfeited under section 4(6)(b)(ii) of the Act of 1972 and instead section 4(6)(a) thereof, was invoked. The Controlling Authority as well as the Appellate Authority in the present case did refer to section 4(6)(b)(ii) of the Act of 1972, while

considering the rival contentions, but it cannot be said that reliance was placed only on the said provision while holding against the petitioner-employer. A proper appreciation of the orders passed by the said Authorities would show that they were not oblivious of section 4(6)(a) of the Act of 1972.

26. This Court is of the opinion that when gratuity payable to an employee is sought to be forfeited to the extent of loss caused due to willful omission or negligence of the employee under section 4(6)(a) of the Act of 1972, notice has to be issued to such an employee stating the basis of and extent to which the employer has been put to loss, due to the willful omission or negligence of the employee. This would facilitate the employee to respond to the same and thereupon, the extent of loss caused to the employer, if any, can be determined by the employer, so as to forfeit gratuity to the extent of such loss.

27. The petitioner-employer in the present case heavily relied upon Form-M, which pertains to notice rejecting claim for payment of gratuity under Rule 8(1)(ii) of the Payment of Gratuity (Maharashtra) Rules, 1972. To appreciate the contentions raised

on behalf of the rival parties in this context, it would be appropriate to reproduce Rule 8 of the said Rules, which reads as follows:

“8. Notice for Payment of Gratuity.- (1) Within fifteen days of the receipt of an application under Rule 7 for payment of gratuity, the employer shall-

- (i) if the claim is found admissible on verification, issue a notice in Form ‘L’ to the applicant employee, nominee or legal heir, as the case may be, specifying the amount of gratuity payable at 1d fixing a date, not being later than the thirtieth day of the date of receipt of the application, for payment thereof, or
- (ii) if the claim for gratuity is not found admissible, issue a notice in Form ‘M’ to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible.

In either case a of the notice shall be endorsed to the controlling authority.

(2) In case payment of gratuity is due to be made in the employer’s office, the date fixed for the purpose in the notice in Form ‘L’ under clause (i) of sub-rule (1) shall be refixed by the employer, if a written application in this behalf is made by the payee explaining why it is not possible for him to be present in person on the date specified.

(3) If the claimant for gratuity is a nominee or a legal heir, the employer may ask for such witness or evidence as may be deemed relevant for establishing his identity or maintainability of his claim as the case may be. In that case the time limit specified for issuance of notice under sub-rule (1) shall be operative with effect from the date, such witness or evidence as the case may be called for by the employer is furnished to the employer.

(4) A notice in Form ‘L’ or Form ‘M’ shall be served on the applicant either by personal Service after taking receipt or by registered post with acknowledgment.

(5) A notice under sub-section (2) of section 7 shall be in Form ‘L’.”

28. It would also be appropriate to quote Form-M appended to the said Rules which reads as follows:

“FORM ‘M’

[See clause (ii) of sub-rule (1) of Rule 8]
Notice Rejecting Claim for Payment of Gratuity

To

(Name and address of the applicant employee/nominee/legal heir)

You are hereby informed as required under clause (ii) of sub-rule (1) of Rule 8 of the Payment of Gratuity (Maharashtra) Rules, 1972 that your claim for payment of gratuity as indicated on your application in Form under the said rules is not admissible for the reason stated below.

Reasons
(Here specify the reason)

Place :

Signature of the employer/officer authorized

Date:

Name or description of establishment of

rubber stamp thereof

Copy to the Controlling Authority”

29. A proper appreciation of the provisions of the Act of 1972, as also the Rules framed thereunder would show that although Form-M is titled as a notice, in real terms, it is a decision rejecting claim for payment of gratuity or information given to the employee that his gratuity stands forfeited. This view is supported by an observation made by a learned Single Judge (Rohit Deo, J.) of this Court in the case of *General Manager, HRM and others v. Appellate Authority and others (Writ Petition No.956 of 2022*

decided on 08/04/2022), the relevant portion of the said judgment reads as follows:

“7. In response to a specific query put by me as to whether prior notice is issued to the employee before forfeiting the gratuity, the learned Counsel for the employer Mr. R.N.Sen invites my attention to notice form dated 15-7-15 which is at Annexure-5 to the memo of the petition. The said communication, as a fact, is not a show cause notice. Rather, by the said communication, the employee is only informed the decision of the employer that the gratuity stands forfeited.”

30. This Court is of the opinion that an employer cannot simply issue notice in Form-M to the employee rejecting claim for payment of gratuity. This has to be preceded by a show cause notice, because the gratuity amount to which the employee is otherwise entitled is to be forfeited, which is a drastic consequence for the employee. Such a notice would enumerate the basis and extent of financial loss as claimed by the petitioner-employer, due to the alleged willful omission or negligence of the employee. An opportunity would also be available for the employee to contest the same, ensuring fairness of procedure. In the present case, admittedly show cause notice was not issued to the respondent No.1 before the said notice rejecting claim for payment of gratuity was directly issued to him under Form-M on

06/10/2012. The reason stated by the petitioner-employer in the said notice for forfeiting gratuity reads as follows:

“Reasons: - There is a loss to the Bank to the extent of Rs.69.72 lacs plus unapplied interest thereon on account of your misconduct.”

31. The said reason is not only cryptic, but there are no details as to on what basis, the petitioner-employer concluded that the respondent No.1 was responsible for loss to the extent of Rs.69.72 Lakhs plus unapplied interest thereon. The manner in which the petitioner-employer proceeded is clearly arbitrary, apart from being violative of the principles of natural justice. The petitioner-employer is not justified in referring to and relying upon the enquiry report, on the basis of which the respondent No.1 was compulsorily retired from service. An attempt was made on behalf of the petitioner-employer to refer to the contents of the enquiry report to contend that grave financial loss was caused due to the alleged willful negligence on the part of respondent No.1. It is found that on the basis of the conclusions rendered in the enquiry report, the respondent No.1 has already suffered the punishment of compulsory retirement. The respondent No.1 is

justified in contending that even if the contents of the enquiry report are to be referred, it is recorded therein that due to the alleged negligence of the respondent No.1, certain loan amounts disbursed to individuals, could be only partially recovered or not recovered at all. But, there was no material on record to indicate as to what steps the petitioner-employer had taken for recovery of amounts from those individuals and after having taken any such steps, as to what was the extent of financial loss really caused to the petitioner-employer.

32. This Court is of the opinion that unless such an exercise was carried out by the petitioner-employer and on the basis of such material, proper show cause notice was issued to the respondent No.1, power under section 4(6)(a) of the Act of 1972, could not have been invoked to forfeit the gratuity of respondent No.1. Merely referring to the contents of the enquiry report would not suffice and in any event the figure mentioned in the enquiry report was about Rs.68.45 Lakhs, while the notice rejecting claim for payment of gratuity stated the figure as Rs.69.72 Lakhs plus unapplied interest thereon. As noted above, the respondent No.1

already suffered punishment of compulsory retirement on the basis of five out of the six charges being proved in the departmental enquiry and therefore, reliance placed on the contents of the enquiry report for invoking section 4(6)(a) of the Act of 1972, on the part of the petitioner-employer is not justified.

33. Therefore, it is evident that even on merits, the petitioner-employer has failed to make out a case for interference with the impugned orders passed by the Authorities. There was no ground raised challenging the basis of calculation undertaken by the Controlling Authority while holding that the respondent No.1 was entitled to payment of gratuity of Rs.10,00,000/- with interest at the rate of 10% per annum towards delayed payment.

34. Hence, there is no ground made out for interference with the impugned orders passed by the Authorities below. Accordingly, the writ petition is dismissed. Rule stands discharged.

JUDGE