

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 956 OF 2022

- 1) The General Manager (HRM),
Bank of Maharashtra,
Head Office, Lokmangal 1501,
Shivaji Nagar, Pune 411005.
- 2) Dy. General Manager,
Financial Management and Accounts,
Bank of Maharashtra, Head Office,
Lokmangal 1501, Shivaji Nagar,
Pune-411005.
- 3) The Zonal Manager,
The Bank of Maharashtra,
Nagpur Zonal Office, Mahabank
Bhavan, Munje Chowk, Sitabuldi,
Nagpur-12.

.... **PETITIONERS**

VERSUS

- 1) Appellate Authority Under the
Payment of Gratuity Act, 1972 &
Deputy Chief Labour Commissioner
(C) CGO Complex, Seminary Hills,
Nagpur Pin – 440001.
- 2) Controlling Authority Under the
Payment of Gratuity Act, 1972 &
Assistant Labour Commissioner (C)
CGO Complex, Seminary Hills,
Nagpur Pin-440001.
- 3) Rohit s/o Ambadas Dhakate (Dead),
through his legal heirs (Wife)
Smt. Pranita wd/o Rohit Dhakate,
R/o Flat No.401, Neel-1, Neel Gagan
Apartment, Hudkeshwar, Nagpur-440034.

.... **RESPONDENTS**

Mr. R.N. Sen, Counsel for the petitioners,
Ms. Sushma, Counsel for respondents 1 and 2,
Mr. Rajendra Parate & Mr. A.S. Ghawde, Counsel for respondent 3.

CORAM : ROHIT B. DEO, J.

DATED : 8th APRIL, 2022

ORAL JUDGMENT :

Heard. **Rule.** Rule is made returnable forthwith. With consent, the petition is heard finally.

2. The petitioners, who shall be collectively referred to as the employer, are assailing the order dated 24-2-2021 rendered by respondent 1-which is the appellate authority under the Payment of Gratuity Act, 1972 (Act) in Appeal N-48(03)/2020-PGA whereby the order dated 23-7-2020 passed by the controlling authority under the Act, which order directs the employer to pay respondent 3-employee gratuity of Rs.6,83,077/- (Rupees Six Lax Eighty Three Thousand Seventy Seven) with interest, is confirmed.

3. The short submission of the learned Counsel for the employer Mr. R.N. Sen is that due to the misconduct committed, the employer was put to loss of Rs.63,94,000/- (Rupees Sixty Three Lac Ninety Four Thousand) and the misconduct constitutes offence involving moral

turpitude and, therefore, the employer will be entitled to forfeit the gratuity.

4. The learned Counsel for respondents 1 and 2 and the learned Counsel for respondent 3-employee support the order impugned. It is pointed out that the gratuity is forfeited without issuing show cause notice to the employee. The next submission of the learned Counsel for the respondents is that in view of the decision of the Hon'ble Supreme Court in *Union Bank of India and Others vs. C.G. Ajay Babu and Another, (2018) 9 SCC 529*, gratuity cannot be forfeited on the premise that the misconduct constitutes an offence involving moral turpitude unless the employee is put on trial in the criminal court and is convicted.

5. Section 4 of the Act reads thus :

“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.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of [an employee who is employed in a seasonal establishment and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days' wages for each season.

Explanation: In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

(3) The amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award

or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1), -

(a) the gratuity of an employee, whose services have been terminated for any act, wilful 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.”

6. In *Union Bank of India and Others v. C.G. Ajay Babu and Another*, the Hon’ble Supreme Court rejected a similar submission emphasizing that Section 4(6)(b)(ii) of the Act would apply and permit forfeiture of gratuity only if the employee is convicted for an offence involving moral turpitude by a Court of competent jurisdiction.

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 15-7-2015 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.

8. It would be apposite to notice paragraphs 15, 16 and 17 in *Union Bank of India and Others v. C.G. Ajay Babu and Another*, which read thus :

“15. Under sub-Section (6)(a), also the gratuity can be forfeited 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 sub-section (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.

16. “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” (Section 3(38)).

17. 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 subsection (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.”

9. *Union Bank of India and Others v. C.G. Ajay Babu and Another* follows the earlier decision of the Hon’ble Supreme Court in ***Jaswant Singh Gill v. Bharat Coking Coal Ltd. and Others, (2007) 1 SCC 663.*** Jaswant Singh Gill came to be compulsorily retired from the services of Bharat Coking Coal Limited pursuant to departmental enquiry in which the charge proved was that Jaswant Singh Gill had a major role in causing the shortages in the coal stock and conniving with the measurement team in concealing the shortages. Jaswant Singh Gill’s gratuity was forfeited. Paragraph 13 in *Jaswant Singh Gill v. Bharat Coking Coal Ltd. and Others* emphasizes that it would be on conviction for an offence involving moral turpitude, that Section 4(6)(b)(ii) of the

Act will be attracted.

10. In view of the articulation of the Hon'ble Supreme Court in *Jaswant Singh Gill v. Bharat Coking Coal Ltd. and Others* and *Union Bank of India and Others v. C.G. Ajay Babu and Another*, the petition is sans merit.

11. The petition is dismissed with no order as to costs.

JUDGE

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