

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

WRIT PETITION NO. 2535 OF 2021

The Sub Area Manager,
Western Coalfields Ltd., Sasti Sub Area,
Post – Sasti, Tahsil – Rajura, District -
Chandrapur.

.... **PETITIONER**

VERSUS

- 1) Appellate Authority under P.G. Act,
1972 and Deputy Chief Labour
Commissioner (Central), Nagpur.
- 2) Controlling Authority under the Payment
of Gratuity Act, 1972 & Assistant Labour
Commissioner (Central), Chandrapur.
- 3) Ratan Kantaram Sardar,
Occupation – Labour,
R/o. C/o. India Earth Movers, Shankar
Nagar, Bangali Camp, Bypass Road,
Chandrapur (M.S.).

.... **RESPONDENTS**

Mr. A.M. Ghare, Counsel for the petitioner,
None for respondents 1 and 2,
Mr. D.P. Bhongade, Counsel for respondent 3.

CORAM : ROHIT B. DEO, J.
DATED : 3rd JANUARY, 2022

ORAL JUDGMENT :

Petitioner is assailing the order dated 09-6-2020 rendered by the
Assistant Labour Commissioner (Central), Chandrapur and the

Controlling Authority under the Payment of Gratuity Act, 1972 (Act) whereby respondent 3-Mr. Ratan Kantaram Sardar is held entitled to receive gratuity in the sum of Rs.10,00,000/- (Rupees Ten Lac) along with simple interest at the rate of 10% with effect from 15-12-2017 till the actual payment, and the order dated 26-2-2021 rendered by the Deputy Chief Labour Commissioner (Central), Nagpur and the Appellate Authority under the Act whereby the appeal preferred by the petitioner challenging the decision of the Controlling Authority came to be dismissed.

2. Shorn of unnecessary details, the relevant facts are thus :

- (i) Respondent 3 joined the services of Western Coalfields (WCL) on 17-5-1990.
- (ii) Respondent 3 was served with charge-sheet dated 16-7-2017 alleging commission of misconduct under Clauses 26.1 and 26.22 of the Standing Orders. The gravamen of the charge is “misappropriation of money”.
- (iii) The management contends that it was pursuant to validly conducted departmental enquiry, that respondent 3 came to be dismissed from service vide order dated 15-12-2017 issued by the Disciplinary Authority.
- (iv) The competent authority issued notice dated 18-12-2017 to the

dismissed employee proposing to forfeit the gratuity on the premise that the proved misconduct falls within the category “moral turpitude”.

- (v) The dismissed employee filed application in Form “N” dated 02-1-2018 before the Controlling Authority seeking appropriate directions to the management to pay the gratuity.
- (vi) The petitioner contended, opposing the claim for payment of gratuity, that since the dismissal of the employee was on the ground of proved misconduct, which also constitutes offence involving moral turpitude, gratuity is not payable.
- (vii) The submission of the management that gratuity is not payable in view of the nature of the misconduct, did not find favour either with the Controlling Authority or then with the Appellate Authority.

3. At the very outset, the learned Counsel for the petitioner Mr. A.M. Ghare fairly invites my attention to the judgment of a learned Judge of this Court in Writ Petition 6006/2016 which repels the very submission canvassed by the petitioner in the present petition. Mr. A.M. Ghare would submit that since the judgment in Writ Petition 6006/2016 is assailed before the Hon’ble Supreme Court in Special Leave to Appeal (C) 10088/2020 and notice is issued, the hearing be

adjourned. I am not inclined to adjourn the hearing, in view of the fact that the Hon'ble Supreme Court has not stayed the judgment in Writ Petition 6006/2016 and the judgment of the learned Single Judge, in any event, follows the judgment of the Hon'ble Supreme Court in ***Union Bank of India and Others vs. C.G. Ajay Babu and Another, (2018) 9 SCC 529.***

4. 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.”

5. Mr. A.M. Ghare would submit that since the employee is dismissed for proved misconduct of misappropriation of amount, Section 4(6)(b)(ii) of the Act would come into play since the misconduct constitutes an offence involving moral turpitude.

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. 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 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.”*

8. *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.

9. 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.

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

JUDGE

Digitally signed by PRAFULLA
MANOHARRAO ADGOKAR
Signing Date: 09.02.2022 17:30

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