



W.P. No.1561 of 2018

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 16.09.2022

CORAM:

**THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE**

**W.P. No.1561 of 2018**

**and**

**W.M.P. Nos.32144 and 1965 of 2018**

M/s.Indian Overseas Bank,  
Rep. By its the General Manager,  
Personnel & Administration Dept.,  
Central Office,  
763, Anna Salai,  
Chennai – 600 002.

...Petitioner

vs.

1. The Appellate Authority under the  
Payment of Gratuity Act, 1972 and  
Dy. Chief Labour Commissioner (Central),  
Chennai  
No.26,  
IIIrd Block,  
5<sup>th</sup> Floor,  
Shasthri Bhavan,  
Haddows Road,  
Chennai – 600 006.

2. Controlling Authority under the Payment of  
Gratuity Act, 1972 and regional labour Commissioner  
(Central), Madurai,  
New No.5, Old No.1-A (II Floor),  
Lady Doak college road,  
Chinna Chokkikulam,  
Madurai – 625 002.

3. N.Balagurusamy

...Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records in relation to the impugned order dated 30.11.2017 of the first respondent passed in G.A. No.8/17, confirming the impugned Order dated 6.12.2016 passed by the Second respondent in Gratuity Application No.167/2015 and quash the same.

For petitioner : Ms.S.Rajeni Ramadoss  
For respondents : R1 & R2 – No appearance  
Mr.V.Sivaraman for R3

### **ORDER**

This writ petition has been filed challenging the order of the Appellate Authority under the Payment of Gratuity Act, 1972, dated 30.11.2017 which has confirmed the order of the Controlling Authority dated 06.12.2016.

2. Under the impugned orders, the petitioner-bank was directed to pay Gratuity to the 3<sup>rd</sup> respondent based on his application filed under the Payment of Gratuity Act, 1972.

3. The 3<sup>rd</sup> respondent was an employee with the petitioner-bank. He has now attained superannuation. When he was an employee, charges were framed against him and disciplinary proceedings were initiated by the petitioner-bank.



4. The following charges were framed against the 3<sup>rd</sup> respondent by the petitioner-bank :-

*a. You had dishonestly and fraudulently transferred amounts on various dates between 8.8.2008 and 1.12.2008 aggregating to Rs.4,22,950/- from SB account No.1463 of Ms.K.Janaki to SB accounts standing in the names of your friends and relatives, as per Annexure A.*

*b. You had transferred the amounts fraudulently after taking printouts/completion of the daybook and before the day and without preparing any vouchers and thereby concealed your fraudulent acts.*

*c. You had misutilised the password of Mr.S.A. Kannan, SCA of the branch to carry out your fraudulent transactions.*

*You had thus caused wrongful loss to the account holder Ms.K.Janaki to the tune of Rs.4,22,950/- and wrongful gain to your relatives and friends to that extent.*

5. The Disciplinary Authority after holding a proper enquiry dismissed the 3<sup>rd</sup> respondent from service vide its order dated 30.11.2010. The 3<sup>rd</sup> respondent has also preferred an appeal before the Appellate Authority as against the dismissal and the Appellate Authority by its order dated 02.02.2011 also confirmed the findings of the Disciplinary Authority. Thereafter, the order of the Appellate Authority dated 02.02.2011 has not been challenged by the 3<sup>rd</sup> respondent and the findings of the Disciplinary Authority, dated 30.11.2010 and the



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Appellate Authority dated 02.02.2011 has admittedly attained finality.

The charges levelled against the 3<sup>rd</sup> respondent have been proved.

6. The Appellate Authority by its order dated 02.02.2011 confirmed the findings of the Disciplinary Authority, dated 30.11.2010. The 3<sup>rd</sup> respondent has filed an application before the Controlling Authority under the Payment of Gratuity Act, 1972 seeking for payment of his gratuity. Before the Controlling Authority, the petitioner-bank had raised a preliminary issue of limitation as according to them, the application submitted by the 3<sup>rd</sup> respondent seeking for Gratuity is barred by the law of limitation in view of Rule 10 of the The Payment of Gratuity(Central) Rules, 1972, which prescribes 90 days period and in case, if there is any delay, sufficient reasons have to be shown. According to them, without seeking condonation of delay, the petitioner has filed the application beyond the prescribed period and therefore, the application filed by the 3<sup>rd</sup> respondent seeking for payment of Gratuity is barred by limitation. However, the Controlling Authority by its order dated 06.12.2016 rejected the contention of the petitioner and allowed the application filed by the 3<sup>rd</sup> respondent and directed the petitioner-bank to pay Gratuity to him. Apart from the defence of limitation raised by the petitioner, they have also raised a plea that having caused loss to



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the bank(petitioner), the 3<sup>rd</sup> respondent is not entitled for any Gratuity.

The said contention is also rejected by the 2<sup>nd</sup> respondent, the Controlling Authority by its order dated 06.12.2016. Aggrieved by the order dated 06.12.2016 of the Controlling Authority, the petitioner filed a statutory appeal under the Payment of Gratuity Act, 1972 before the 1<sup>st</sup> respondent on 01.04.2017.

7. The 1<sup>st</sup> respondent, who is the Appellate Authority also confirmed the findings of the 2<sup>nd</sup> respondent dated 06.12.2016 by its order dated 30.11.2017. Aggrieved by the said order, the petitioner-bank has filed this writ petition.

8. A counter affidavit has been filed by the 3<sup>rd</sup> respondent denying the contentions of the petitioner, wherein he has contended as follows :-

a) The petitioner-bank neither issued any notice to him as required under Section 4(6) for forfeiture of gratuity nor deposited the amount of gratuity within the stipulated time before the 2<sup>nd</sup> respondent, Controlling Authority in terms of Section 7(4) (a) of the Act.

b) There is no provision in the Payment of Gratuity Act, 1972 prescribing any time limit for claiming gratuity before the Controlling Authority.



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c) The employer can deny payment of gratuity only on such contingencies stipulated in Section 4(6) of the Payment of Gratuity Act, 1972, and for doing so, the employer is bound to issue a show cause notice proposing the same to the employee.

9. Heard Ms.S. Rajeni Ramadoss, learned counsel for the petitioner, Mr.V. Sivaraman, learned counsel for the 3<sup>rd</sup> respondent.

**Discussion :**

10. Section 4 of the Payment of Gratuity Act, 1972 reads as follows:-

**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,
- (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 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 minor, the share of such minor, shall be deposited with the Controlling Authority who shall invest the same for the benefit of



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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].

\* The Central Government hereby specifies that the amount of gratuity payable to an employee under the said Act shall not exceed twenty lakh rupees, vide S.O. 1420(E), dated 29-5-2018.

(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



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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 (i),-

(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.

11. It is made clear from the Sub Section 6 of Section 4 of the Payment of Gratuity Act, 1972 that 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.

12. In the case on hand, the 3<sup>rd</sup> respondent has been dismissed from service after he was proved guilty of the following charges.



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a) A sum of Rs.4,22,950/- has been transferred dishonestly and fraudulently by the 3<sup>rd</sup> respondent, who was the Clerk in the petitioner- bank on various dates between 08.08.2008 and 1.12.2008 from SB Account No.1463 of Ms.K.Janaki to SB accounts standing in the names of his friends and relatives.

b) The 3<sup>rd</sup> respondent has also transferred the amounts fraudulently after taking printouts / completion of daybook and before the day end without preparing any vouchers and thereby concealed his fraudulent acts.

c) He has also misutilised the password of Mr.S.A.Kannan, SCA of the branch to carry out his fraudulent transactions.

d) Thus, the 3<sup>rd</sup> respondent caused wrongful loss to the account holder Ms.K.Janaki to the tune of Rs.4,22,950/- and gave wrongful gain to his relatives and friends to that extent.

13. The findings against the 3<sup>rd</sup> respondent rendered by the Enquiry Officer in his report dated 08.10.2010 is accepted by the Disciplinary Authority by its order dated 30.11.2010 and also confirmed by the Appellate Authority on 02.02.2011. The orders of the Disciplinary



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Authority as well as the Appellate Authority have attained finality as the same have not been challenged by the 3<sup>rd</sup> respondent, though the learned counsel for the 3<sup>rd</sup> respondent would submit that only due to 3<sup>rd</sup> respondent's superannuation, the said order has not been challenged. This Court is of the considered view that it cannot be a ground for proving innocence of the charges framed and proved against the 3<sup>rd</sup> respondent. Therefore, the contention of the learned counsel for the petitioner that the order of the Appellate Authority, dated 02.02.2011 dismissing the 3<sup>rd</sup> respondent from service was not challenged due to the 3<sup>rd</sup> respondent's superannuation is rejected by this Court.

14. Since the findings of the Enquiry Officer has attained finality, it is proved by the petitioner-bank that they have suffered a loss of Rs.4,22,950/- on account of the dishonest and the fraudulent act of the 3<sup>rd</sup> respondent. Therefore, Section 4(6) of the Payment of Gratuity Act, 1972 gets attracted to the facts of the instant case. The Gratuity amount payable to the 3<sup>rd</sup> respondent, if he had retired from service in the normal course will be approximately the same amount as according to the petitioner-bank, if the 3<sup>rd</sup> respondent is eligible to receive the Gratuity, he would have been entitled only to Rs.3,78,371.25, as seen from the affidavit filed in support of this writ petition.



15. Therefore, the petitioner ought to have been exempted from payment of the Gratuity to the 3<sup>rd</sup> respondent as the act of the 3<sup>rd</sup> respondent has caused loss to the petitioner-bank to a sum of Rs.4,22,950/-, as per the provisions of the Section 4(6) of the Payment of Gratuity Act, 1972. The authorities viz., the 2<sup>nd</sup> respondent in its order dated 06.12.2016 as well as the 1<sup>st</sup> respondent in its order dated 30.11.2017, which are impugned in this writ petition have totally ignored Section 4(6) of the Payment of Gratuity Act, 1972 and by total non application of mind to the fact that there was indeed a loss caused to the petitioner-bank has directed the petitioner erroneously to pay the Gratuity to the 3<sup>rd</sup> respondent though he is not legally eligible.

16. Insofar as the limitation issue is concerned, which was raised as a preliminary issue by the petitioner-bank before the Controlling Authority viz., the 2<sup>nd</sup> respondent, the same has also not been considered in the light of Rule 10 of the Payment of Gratuity (Central) Rules, 1972, which reads as follows :-

***Section 10(1) in The Payment of Gratuity (Central) Rules, 1972***

*(1) If an employer—*

*(i) refuses to accept a nomination or to entertain an application sought to be filed under rule 7, or*

*(ii) issues a notice under sub-rule (1) of rule 8 either specifying an amount of gratuity which is considered by the applicant less than what is payable or rejecting eligibility to payment of gratuity, or*



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*(iii) having received an application under rule 7 fails to issue any notice as required under rule 8 within the time specified therein, the claimant employee, nominee or legal heir, as the case may be, may, within ninety days of the occurrence of the cause for the application, apply in Form 'N' to the controlling authority for issuing a direction under sub-section (4) of section 7 with as many extra copies as are the opposite party: Provided that the controlling authority may accept any application under this sub-rule, on sufficient cause being shown by the applicant, after the expiry of the specified period.*

17. As seen from the aforesaid Rule 10(1), it is clear that the 3<sup>rd</sup> respondent ought to have filed an application seeking for payment of Gratuity, within 90 days of the occurrence of the cause for the application and in case, there is a delay only after he shows sufficient cause for the said delay, the Controlling Authority can entertain his application seeking for payment of Gratuity.

18. In the case on hand, the 3<sup>rd</sup> respondent admittedly did not file any application seeking for condonation of delay as required under Rule 10(1) proviso of the Payment of Gratuity (Central) Rules, 1972. Admittedly, the application was filed only on 26.11.2014, whereas the 3<sup>rd</sup> respondent was dismissed from service by the Disciplinary Authority's order dated 30.11.2010, which was confirmed by the Appellate Authority on 02.02.2011 much beyond the prescribed period. By total non application of mind to Rule 10(1) of the Payment of Gratuity (Central) Rules, 1972, the 2<sup>nd</sup> respondent by its order dated 06.12.2016 and the 1<sup>st</sup>



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respondent(Appellate Authority) by its order dated 30.11.2017 has held the application filed by the 3<sup>rd</sup> respondent seeking for Gratuity is well within the prescribed period of limitation, which is an erroneous finding.

19. The learned counsel for the 3<sup>rd</sup> respondent relied upon the following authorities in support of his submissions that being a Welfare legislation and the petitioner-bank having not suffered any loss the impugned orders are legally correct.

*a. Permali Wallace Ltd., Bhopal vs. State of Madhya Pradesh and others reported in 1996 MPLJ 262 (MP) ;*

*b. J.B. Micheal D'Souza vs. Appellate Authority under Payment of Gratuity Act, Bangalore and others reported in 2001(4) LLN 582 (Kar);*

*c. Krishnaveni Textile Mills vs. Asst. Labour Commissioner (Central), Madras and others reported in 2002 (4) LLN 363 (Mad);*

*d. Hindalco Industries Ltd., vs. Appellate Authority under the Payment of Gratuity Act, Kanpur and others reported in 2004 (3) LLN 106 (All) ;*

*e. Baroda Traders Co.op Bank Ltd. vs. Mahendrabhai B. Shah reported in 2006 (2) LLJ 500 (Guj);*

*f. Union of India vs. K.R. Ajwalia, reported in 2006 (1) LLN 934 (Guj);*

*g. Jaswant Singh Gill vs. Bharat Coking Coal Ltd. And others reported in (2007) 1 SCC 663*



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*h. Union of India and others vs. C.G. Ajay Babu and another reported in 2018 9 SCC 529.*

20. The decisions relied upon by the learned counsel for the 3<sup>rd</sup> respondent referred to supra has no bearing to the facts of the instant case. The question of issuance of notice to the 3<sup>rd</sup> respondent before forfeiture of Gratuity amount will not arise in view of the fact that the finding of the Disciplinary Authority dismissing the 3<sup>rd</sup> respondent from service has attained finality. The charges framed against the 3<sup>rd</sup> respondent was that he has caused loss to the petitioner bank to a sum of Rs.4,22,950/- on account of the 3<sup>rd</sup> respondent's dishonest and fraudulent transfer of the money to various account. When the charges have been proved and the findings have attained finality, the question of issuance of notice to the 3<sup>rd</sup> respondent prior to forfeiture will not arise. All the decisions relied upon by the learned counsel for the 3<sup>rd</sup> respondent did not relate to the facts of this case. In those cases, the findings with regard to fraudulent and dishonest act of the delinquent was not proved. Just because the Payment of Gratuity Act, is a welfare legislation, the 3<sup>rd</sup> respondent cannot as a matter of right claim Gratuity that too when Section 4(6) of the Payment of Gratuity Act, 1972, makes it clear that the petitioner has a right to forfeit the Gratuity amount in case, they have



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suffered any loss due to the dishonest and fraudulent act of the 3<sup>rd</sup> respondent. Since the charges against the 3<sup>rd</sup> respondent have been proved and the findings have attained finality, the 3<sup>rd</sup> respondent cannot contend that the Payment of Gratuity Act, being a welfare legislation, necessarily he has to be paid the Gratuity amount.

21. For the foregoing reasons, the impugned orders, dated 06.12.2016 passed by the 2<sup>nd</sup> respondent which has been confirmed by the 1<sup>st</sup> respondent /Appellate Authority by its order dated 30.11.2017 have to be quashed and the writ petition will have to be allowed. Accordingly this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

**16.09.2022**

Index: Yes/No  
Internet: Yes/No  
Speaking Order/Non-Speaking Order  
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To  
1. The Appellate Authority under the  
Payment of Gratuity Act, 1972 and



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Dy. Chief Labour Commissioner (Central),  
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**ABDUL QUDDHOSE, J.**

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