**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP No.8917 of 2017 (O&M)
DATE OF DECISION: 10th AUGUST, 2022

Oriental Bank of Commerce, Corporate Office, through DGM (HRD), OBC

…. Petitioner

Versus

Rajeev Gupta (since deceased) through his LRs and others

…. Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. R.N. Lohan, Advocate,
for the petitioner.

Mr. Yogesh Gupta, Advocate
for respondent No.1.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing of order dated 20.02.2017 (Annexure P-3) passed by respondent No.2 and orders dated 29.07.2016 (Annexure P-1) passed by respondent No.3, whereby the petitioner has been directed to pay gratuity to respondent No.1.

The brief facts, as involved in the present case, are that respondent No.1, who is now represented through LRs, was appointed as Peon with the petitioner-Bank on 29.12.1987. He continued to work as such. However, an FIR was registered against him under Sections 420, 468, 471 read with Section 120-B of Indian Penal Code with the CBI;

vide RC No.12 dated 28.11.2001. On completion of the trial, the respondent No.1 was convicted by the trial Court, vide judgment and order dated 27.01.2006. Pursuant to the conviction, the petitioner-Bank had terminated the service of the respondent-workman vide order dated 28.02.2006, statedly, in terms of Section 10 of Banking Regulations Act read with Para 12.2 of the Bipartite Settlement. The conviction was even upheld by the Appellate Court vide judgment dated 31.01.2012. However, the respondent-workman was released on probation on the ground that he was juvenile on the date when the alleged offence was committed. The petitioner-Bank had issued a show cause notice to the respondent-workman on 09.12.2013 seeking explanation as to why the amount of gratuity be not forfeited on account of his conviction in the said criminal case. The respondent-workman had filed reply to the said show cause notice. Finding the reply to be not satisfactory, the petitioner-Bank had passed the order dated 09.01.2014 to forfeit the amount of gratuity. However, the respondent-workman had approached the Controlling Authority under the Payment of Gratuity Act, 1972 (for short, the Act). The Controlling Authority allowed the application filed by the respondent-workman vide order dated 29.07.2016 and held that since there was no allegation of loss caused to the Bank by the respondent-workman, therefore, the petitioner-Bank could not have forfeited the gratuity of the respondent-workman. Moreover, it was held that since there was a Bipartite Settlement between the petitioner-Bank and the employees of the Bank, under which the gratuity could have been forfeited only in case of financial loss caused by misconduct of the employee. In terms of Section 4 (5) of the Act, the beneficial provision would protect the interest of the respondent-workman. Feeling aggrieved against the said order, the petitioner-Bank had filed the statutory appeal. However, that statutory appeal was also dismissed vide order dated 20.02.2017. It is against these orders that the petitioner-Bank has filed the present petition.

Arguing the case, learned counsel for the petitioner-Bank has submitted that the case of the petitioner is covered under Section 4 (6) (b) (ii) of the Act. As per the said section, the petitioner-Bank is entitled to forfeit the gratuity payable to an employee in case of conviction of the employee for offences involving moral turpitude committed in the course of employment. Hence, the petitioner-Bank had rightly relied upon the said provisions and had forfeited the gratuity amount of the respondent-workman. Carrying forward the arguments learned counsel has submitted that since the employment was obtained by the respondent-workman by basing his claim of eligibility on the fraudulent document relating to date of birth, therefore, the said act of the respondent-workman shall be deemed to have been committed in the course of employment only. Employment is dependent upon and relatable to conditions of eligibility. Hence, the Controlling Authority has gone wrong in law in interpreted Section 14 of the Act and infusing the provision of Bipartite Settlement; by ignoring the non-obstinate clause used in Section 4(6) of the Act.

On the other hand, learned counsel for respondent No.1 has submitted that it is not in dispute that the respondent-workman was convicted by the criminal Court for the offences mentioned above. However, the alleged offences were not relating of any act done by the respondent-workman in the course of his employment. The alleged offences related to a fact which existed before the respondent-workman had entered into the employment with the petitioner-Bank. Therefore, the Section 4 (6) (b) (ii) is not attracted in the case. Still further, the counsel has submitted that sub Section 5 of Section 4 of the Act specifically provides that if there are any other better terms available to the workman qua payment of gratuity, then the provisions in the Act are not to be read in derogation of that provision. In the present case, there was a Bipartite Settlement between the petitioner-Bank and its employees; which provided for forfeiture of gratuity only in specified circumstances. The forfeiture of the gratuity on the basis of conviction in a criminal case was not made a ground in the Bipartite Settlement. Hence, the respondent-workman would be governed by the beneficial provisions as contained in the Bipartite Settlement. Therefore, the Controlling Authority and the Appellate Authority has rightly passed the orders; awarding gratuity amount to the respondent-workman. The counsel has further submitted that, moreover, the respondent-workman had rendered 18 years of service without there being any complaint during this duration. Therefore, the respondent-workman was fully entitled to the amount of gratuity as has been granted by the Controlling Authority, as upheld by the Appellate Authority under the Act.

Before proceeding further, it is apposite to have reference to the relevant provisions as contained in Section 4 of the Act, which are as under:-

> **"Section: 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 riot 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."

"Para 12.2 of Bipartite Settlement:-

There will be no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only"

Having heard the counsel for both the parties, this Court does not find any substance in the arguments raised by the counsel for the petitioner-Bank. It is obvious that the provisions as contained in Section 4 (6) (b) (ii) of the Act contemplates forfeiture of gratuity of an employee on termination of service for misconduct constituting offences involving moral turpitude. However, the pre-condition stipulated in the said section is that such an offence should have been committed by the employee in the course of his employment. In this case, undisputedly, the alleged conduct of the employee, which led to his conviction, happened even before the respondent-workman had entered into the formal employment of the petitioner-Bank. Although the course of employment is not necessarily the working hour in the office nor the same can be restricted to the premises of ordinary working of an employee, however, for initiating the course of employment the entry into the employment is a pre-condition. Hence, at the time when the alleged offence was committed by the respondent-workman, there was not even employer-employee relationship between the petitioner-Bank and the respondent-workman. Therefore, the said offence cannot be deemed to have been committed by the respondent-workman in the course of employment. Anything done before the entry into the employment cannot be deemed to be an act done in the course of employment, and therefore, the conviction on such a conduct cannot be made a ground for forfeiture of the gratuity amount by invoking powers under Section 4(6) (b) (ii) of the Act.

Still further, there is another ancillary argument in support of the respondent-workman. Although the provisions of the Act are statutory in nature and, therefore, are binding upon the parties to whom the Act is applicable, however, the said Act itself curves out exception in favour of the better conditions regarding payment of gratuity available to a workman under any other provisions of law. Sub section (5) of Section 4 of the Act contains a specific provision to this effect. Taking shelter under this provision, learned counsel for the respondent-workman has rightly relied upon the Bipartite Settlement between the petitioner-Bank and its employees. Despite the fact that the Act contained provisions for forfeiture of the gratuity by the employer in the case of conviction of an employee for the offences involving moral turpitude, however, by entering into the Bipartite Settlement, the petitioner-Bank has waived-off its authority as available under Section 4 (6) beyond what is contained in the Bipartite Settlement, as such. Therefore, the terms as contained in the Bipartite Settlement are, obviously, better than the terms available to the workman under the Act. Hence, the terms as contained in the Bipartite Settlement shall have the governing effect qua the payment or forfeiture of the gratuity. Only that reasoning has been advanced by the authorities under the Act; while passing the orders impugned in the present petition.

In view of the above, no fault could be found with the orders passed by the Statutory Authorities. Accordingly, finding no merit in the present petition, the same is dismissed.

The pending miscellaneous application, if any, is also disposed of as such.

10th AUGUST, 2022 | **(RAJBIR SEHRAWAT)**
'sandeep' | **JUDGE**

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*