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

LPA No. 504 of 2017 (O & M)
Date of decision: 22.08.2022

R.C. Sidhu ....Appellant(s)

Versus

Canara Bank and others ....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr. Ranvir S. Chauhan, Advocate,
for the appellant.

Mr. Nitin Gupta, Advocate,
for respondent Nos.1 to 3.

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G.S.SANDHAWALIA, J. (Oral)

The present appeal filed by the appellant-employee is directed against the judgment of the learned Single Judge passed in CWP No. 1629 of 2011, R.C. Sidhu vs. Canara Bank and others decided on 04.10.2016. The appellant is aggrieved against the fact that the finding was recorded that since the charges were proved against him the benefit of gratuity could be withheld in view of the judgment of Full Bench of this Court in ***UCO Bank and others vs. Anju Mathur vs. 2013 (3) SCT 272.*** The same was on the ground that since a show cause notice had been issued that the appellant had caused loss to the tune of Rs.244.05 lakhs to the bank and the same was considered and the impugned order was passed. Qua the other portions, regarding leave encashment, the writ petition had been allowed and, therefore, the appellant-employee has no grouse as such and is only aggrieved against the upholding of the order dated 17.02.2011 (Annexure P-21) whereby gratuity was withheld.

We are of the considered opinion that it escaped the notice of the learned Single Judge that the order passed as such by the Appellate Authority can be termed as a non-speaking order and the reply of the appellant-writ petitioner was not kept into consideration while passing the order of forfeiting the gratuity. The relevant part of the order reads thus:-

> *"You were issued with the Chargesheet No. IRS UP JLC DC CS 06/08 dated 18.7.2008 for the lapses observed on your path while working at Jammu Branch which has exposed the bank a huge financial loss of Rs.244.05 lakhs and punishment of "Removal from service, which shall not be a disqualification for future employment" as imposed on you vide Proceedings No. IRS UP JLC 3580 2009 dated 31.7.2009, which has been modified as "Compulsory Retirement" vide proceedings of the Appellate Authority dated 21.9.2010.*
>
> *In this connection, we have vide our letter PWPM 8075 226 DK dated 3.1.2011 called upon you to show cause within seven days from the date of receipt of the letter, as to why the Bank should not forfeit the Gratuity payable to you. In this regard, the reply submitted by you vide your letter dated 27.1.2011 is neither convincing nor satisfactory. On placing the matter before the "competent authority. It has been ordered to forfeit the gratuity amount payable to you. As such the Gratuity payable to you, stands forfeited."*

It is not disputed that initially, an order of removal from service dated 31.07.2009 was passed, which shall not be a disqualification for future employment. The appellant had filed an appeal, which was allowed by the Appellate Authority keeping in view the long service rendered by him and the order of removal was converted into the order of compulsory retirement by the Appellate Authority. A show cause notice dated 03.01.2011 (Annexure P-19) was served upon the employee wherein, he was put to notice that while working at Jammu Branch, he had exposed the bank to a huge financial loss of Rs.244.05 lakhs. Since his order of removal from service had been converted into an order of compulsory retirement on account of the financial loss to the tune of Rs.244.05 lakhs to the bank, it was proposed to forfeit the gratuity amount payable to him in terms of provisions of Section 4(6) of the Payment of Gratuity Act, 1972.

In response to the said show cause notice, the appellant gave a reply that it was a baseless allegation for causing financial loss and that the accounts had full value securities available by way of perfect mortgage put through by branch based upon valuation and legal scrutiny report submitted by the bank's panel valuer and Advocate. Rather, he gave example that he had never caused any loss to the bank and brought a lot of business and profit while being posted with the bank and he had worked sincerely and honestly and that he had 30 years of commendable and active service and the retirement dues are his life and right.

The impugned order had then been passed which has been reproduced above. The said order apparently does not meet the requirement of a speaking order, which an administrative order is required to be as laid down by the Apex Court in ***M/s. Kranti Associates Pvt. Ltd. and another vs. Sh. Masood Ahmed Khan and others, 2010 (4) RCR (Civil) 600.*** It is silent and not dealing with the aspect whether the property mortgaged could not be put to sale and whether the bank had actually suffered any loss.

Rather, the impugned order does not even quantify the amount of loss which the bank has suffered.

The learned Single Judge, though had relied upon the Full Bench judgment in *Anju Mathur's case (supra),* but has failed to consider this aspect and the situation therein also was similar wherein the matter was remanded by giving liberty to the bank to pass a fresh order. The relevant portion of *Anju Mathur's case (supra)* reads thus:-

> *"22. After considering these arguments, we find that argument of the learned counsel for the respondent has to prevail. We have gone through charge-sheet as well as enquiry report. No doubt, in the charge- sheet as many as 24 accounts are mentioned where the respondent had given loans or other financial accommodation either beyond her powers or without obtaining proper securities. That would show that certain accounts were overdrawn. Even the operation of these accounts was not satisfactory. However, whether the appellant-Bank ultimately suffered loss and what was the actual loss is not reflected. No doubt, the irregularities committed by the respondent may have exposed the Bank to such losses. However, that is entirely different from loss having been actually suffered by the bank. Even if some accounts became bad and the Bank had to file suits for recovery concerning those accounts against the defaulting parties, that would not automatically lead to the conclusion that the loss/damage has been suffered. It is possible that Bank is able to recover full money in those proceedings. Whether that happened in fact or not and whether loss is actually suffered or not is not discernible from either the charge-sheet or the enquiry*

report.

23. It is for this reason that it was incumbent upon the appellant-Bank to mention specifically about the actual loss having been suffered, if it suffered, in the show cause notice itself with particulars of that loss in order to enable the respondent to meet the same. That has not been done even in the final order. Though the figure of L 4 crores is given, in the final order, even that is not substantiated by giving particulars thereof. We are, therefore, of the opinion that the show cause notice or the final orders passed, forfeiting the gratuity, do not meet the legal requirements and have to be set aside.

24. The upshot of the aforesaid discussion would that though we disagree with the reasons given by the learned single Judge allowing the writ petition and also that Ashwani Kumar Sharma (supra) does not lay down correct law, insofar as present case is concerned, still the impugned order forfeiting the gratuity has to be set aside for the reasons given above. At the same time, since it is a procedural defect, liberty is given to the Bank to serve proper show cause notice indicating actual loss, if any, with particulars of the said loss and pass final orders after giving due opportunity of being heard to the respondent."

In such circumstances, the present appeal is allowed by setting aside the order dated 17.02.2011 (Annexure P-21). Liberty is given to the bank to pass a fresh order after hearing the appellant and in case it is found that no specific loss has been caused, the appellant shall be entitled for the benefit of gratuity alongwith interest @ 6% per annum from the date it was legally due. In case an adverse order is passed as such against the appellant, it will be open for him to challenge the same in accordance with law. The needful be done within a period of 3 months.

(G.S. SANDHAWALIA)
JUDGE

22.08.2022
shivani

(JAGMOHAN BANSAL)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No