

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24888 of 2018

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Rana Pratap Singh S/o Late Guirui Dayal Singh Resident of village- Uttar
Badi Tala Sursand Uttari, Police Station-Sursand, District- Sitamarhi-843331.

... .. Petitioner/s

Versus

1. The Uttar Bihar Gramin Bank Through Its Chairman and Ors
2. The Chairman-cum-Disciplinary Authority, Uttar Bihar Gramin Bank,
Kalambagh Chowk, Muzaffarpur.
3. The General Manager, Uttar Bihar Gramin Bank, Kalambagh Chowk,
Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gyan Prakash, Advocate
For the U.B.G.B. : Mr. Prabhakar Jha, Advocate
Mr. Shankar Kumar Jhalar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 25-04-2023

Heard Mr. Gyan Prakash, learned counsel
appearing on behalf of the petitioner and Mr. Prabhakar Jha,
learned counsel for the Uttar Bihar Gramin Bank.

2. Petitioner is aggrieved for non-payment of
gratuity and leave encashment and for entitlement of the same
he has filed the present writ petition for following relief(s):-

*“ I. For issuance of a writ in the nature
of certiorari for quashing letter No.
HO/DAD/10/17-18/No.272 dated 25.09.2017
issued by the General Manager, Uttar Bihar
Gramin Bank, Muzaffarpur by which he has denied
the payment of amount of petitioner's gratuity and*



earn leave holding him vicariously liable in the capacity of Branch Manager for having financial loss to the Bank, which is not only contrary to the punishment order dated 04.01.2012, Dismissal from Bank Service which shall ordinary be a disqualification for future employment in terms of Regulation 39(1)(b)(v) of Uttar Bihar Gramin Bank (Officers & Employees) Service Regulation, 2010 but also against the principle of nemo debet bis vexari and audi alterum partem.

II. For holding that once the Bank has awarded punishment to the petition through a departmental proceeding under Regulation 39(1)(b)(v) of Uttar Bihar Gramin Bank (Officers & Employees) Service Regulation, 2010 which is Dismissal from Bank service which shall ordinary be disqualification for future employment as the Disciplinary Authority or the Appellate Authority could not found any pecuniary loss to the Bank caused by the petitioner and now the General Manager of the Bank subsequently can not award any other punishment contrary to the punishment awarded by the Disciplinary Authority and affirmed by the Appellate Authority which amounts to violation of Article 20(2) of the Constitution of India.

III. For issuance of a writ of certiorari for quashing letter No. TBC/08/2015-16/281 dated 14.05.2015 issued by the Senior Manager, Post Retiral Benefit Department, Uttar Bihar Gramin Bank, Muzaffarpur wherein he hold that petitioner is not entitled for earn leave within the provision of Regulation 67 of Uttar Bihar Gramin Bank (Officers & Employees) Service Regulation, 2010.

IV. For issuance of order(s), direction (s) commanding the Respondents to make payment of amount of gratuity and earn leave as in departmental proceeding petitioner has not been punished for any pecuniary loss to the Bank by the Disciplinary Authority or by the Appellate Authority.

V. For any other reliefs for which the petitioner may find entitle to in the facts of the case.”



3. Learned counsel appearing on behalf of the petitioner informs this Court that the petitioner had earlier filed CWJC No. 8748 of 2014 in which he had sought following relief(s):-

"1. Direction/directions to the Respondents to make payment of Gratuity amount which has been withheld by the respondents without any rhyme or reason and also for passing a fresh order in the light of representation dated 30.01.2014 of the petitioner in which a representation he has clearly shown that utter discrimination has been meted out to him by the respondents."

4. While disposing of the said writ petition, this Court had made following observation:-

"8. In that view of the matter, this Court would find it difficult now to direct the authorities of the Bank to reconsider the representation of the petitioner which has already been rejected. Such action of the Bank in fact will never be interfered by this Court specially when the parties are bound by the interparte judgment as recorded above.

9. That would leave this Court to decide the issue of payment of Gratuity.

10. The submission of Mr. Roy in this regard is that even if the order of punishment, by way of dismissal of the petitioner from the service of the Bank, was passed that did not authorize the Bank to even deny the petitioner to pay amount of Gratuity. Learned counsel for the Bank, however, has referred to specific provision in the service rule of the Bank wherein it has been clearly laid down that in case of an employee of the Bank, if he is inflicted to punishment of dismissal from service, he would not be entitled for payment of



Gratuity. Thus, in view of the rules of the Bank, it will be difficult for this Court to direct for payment of Gratuity to the petitioner.

11. As with regard to the rest of the claim of the petitioner for payment of amount of Group Insurance and Leave Encashment, this Court can only observe that if the petitioner had contributed certain amount in the Group Insurance Scheme of the Bank such amount should be refunded to the petitioner; if no amount is recoverable from the petitioner, inasmuch as the learned counsel for the Bank has submitted that though the petitioner may be eligible for amount of Group Insurance and Leave Encashment but then there is an order of recovery of amount of loss sustained by the Bank from the petitioner.

12. Since, that order of punishment also regarding recovery has become final, this Court can only say that any amount of Group Insurance and/or Leave Encashment payable to the petitioner, will be made only after adjusting the amount of loss sustained by the Bank in terms of the order of punishment.

13. In that view of the matter, this Court would also direct the Bank to examine the claim of the petitioner for grant of Leave Encashment and Group Insurance strictly as per its own service law but whatever decision has to be taken in this regard, must be taken within a period of four months from the date of receipt of a copy of this order.”

5. Aggrieved by the said order, the petitioner had preferred Letter Patent Appeal No. 1229 of 2015 for setting aside the order of the learned Single Judge. The Division Bench after proper analysis of the relevant provision of Rule 72 of Uttar Bihar Gramin Bank (Officers & Employees) Service Regulation, 2010 (hereinafter referred to as ‘the Regulation’)



had passed the order by making following observation:-

“Therefore, we deem it appropriate to direct the respondent-Bank to pass an order as to whether the act of misconduct, the basis of dismissal of the appellant, has caused any financial loss to the Bank and to what extent. If the extent of financial loss is more than the amount of gratuity payable, then gratuity would not be payable. But, if the amount of financial loss is lesser than the amount of gratuity, the balance dues will be payable to the appellant.”

6. Against the aforesaid order of the Division Bench, the respondent- Bank had moved before the Hon’ble Supreme Court by filing Special Leave Petition (Civil) Diary No (s). 36183 of 2017, which was dismissed vide order dated 08.12.2017.

7. Mr. Gyan Prakash, learned counsel appearing on behalf of the petitioner submitted that the provision of the “Payment of Gratuity Act, 1972” (hereinafter referred to as ‘the Gratuity Act, 1972’) was not taken into consideration either by the learned Single Judge or by the Division Bench. The orders were passed taking into consideration the regulation of the bank with respect to the provision of gratuity and the alleged misconduct. Learned counsel further submitted that the petitioner will not enter into the legality or propriety of the order of the penalty, however, he submitted that the authority of the



bank has not acted upon in the manner prescribed under the regulation of the bank as well as provision of Section 4, particularly, sub-Section 5 and 6 of the Payment of Gratuity Act, 1972. He further submitted that Section 14 of the Act provides for the overriding effect over the regulation of the Bank so far as Regulation 72 is concerned would be relevant for the present case. The calculation chart as provided by the bank contained in Letter dated 25th September, 2017 is not in accordance with the provision of the Central Act. The provision of Sub-Section 5 and 6 of Section 4 of the Payment of Gratuity Act, 1972 mandates that before taking decision to forfeit the gratuity, minimum requirement is to issue show cause notice and the same having not been done, the action of the respondent- bank is against the statutory provision of the Act of 1972. The statutory requirement fasten upon the respondent- bank to quantify the financial loss, however, the punishment order dated 04.01.2012 does not quantify the said fact. This fact has also not been looked by the disciplinary authority and such lapses admittedly could not be pointed out at the time of hearing of CWJC No. 23383 of 2012 before the learned Single Judge as well as before the Division Bench which has affirmed the order dated 08.01.2013 passed in the writ petition bearing CWJC No. 23383



of 2012. The writ petition and the Letters Patent Appeal No. 752 of 2013 were dismissed.

8. In support of his contention, learned counsel has relied upon a judgment of Hon'ble Supreme Court in case of ***Union Bank of India and Ors v. C.G. Ajay Babu and Anr.*** reported in ***(2018) 9 SCC 529***. He submitted that instead of specific Regulation, the Union Bank of India has adopted The Payment of Gratuity Act, 1972. He further submitted that the Apex Court has, considering the fact that the termination of employee is for any act or wilful omission or negligence causing any damage or loss to employer or destruction of property belonging to employer, loss can be recovered from gratuity by way of forfeiture. The Apex Court after proper analysis of the bipartite settlement and the provision of Sub-Section 5 and 6 of Section 4 of the Payment of Gratuity Act, 1972 has laid down a law that forfeiture of gratuity is not automatic on dismissal from the service and it is subject to Sub-Section 5 and 6 of Section 4 of the Payment of Gratuity Act, 1972.

9. Learned counsel further supported his stand by placing reliance on a judgment/ order of a learned Single Judge of High Court of Chhattisgarh, Bilaspur dated 10.10.2022 passed in **WPS No. 503 of 2020** (***Siyaram Basanti vs.***



Chhattisgarh Rajya Gramin Bank and Ors.). In these backgrounds, learned counsel submitted that the action of the bank in not providing him opportunity before taking penal action is not sustainable in the eye of law and accordingly, seeks for quashing of Letter No. 272 dated 25th September, 2017 along with the chart quantifying the loss sustained by the bank.

10. Learned counsel further submitted that so far as payment of leave encashment is concerned, the same has been allowed by the learned Single Judge and the order of the learned Single Judge was finally affirmed by the Hon'ble Supreme Court. However, in spite of the specific order and representation made by the petitioner, the authorities have not made payment of leave encashment to the petitioner. For payment of leave encashment also learned counsel has relied upon paragraph nos. 17 and 19 of the judgment passed in case of *C.G. Ajaya Babu (supra)*.

11. *Per contra*, Mr. Praphakar Jha, learned counsel appearing on behalf of the respondent- Bank submitted that the petitioner has waived his right as contention and submission, which has been made before this Court with respect to the illegality committed by the Disciplinary Authority were not raised either before the learned Single Judge or before the



Division Bench when he had filed CWJC No. 23383 of 2012 and the Letters Patent Appeal No. 752 of 2013 wherein the order passed by the Disciplinary Authority was not interfered. Since the order of penalty has attained finality, no interference is required to be made by this Court in the present proceeding and the action of the respondent- Bank in withholding of gratuity is concerned cannot be interfered with at this stage.

12. He further submitted that Regulation 72 of Regulation 2010 as well as provision contained in Sub-Section 5 and 6 of Section 4 of the Payment of Gratuity Act, 1972 restrict the commissioning of offence involving moral turpitude only in the course of employment. The proviso to regulation 72 of the Regulation 2010 of the bank also stipulates in respect of a dismissed employee. The petitioner was holding the responsible post of Branch Manger of the respondent- bank. The charges were proved against him. He had been found to have disbursed a huge amount of Rs. 41 lacs as loan while he was on medical leave and the petitioner was inflicted a punishment of dismissal which do not entitle him for gratuity in terms of the order of this Court. The authorities have complied with the observation made by the Division Bench in Letters Patent Appeal No. 1229 of 2015 so far as financial loss to the bank and the extent of



gratuity payable has already been completed and a chart has been provided to the petitioner. It has been found that the amount of loss is much more than the amount of gratuity which is payable to the petitioner.

13. Learned counsel further submitted that so far as the payment of leave encashment is concerned, Rule 67 of the Regulation 2010 provides that all leave shall lapse on the death of an officer or employee or if he ceases to be in the service of the Bank. The provision being clear the petitioner is not entitled for leave encashment after his dismissal from the service. On the basis of above submission, learned counsel submitted that the writ petition is devoid of any merit and is fit to be dismissed.

14. Heard the parties.

15. The order of dismissal was challenged by the petitioner in CWJC No. 23383 of 2012 and the dismissal order was not interfered by this Court. Thereafter, the petitioner has come before this Court in CWJC No. 8748 of 2014 in which the petitioner had prayed for following relief(s):

"1. Direction/directions to the Respondents to make payment of Gratuity amount which has been withheld by the respondents without any rhyme or reason and also for passing a fresh order in the light of representation dated 30.01.2014 of the petitioner in which a representation he has clearly shown that utter discrimination has been meted out to him by



the respondents."

16. The said writ petition was disposed of vide order dated 17.03.2015 in which the learned Single Judge has passed *inter alia* following order after discussing the facts of the case:-

"....In that view of the matter, this Court would also direct the Bank to examine the claim of the petitioner for grant of Leave Encashment and Group Insurance strictly as per its own service law but whatever decision has to be taken in this regard, must be taken within a period of four months from the date of receipt of a copy of this order....."

17. Aggrieved by the order of the learned Single Judge, the petitioner had preferred Letters Patent Appeal No. 1229 of 2015 and the appeal of the petitioner was modified to the extent that the respondent- bank was required to pass an order as to whether the act of misconduct, the basis of dismissal of the appellant has caused any financial loss to the Bank and to what extent exact financial loss has been found either more than the amount of gratuity payable, then gratuity or less than the loss. The Act provides that if financial loss is lesser than the amount of gratuity, the balance dues is required to be payable to the appellant.

19. The question which has arisen in the present



writ petition is whether, while invoking Rule 39(1)(b)(v) and Rule 72 of Uttar Bihar Gramin Bank (Officers and Employees) Service Regulation, 2010 the respondents are justified in not granting gratuity to the petitioner.

20. The Payment of Gratuity Act, 1972 was enacted to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. Section 5 whereof empowers the appropriate Government, by way of notification and subject to such conditions as may be specified in the notification, exempt any establishment.

21. The petitioner is justified to the extent that at the time of filing of the representation challenging the dismissal order as well as the relief as sought for in the writ court in CWJC No. 8748 of 2014, the petitioner had not taken note of the provision of The Payment of Gratuity Act, 1972 which has an overriding effect by virtue of Section 14 of the Act, which is, *inter alia* as follows:-

“14. Act to override other enactments, etc.- The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by



virtue of any enactment other than this Act.”

22. The Apex Court in ***Y.K Singla vs. Punjab National Bank*** reported in **(2013)3 SCC 472** clinches the issue.

It has been held in following paragraphs as follows:-

“22. In order to determine which of the two provisions (the Gratuity Act or the 1995 Regulations) would be applicable for determining the claim of the appellant, it is also essential to refer to Section 14 of the Gratuity Act, which is being extracted hereunder:

14.Act to override other enactments, etc.—*The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.” (emphasis supplied)*

A perusal of Section 14 leaves no room for any doubt that a superior status has been vested in the provisions of the Gratuity Act vis-à-vis any other enactment (including any other instrument or contract) inconsistent therewith. Therefore, insofar as the entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of the Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law), the provisions of the Gratuity Act cannot be ignored. The term “instrument” and the phrase “instrument or contract having the force of law” shall most definitely be deemed to include the 1995 Regulations, which regulate the payment of gratuity to the appellant.

24.*Furthermore, from the mandate of Section 14 of the Gratuity Act, it is imperative to further*



conclude that the provisions of the Gratuity Act would have overriding effect with reference to any inconsistency therewith in any other provision or instrument.”

23. In the present case, learned counsel for the respondents does not dispute that the respondents are not exempted. Thus, the provisions of Act of 1972 are applicable.

24. In this backdrop, the relevant Sub section (5) and (6) of Section 4 of The Payment of Gratuity Act, 1972 is applicable and same is *inter alia* reproduced below:

“(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.”*

25. The point for consideration is as to whether the
Uttar Bihar Gramin Bank (Officers and Employees) Service



Regulation, 2010, will have overriding effect on the provisions of Payment of Gratuity Act, 1972.

26. The Apex Court in ***Union Bank of India and Others and C.G. Ajay Babu and Another*** reported in (2018) 9 SCC 529 has held as under:-

“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.

18. In Jaswant Singh Gill v. Bharat Coking Coal Ltd. [Jaswant Singh Gill v. Bharat Coking Coal Ltd., (2007) 1 SCC 663 : (2007) 1 SCC (L&S) 584], it has been held by this Court that forfeiture of gratuity either wholly or partially is permissible under sub-section (6)(b)(ii) only in the event that the termination is on account of riotous or disorderly conduct or any other act of violence or on account of an act constituting an offence



involving moral turpitude when he is convicted.

“13. The Act provides for a close-knit scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. As noticed hereinbefore, sub-section (6) of Section 4 of the Act contains a non obstante clause vis-à-vis sub-section (1) thereof. As by reason thereof, an accrued or vested right is sought to be taken away, the conditions laid down thereunder must be fulfilled. The provisions contained therein must, therefore, be scrupulously observed. Clause (a) of sub-section (6) of Section 4 of the Act speaks of termination of service of an employee for any act, wilful omission or negligence causing any damage. However, the amount liable to be forfeited would be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or damage. It was not found that the damage or loss caused to Respondent 1 was more than the amount of gratuity payable to the appellant. Clause (b) of sub-section (6) of Section 4 of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude. Conditions laid down therein are also not satisfied.”

19. In the present case, there is no conviction of the respondent for the misconduct which according to the Bank is an offence involving moral turpitude. Hence, there is no justification for the forfeiture of gratuity on the ground stated in the order dated 20-4-2004 that the “misconduct proved against you amounts to acts involving moral turpitude”. At the risk of redundancy, we may state that the requirement of the statute is not the proof of misconduct of acts involving moral turpitude but the acts should



constitute an offence involving moral turpitude and such offence should be duly established in a court of law.”

27. From the foregoing facts and the settled principle of law it is clear that there has been no service of notice by the respondents to the petitioner which, without an iota of doubt, violates the principle of natural justice of providing opportunity of hearing before taking any decision to realise or withhold the amount of gratuity. The law laid down by the Apex Court in case of *C.G. Ajay Babu (supra)* supports the contention of the petitioner.

28. The Division Bench of this Court in The Chairman and MD, UCO Bank v. Shambhu Sharan Singh, reported in 2013 (2) PLJR 866 has also passed order observing *inter alia* as follows:-

“5. It is not in dispute that the service of the writ petitioner was not terminated on disciplinary grounds. On his retirement he was entitled to receive the amount of gratuity. The action of the Bank in withholding the amount of gratuity was clearly in violation of Section 4 read with Section 14 of the Payment of Gratuity Act, 1972.”

29. Accordingly, the communication made by the respondent- bank as contained in Letter No. 272 dated 25th September, 2017 under the signature of General Manager, Uttar



Bihar Gramin Bank along with the calculation chart are set aside for having passed without following the mandatory statutory provision of The Payment of Gratuity Act, 1972 as well as provision of the Regulation of the Bank 2010.

30. So far as the payment of leave encashment is concerned, Rule 67 of the Regulation provides for lapse of leave that all leave shall lapse on the death of an officer or employee or if he ceases to be in the service of the Bank. However, the bank has not taken any decision with regard to grant of leave encashment of the petitioner in compliance or order dated 17.03.2015 passed in CWJC No. 8748 of 2014 which has been affirmed by the Division Bench of this Court in Letters Patent Appeal No. 1229 of 2015. The bank had not chosen to move against the order dated 17.03.2015. So far as the matter of leave encashment and group insurance is concerned, decision is required to be taken by the respondent- bank. The record reveals that no decision till date has been taken by the respondents with respect to payment of leave encashment to the petitioner.

31. Considering the aforesaid fact, the respondent-Bank is directed to take final decision so far as payment of leave encashment is concerned to the petitioner within a period of three weeks.



32. The respondent- Bank must give proper opportunity of hearing to the petitioner and must take into consideration the provision of Regulation, 2010 of the Bank as well as provisions of the Payment of Gratuity Act, 1972 and the observation made by the Apex Court in case of *C.G. Ajay Babu (supra)*.

33. Accordingly, the present writ petition is allowed.

(Purnendu Singh, J)

Niraj/-

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