IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4442 OF 2022

Canara Bank, Circle Office
Through Its Assistant General Manager ...Petitioner

Versus

Sanjaykumar Lade & Ors. ...Respondents

…

Mr. Nitin Kulkarni, for Petitioner.
Ms. Surekha H. Das, for Respondent No.1.

…

CORAM : SANDEEP V. MARNE, J.
DATE : SEPTEMBER 21, 2023.

PC:

1. By this Petition, Petitioner-Bank challenges orders dated 20 March 2023 passed by the Controlling Authority and 11 January 2022 passed by the Appellate Authority under the provisions of Payment of Gratuity Act, 1972 (**Gratuity Act**) by which Petitioner-Bank has been directed to pay gratuity to Respondent No.1 of Rs.10,00,000/- along with interest at the rate of 05% per annum.

2. Respondent No.1 was appointed with Petitioner-Bank on 15 January 1979. While working on the post of Officer, the disciplinary

proceedings were initiated against Respondent No.1 in terms of Regulation 6 (2) of the Canara Bank Officer Employees (Discipline and Appeal) Regulations, 1976 by issuance of charge-sheet dated 19 January 2016. Five charges were levelled against him. The enquiry officer submit a report holding that charge Nos.1 to 4 were fully proved and charge No.5 alleging exposure of the Bank to the financial risk/loss to the tune of Rs.63.03 Lakhs was partly proved. Penalty of dismissal from service was imposed on Respondent No.1 by order dated 30 January 2016.

3. Respondent No.1 did not challenge the penalty of dismissal from service and it attained finality. However, since he was not paid gratuity, he filed an application before the Controlling Authority under the Gratuity Act. The application was resisted by Petitioner-Bank by filing reply before the Controlling Authority. By order dated 20 March 2020, the Controlling Authority allowed the complaint of Respondent No.1 and held he is entitled to payment of gratuity of Rs.12,53,958/-. However, considering the provisions of Section 4(3) of the Gratuity Act, imposing a ceiling of Rs.10,00,000, the Petitioner-Bank has been directed to pay gratuity to Respondent No.1 of Rs.10,00,000/- along with interest at the rate of 5% per annum from the date of entitlement of gratuity till the actual date of payment. Petitioner-Bank

challenged the order dated 20 March 2020 by Controlling Authority before the Appellate Authority by filing appeal. However, by judgment and order dated 11 January 2022, the Appellate Authority has proceeded to reject the Appeal. Aggrieved by the decision of the Controlling Authority and the Appellate Authority, Petitioner-Bank has filed a present Petition.

4. I have heard Mr.Kulkarni, the learned counsel appearing for Petitioner-Bank. He would submit that the charge of causing financial loss to the bank has been proved against Respondent No.1 in the domestic enquiry and therefore the bank has forfeited his gratuity amount under the provisions of Sub-Section 6 of Section 4 of the Gratuity Act. He would submit that the loss caused is to the tune of Rs.63.03 Lakhs, which is more than the gratuity of Rs.10,00,000/- claimed by Respondent No.1 and therefore the entire gratuity stands forfeited. He would submit that there was no necessity of passing the separate order for forfeiture of gratuity in view of proof of charge of causing financial loss. In support of his contention, he would rely upon the judgment of this Court in ***Bank of India Vs. Kamlakar Vishwambhar Joshi & others***[1]***.***

5. Per contra Ms. Das, the learned counsel appearing for Respondent No.1 would oppose the Petition and support the order passed by

1 MANU/MH/0386/2001.

Controlling and Appellate Authorities. She would submit that the charge of causing financial loss has not been fully proved. That in absence of any specific order forfeiting the gratuity, the Bank ought to have paid gratuity due to Respondent No.1.

6. I have considered the submissions canvassed by the learned counsels for the parties. Sub-Section 6 of Section 4 provides for forfeiture of gratuity and reads thus :

> "(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."

7. In the present case, reliance is placed by Petitioner-Bank on clause-A of Sub-Section 6 of Section 4 contending that services of Respondent No.1 have been terminated for an act causing loss to the Bank. In the disciplinary proceedings Respondent No.1 faced five charges. The findings

recorded by the enquiry officer with regard to each article of charge are as under:

Charge No.	Gist of Charge	Findings
1	Sri. S.S. Lade has sanctioned five OCC account on the same day, i.e. 01/11/2012 with the malafide intention of enjoying the funds for his personal use. Major portion of proceeds of all these loans were utilized for either transfer of fund to M/s. Bhosale Builders and Developers Pvt. Ltd by way of RTGS or withdrawn in Cash in the name of 'Ramdas Bhosale'(Director of M/s. Bhosale Builders and Developers Pvt Ltd), with whom he was having financial dealings. None of the OCC parties are having any dealings with Ramdas Bhosale or Bhosale Builders & Developers Pvt Ltd. All the five OCC accounts slipped to NPA within a few months of sanction under Quick mortality.	**Proved**
2	The CSO misused his official position and entered into financial dealings with 6 OCC parties of the bank for his personal purpose, which is against the regulation 15(i) of Canara Bank Officers Employees (conduct) Regulation 197.	**Proved**
3	Shri S S Lade was not maintaining the required level of Financial Discipline expected from an officer employee which is against Regulation 19 of Canara Bank Officers Employees' (conduct)Regulation 1976. He entered into personal financial dealings with the customer of the Bank by misusing his official position. As he could not honour the cheques issued by him, M/s. Shams multy services has filed court case against him, under Section 138 of N I Act, and other parties have also informed that they have filed case	**Proved**

	in Aurangabad court against him.	
4	By borrowing from the borrowers of the Bank and not meeting the repayment obligations, Shri S S Lade has tarnished the image of the Bank	**Proved**
5	Shri S S Lade has exposed the bank to huge financial risk/loss to the tune of Rs.66.03 lacs.	**Partly Proved**

8. The allegation of causing financial loss is to be found only in charge No.5 which has been partially proved. The findings recorded by the Enquiry Officer with regard to charge 5 are as under:

> "**Analysis and Findings of IA :**
>
> Referring to the arguments set forth in the issue by PO and DR, evidence brought on record by them during enquiry both oral and documentary, I observe the following:
>
> The PO has argued that the nature of the present charge are different from the previous ones and it involves malafide intentions on the part of the CSO which had resulted in the financial risk/loss to the Bank to the tune of 66.03 lacs.
>
> However, the arguments put forth by the DR stating that on the count of the Charge relating to the financial risk/loss caused to the Bank had been dealt with earlier and the CSO had earlier received punishment in respect of the same is noted.
>
> **Considering the submission and arguments advanced by the DR, to that extent as to financial loss on account of these accounts, as mentioned in earlier charges, the charge stands <u>partly proved.</u>**"

9. The findings recorded by the enquiry officer do not indicate as to which part of the charge is proved and which is not proved. A specific stand

was taken by Respondent No.1 that he was already penalized in respect of charge of causing financial risk/loss. The said defence is taken note of by the enquiry officer while holding that the charge is partially proved. However, whether Petitioner is held responsible for the entire amount of Rs.66.03 Lakhs is not clarified. In short there is no specific finding that actions of Respondent No. 1 caused loss of Rs.66.03 Lakhs. Furthermore the charge alleged "exposure to financial risk/loss". Whether the loss was actually caused or Respondent No. 1 merely exposed the Bank to financial risk is unknown. Thus, there is no specific finding the bank actually suffered any financial loss. The charge can also be interpreted to mean mere exposure to the risk and not causing the actual loss. The enquiry officer has also nowhere held that the Bank actually suffered the financial loss, much less has he computed the amount of such loss.

10. It is Petitioner's contention that once the services are terminated for causing financial loss, separate order forfeiting gratuity need not be passed. However, Rule 8 of the Payment of Gratuity (Maharashtra) Rules, 1972 mandates every employer to issue notices, either in Form-L specifying the amount of gratuity payable or in Form-M if gratuity is not admissible, within 15 days of receipt of application under Rule 7. Rule 8 reads as thus:

8. Notice for payment of gratuity.-(1) Within fifteen days of the receipt of an application under rule 7 for payment of gratuity, the employer shall-

(i) if the claim is found admissible on verification, issue a notice in Form 'L' to the applicant employee, nominee or legal heir, as the case may be, specifying the amount of gratuity payable and fixing a date, not being later than the thirtieth day after the date of receipt of the application, for payment thereof, or

(ii) if the claim for gratuity is not found admissible, issue a notice in Form 'M' to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.

(2) In case payment of gratuity is due to be made in the employer's office, the date fixed for the purpose in the notice in Form 'L' under clause (1) of sub-rule (1) shall be refiexed by the employer, if a written application in this behalf is made by the payee explaining why it is not possible for him to be present in person on the date specified.

(3) If the claimant for gratuity is a nominee or a legal heir, the employer may ask for such witness or evidence as may be deemed relevant for establishing his identity or maintainability of his claim, as the case may be. In that 'case, the time limit specified for issuance of notices under sub-rule (1) shall be operative with effect from the date such witness or evidence, as the case may be, called for by the employer is furnished to the employer.

(4) A notice in Form 'L' or Form 'M' shall be served on the applicant either by personal service after taking receipt or by registered post with acknowledgment due. (5) A notice under sub-section (2) of section 7 shall in Form 'L'.

11. Thus, under Rule 8 (ii) if gratuity is to be forfeited, a Notice under Form-M is required to be issued. Form – M reads thus:

FORM 'M'

[See clause (ii) of sub-rule (1) of rule 8]

Notice rejecting claim for payment of gratuity

To

[Name and address of the applicant employee/nominee legal heir]

You are hereby informed as required under clause (ii) of sub-rule (i) of rule 8 of the Payment of Gratuity (Central) Rules, 1972 that your claim for payment of gratuity as indicated on your application in Form .... under the said rules is not admissible for the reasons stated below:

Reasons

[Here specify the reasons]

Place: Signature of the employer/Authorised Officer.

Date: Name or description of establishment or rubber stamp thereof.

Copy to: The Controlling Authority:

12. Thus, under the Rules, employer is required to pass specific order/issue notice in a prescribed format if gratuity is proposed to be forfeited.

13. In the present case, no order is passed nor any notice issued by Petitioner-Bank forfeiting gratuity of Respondent No. 1. Passing of such an order, in the facts and circumstances of the present case, was mandatory in view of ambiguity in the dismissal order about cause of financial loss. Therefore at least in the order/notice under Rule 8, the Petitioner-Bank ought to have recorded a finding of cause of financial loss. In the present case, there is

neither any specific finding in the dismissal order about cause of financial loss of amount of Rs.10,00,000/- nor there is a specific order forfeiting the amount of gratuity.

14. Reliance is placed by Mr. Kulkarni on the judgment of this Court in ***Kamlakar Vishwambhar Joshi*** (supra) would not cut any ice in that a specific order was passed in that case holding that services of the employee therein were terminated for causing loss of Rs.30,000/-. Therefore out of the gratuity payable, an amount of Rs.30,000 was forfeited and balance gratuity of Rs.19,100/- was paid to the employee concerned. Thus, reliance of Petitioners of Judgment in ***Kamlakar Vishwambhar Joshi,*** far from assisting it, actually militates against Petitioner-Bank.

15. In the result I do not find any error in the orders passed by Controlling and Appellate Authorities. Writ Petition being devoid of merits, is dismissed without order as to costs.

(SANDEEP V. MARNE, J.)