IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.699 OF 2010

Mr. S. Venkatachari,
Aged about 58 years,
Occupation: Nil,
R/o C/o S. Ramaswamy,
14, Shri Mangal Aparments,
Modern Society, 2nd Floor,
Chhatrapati Nagar, Nagpur. .... **PETITIONER**

...V E R S U S...

1. UCO Bank having Head Office at
10 BTM Darani, Calcutta-1.

2. UCO Bank, Zonal Office at Nagpur,
Through its Asstt. General Manager,
Jaika Motors Building, 3rd Floor,
Civil Lines, Nagpur.

3. Trustees of the UCO Bank Employees
P.F. and Trustees of UCO Bank
Employees Gratuity Fund,
Head Office: 10 BTM Darani,
Kolkatta-01. .... **RESPONDENTS**

Mr. I. A. Fidvi, Advocate h/f Mr. A. M. Sudame, Advocate for Petitioner.
Mr. S. G. Zinjarde, Advocate for Respondents.

CORAM: ROHIT B. DEO AND MRS. VRUSHALI V. JOSHI, JJ.
DATE: 3rd MARCH, 2023.

ORAL JUDGMENT: (PER ROHIT B. DEO, J.)

The grievance in the petition is that the employer UCO Bank (Bank) has withheld its contribution to the Provident

Fund (PF) on the premise that the petitioner is not entitled to the employer's contribution, he having been dismissed from service on proven charge of misconduct.

2. Facts lie in an extremely narrow and uncontroverted compass.

3. It is not in dispute that the petitioner, who was working as Assistant Cashier, was dismissed by order dated 06.07.1991.

4. It is further not in dispute that the dismissal was pursuant to regularly held departmental inquiry which culminated in finding of guilt. It is further not in dispute that the petitioner assailed the dismissal by raising a dispute, and the learned Central Government Industrial Tribunal (CGIT) upheld the punitive action. The petitioner challenged the decision of the CGIT in Writ Petition 1478/1999 which a learned Single Judge dismissed vide judgment dated 30.08.1999, which the petitioner assailed in Letters Patent Appeal 167/2000, but in vain. The petitioner then approached the Hon'ble Supreme Court and met with a similar fate, and the review petition preferred by the petitioner was also dismissed.

5. It appears that after the dismissal of the Special Leave Petition and the review petition, the petitioner preferred Writ Petition 2655/2008 seeking gratuity and employer's contribution, which petition was disposed of by the Division Bench vide order dated 15.07.2008. The petitioner was permitted to prefer a representation which the Division Bench expected the Bank to consider expeditiously.

6. Pursuant to the leave granted by the Division Bench the petitioner preferred representation dated 28.07.2008 which did not find favour with the Bank and the petitioner preferred Writ Petition 880/2009. This petition was withdrawn with liberty to take recourse to the remedy under the payment of Gratuity Act. It is discernible from the order dated 10.12.2009 in Writ Petition 880/2009, that the claim of the petitioner as regards the employer's contribution was kept open.

7. Having broadly indicated the course which the litigation has taken, we may now address the contentions of the petitioner.

8. The thrust of the submissions canvased by Mr. Fidvi is that the service conditions of the employees of the UCO Bank are

governed by the provisions of the Shastry Award. The extension of the submission is that the Shastry Award permits forfeiture of the amount of the PF fund only to the extent of the financial loss caused to the employer Bank. The learned counsel Mr. Zinjarde is not joining issues on the provision in the Shastri Award. However, according to the learned counsel Mr. Zinjarde Rules have been framed by the Trustees of the UCO Bank Employee's Provident Fund and Rules 17 and 18, if conjointly read, justify the decision of the UCO Bank not to release its contribution to the PF fund. We may note that the contribution of the petitioner is duly paid.

9. We are not required to address and answer the broader question touching the interplay between the provisions of the Shastri Award and the Provident Fund Rules nor are we required to render a finding on the primacy of the provisions. We are satisfied, that on a conjoint reading of Rules 17 and 18 on which heavy reliance is placed by Mr. Zinjarde, the Employer's right to withhold its contribution to the provident fund is restricted to the actual loss caused due to the misconduct committed.

10. We extract Rules 17 and 18 of the Employees'

Provident Fund Rules in verbatim:

> *17. Any contributor who is dismissed for insubordination, misconduct fraud or any other cause of a like nature or retires from the Bank in consequence thereof shall only be entitled to repayment of the amount of his own contributions with the interest accrued thereon at the rate and in the manner aforesaid. The Trustees shall be the sole judges of the sufficiency of the cause of the dismissal or retirement of any contributor in any of the foregoing cases.*
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> *18. If a contributor is dismissed for fraud or misconduct the Bank shall be entitled to recover from the contributions made by the Bank to the individual account of the contributor and the interest (simple and compound) credited in respect of such contributions any loss or damage resulting to the Bank from the cause entailing such dismissal. The Board shall be entitled to declare the amount of loss or damage so resulting and their declaration in that behalf shall be final and conclusive and the amount so declared shall be paid to the Bank.*

11. Rule 17 is a general provision which provides that if a contributor is dismissed for insubordination, misconduct, fraud or any other cause of a like nature or retires from the Bank as a consequence of such misconduct, he shall only be entitled to repayment of the amount of his own contribution with interest accrued thereon at the rate and in the manner aforesaid and the Trustees shall be the sole Judges of the sufficiency of the cause of the dismissal or retirement of any contributor in such cases.

12. While at the first blush, the provisions of Rule 17 appears to be all pervasive, we are inclined to hold, that the power to withhold the employer's contribution is limited and restricted to the actual loss caused to the employer, in view of the plain language of Rule 18.

13. Rule 18 deals with a situation of dismissal for fraud or misconduct. The Bank is entitled to recover from the contribution made by the Bank in the account of the contributor and the interest credited in respect of such contribution, any loss or damage resulting to the Bank from the cause entailing such dismissal. The Board of Trustee is expected to declare the amount of loss or damage so resulting and Rule 18 further provides that the declaration by the Trustees in that behalf shall be final and conclusive.

14. We find from the charge-sheet dated 12.09.1990 that there are three allegations involving the employer's 'amount'. The first incident referred to is shortage of Rs.36150/- (Rupees Thirty Six Thousand One Hundred Fifty only) on 16.08.1989, which even according to the charge-sheet was made good on 17.08.1990 and the second incident refers to cash shortage of Rs.3000/- (Rupees Three Thousand only) detected on 07.05.1990

which again was made good by the petitioner, albeit without interest and the third incident is the cash shortage of Rs.2900/- (Rupees Two Thousand Nine Hundred only) detected on 18.05.1990 which the petitioner made good on 21.05.1990.

15. In our considered view, Rule 17 cannot be read in isolation. The general enabling power is necessarily circumscribed by the provisions of Rule 18. We are inclined to hold, and it appears to be an eminently reasonable view, that the power to withhold the employer's contribution is restricted to the actual loss caused due to the misconduct proved.

16. The other aspect of the matter is that Rule 18 provides that the Board of Trustees shall be entitled to 'declare' the amount of loss or damage so resulting, and their declaration in that behalf is treated final and conclusive. It is pursuant to such declaration, that the Bank becomes entitled to the amount of its contribution to the fund.

17. The learned counsel Mr. Zinjarde invites our attention to the deliberations in the meeting of the Board of Trustees (Annexure R-2). We have considered the deliberations. We find that there is no declaration much less determination of loss caused

to the Bank. *Au contraire,* Rule 18 is not considered in the proper perspective, and while Rule 18 is extracted, the only conclusion recorded is that in view of Rule 17 the petitioner is not entitled to the contribution of the Bank.

18. Even *de hors* the absence of any declaration much less consideration by the Board of Trustees, we have found that holistic reading of the rules do not permit the Bank to withhold contribution beyond the loss caused.

19. The obvious sequitur of finding recorded *supra,* is that the petition will have to be allowed partly.

20. We direct the respondent – Bank to release the employer's contribution to the PF fund account of the petitioner, with interest at the rate of 8% per annum, within the next twelve weeks.

21. The petition is partly allowed in the aforestated terms.

(MRS. VRUSHALI V. JOSHI, J.) **(ROHIT B. DEO, J.)**

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