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W.P.No.13772 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.13772 of 2015

S.Bhushan Kumar

... Petitioner

-Vs-

1. The Managing Director,
State Bank of Bikaner and Jaipur,
Head Office,
Tilak Marg,
Jaipur-302 005.
2. The Chief General Manager,
State Bank of Bikaner and Jaipur,
Head Office,
Tilak Marg,
Jaipur-302 005.
3. The Chief General Manager,
State Bank of India,
Main Branch, Jaipur Branch,
P.B.No.72,
Sanganeri Gate,
Main Branch Sanganeri Gate,
Jaipur-302 001.
(R3 impleaded vide order
dated 10.08.2022 made in
W.M.P.No.19765 of 2022 in
W.P.No.13772 of 2015)

... Respondents



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Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the concerned records relating to the (1) order No.DPD / HO/ 6/ 952 dated 13.06.2011 passed by the second respondent and (2) order No.Agenda item No.D-4 dated 15.07.2013 and (3) Order in PPG / 401 dated 15.07.2013 passed by the first respondent and (4) order in PPG /401 dated 15.02.2014 passed by the first respondent and quash the same and consequently direct the respondents to settle the terminal benefits including leave salary gratuity together with eligible interest with effect from 30.06.2010.

(Prayer amended as per order dated 25.07.2023 in W.M.P.No.20497 of 2023 in W.P.No.13772 of 2015)

For Petitioner : Mr.M.Gnanasekar
For Respondents
R1 and R2 : Mr.M.Devaraj
for Mr.K.Mohandas

ORDER

This Writ Petition has been filed for the issuance of Writ of Certiorarified Mandamus, calling for the concerned records relating to order No.DPD/HO/6/952 dated 13.06.2011 passed by the second respondent and quash the same and consequently direct the respondents to settle the terminal benefits including leave salary gratuity together with eligible interest with effect from 30.06.2010. Subsequently the



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petitioner filed an amendment petition to amend the prayer and the amended prayer as follows:-

“calling for the concerned records relating to the (1) order No.DPD /HO/6/952 dated 13.06.2011 passed by the second respondent and (2) order No.Agenda item No.D-4 dated 15.07.2013 and (3) Order in PPG / 401 dated 15.07.2013 passed by the first respondent and (4) order in PPG/401 dated 15.02.2014 passed by the first respondent and quash the same and consequently direct the respondents to settle the terminal benefits including leave salary gratuity together with eligible interest with effect from 30.06.2010.

(Prayer amended as per order dated 25.07.2023 in W.M.P.No.20497 of 2023 in W.P.No.13772 of 2015)”.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2 and perused the materials available on record.

3. The petitioner had joined as Clerk-cum-Typist, on 21.05.1973, in the respondents' Bank. He was promoted as an Officer, in the year



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1985. Thereafter, he was promoted as a Branch Manager and he had worked in three branches. Thereafter, he was promoted as Chief Manager. While being so, he was issued with a charge memo dated 02.11.2009, with 9 charges relating to indiscriminate lending, disregard of the Bank's prescribed lending norms and financial discipline and serious act of misconduct in granting loan and advances. After disciplinary enquiry, all the charges were found proved and he was imposed with a punishment of compulsory retirement on 30.09.2010. Thereafter, he was issued with a show cause notice dated 13.06.2011, thereby calling upon the petitioner to show cause, why the gratuity should not be forfeited, since only because of the act done by the petitioner, there was loss of Rs.166.04 Lakhs quantified in the loans and advances mentioned in the charge sheet. On receipt of the same, the petitioner had given a reply dated 14.07.2011. After explanation was submitted by the petitioner, the execution committee of the Board had, by a resolution dated 15.07.2013, resolved forfeiting the gratuity payable to the petitioner. Thereafter, it was communicated to the petitioner 15.02.2014.



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4. Though the petitioner challenged the show cause notice dated 13.06.2011, subsequently a memorandum of the executive committee of the Board dated 15.07.2013 was issued and the subsequent communication dated 15.02.2014 are also under challenge in this writ petition.

5. The respondents vehemently opposed the amendment petition, on the ground that initially the petitioner challenged the show cause notice dated 13.06.2011. The memorandum of the executive committee of the Board was passed on 15.07.2013 and the same was also communicated to the petitioner by the communication dated 15.02.2014. Even on the date of filing the writ petition i.e. 27.04.2015, those were not challenged.

6. The learned counsel for the petitioner would submit that once the petitioner was allowed to retire from service on compulsory retirement or by attaining superannuation, he is entitled for the gratuity. In support of his contention, he relied upon the Judgment of this Court in W.P.(MD).No.2683 of 2011 dated 13.10.2011.



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7. The learned counsel for the respondents would submit that only because of the act done by the petitioner, there was loss to the Bank to the tune of Rs.166.04 Lakhs. Section 4(6)(a) of the Payment of Gratuity Act, contemplates about the forfeiture of gratuity, if the termination 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. Therefore, the executive committee of the respondents' Board resolved to forfeit the gratuity payable to the petitioner to the tune of Rs.10 Lakhs, on the ground that there was loss to the respondent to the tune of Rs.166.04 Lakhs.

8. This Court in **W.P.(MD).No.2683 of 2011** dated **13.10.2011** held that the termination of service for any termination of services for any of the causes enumerated in sub-section (6) of Section 4 of the Act, therefore, is imperative. But once an employee reached the age of superannuation or retired, no punishment can be imposed including dismissal. In such cases, Section 4(6) cannot be invoked, as held by Madhya Pradesh High Court in ***R.Khichrolia Vs. Madhya Pradesh State Co-operative Marketing Federation, Ltd.***, reported in **2002 (4) L.L.N**



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705. Further, this Court in *Krishnaveni Textile Mills, Singanallur, Coimbatore Vs. Assistant Labour Commissioner* reported in 2002 (4) *L.L.N 363* has held that even for forfeiture of gratuity, an employee must be given notice and an opportunity has to be given.

9. Admittedly, the petitioner was charged with nine charges relating to indiscriminate lending in disregard of the Bank's lending norms and financial discipline and serious act of misconduct in granting loan and advances. Therefore, disciplinary enquiry was conducted and the charges were proved against the petitioner. He was permitted to retire compulsory as on date of his superannuation namely 30.06.2010. In fact, he was also affected by criminal Court and his conviction is under Trial.

10. Insofar as the gratuity is concerned, the Gratuity shall be payable to an employee on the termination of his employment after he had rendered continuous service for not less than five years, on his superannuation, or on his retirement or resignation, or on his death or disablement due to accident or disease.



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11. It is relevant to extract the provisions under Section 4(6)(1)(a) and 4(6)(1)(b) of the Payment of Gratuity Act, 1972, which are as follows:-

“4 (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.”

12. Accordingly, if the services of an employee is 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.

13. Only because of the act of the petitioner, there was loss to the respondents' Bank to the tune of Rs.166.04 Lakhs. The competent authority has approved quantification of the said loss suffered by the



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respondents' Bank attributable to the petitioner. The petitioner was compulsorily retired from service on 30.06.2010 as punishment after disciplinary enquiry. Therefore, the gratuity payable to the petitioner is rightly forfeited in terms of the provisions under Section 4(6)(1)(a) of the Payment of Gratuity Act, 1972 and this Court finds no infirmity or illegality in the show cause notice, memorandum of the executive committee of the Board and the communication passed by the respondents 1 and 2. This writ petition is devoid of merits and is liable to be dismissed.

14. Accordingly, this writ petition stands dismissed. No costs.

25.07.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

mn

To

1. The Managing Director,
State Bank of Bikaner and Jaipur,
Head Office,
Tilak Marg,
Jaipur-302 005.
2. The Chief General Manager,
State Bank of Bikaner and Jaipur,
Head Office,
Tilak Marg,
Jaipur-302 005.
3. The Chief General Manager,
State Bank of India,
Main Branch, Jaipur Branch,
P.B.No.72,
Sanganeri Gate,
Main Branch Sanganeri Gate,
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