



W.P.No.14398 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.14398 of 2016
and
WMP.No.12587 of 2016

M/s. Indian Overseas Bank,
Rep. by its Chairman & Managing Director,
Central Office,
762, Anna Salai, Chennai – 600 002.

...Petitioner

Vs.

1. The Appellate Authority under the Payment of Gratuity Act, 1972
and Deputy Chief Labour Commissioner (Central),
Chennai, No.26, III Block, 5th Floor,
Shastri Bhavan, Haddows Road,
Chennai – 600 006.
2. The Controlling Authority under the Payment of Gratuity Act, 1972
and Assistant Labour Commissioner (Central),
Chennai, No.26, III Block, 5th Floor,
Shastri Bhavan, Haddows Road,
Chennai – 600 006.

3. Thinakaran.D

...Respondents



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Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records in relation to the order of the first respondent dated 16.2.2016 passed in PG Appeal No.112/15 and quash the same confirming the order dated 07.11.2014 passed by the second respondent rejecting the third respondent's application seeking gratuity in PGA.No.M/48/173/ 2011 dated 17.1.2011.

For Petitioner : M/s.S.Rajeni Ramadass

For Respondents : No appearance

ORDER

This Writ petition has been filed seeking quashment of the order of the 1st respondent dated 16.02.2016 confirming the order dated 07.11.2014 passed by the 2nd respondent rejecting the application of the 3rd respondent dated 17.01.2011.

2. The case of the petitioner is that, the 3rd respondent joined the services of the petitioner bank on 07.01.1966. During the course of employment, while working as the Chief Manager at Karol Bagh Branch, New Delhi, the 3rd respondent committed various irregularities with regard to credit facilities granted to seven borrowers amounting to the tune of Rs.1.97 Crores. Therefore, a charge sheet dated 02.8.1996 came to be issued to the



3rd respondent and pursuant to which, a departmental inquiry was held and

as a result, the 3rd respondent was dismissed from service by order dated

02.12.1997 and the statutory appeal filed by him also came to be dismissed

on 31.07.1998. Thereafter, the petitioner bank, vide letter dated 12.09.2002

informed the 3rd respondent that the amount payable towards gratuity was

Rs.2,73,289/- and it was credited to his bank account. Immediately

thereafter, the petitioner sent another letter dated 24.09.2002 to the 3rd

respondent asking him to fill up certain forms and put his signature so as to

enable them to transfer the amounts to their branch at Karol Bagh and to

appropriate the same towards the loss incurred to the petitioner bank.

However, the 3rd respondent sent his objections vide letter dated 07.10.2002.

Therefore, the petitioner bank informed the 3rd respondent that his savings

bank account at Pusa Road Branch was credited with the gratuity amount of

Rs.2,73,289/- and provident fund amount of Rs.2,65,083/- and that the said

amounts were adjusted towards the loss caused at the Karol Bagh Branch.

While so, after a lapse of about nine years, the 3rd respondent made an

application before the 2nd respondent to determine the amount of gratuity

payable to him and the 2nd respondent, by order dated 07.11.2014,



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dismissed the said application, as against which, the 3rd respondent filed an appeal before the 1st respondent, who in turn, without considering any of the above said facts, by the impugned order, set aside the order of the 2nd respondent dated 07.11.2014 and directed the petitioner to compute the amount of gratuity and pay the same to the 3rd respondent. Challenging the same, the petitioner is before this Court.

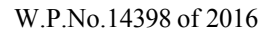
3. Learned counsel for the petitioner submitted that, as per section 4(6)(b) of the Payment of Gratuity Act, 1972, the gratuity of an employee, whose services have been terminated for any of his act that caused damage to the employer, shall be forfeited to the extent of the damage or loss so caused. In the present case, as the irregularity committed by the 3rd respondent caused a loss to the tune of Rs.1.97 Crores to the petitioner bank, his gratuity amount was forfeited by the petitioner by invoking the above said provision, which is well within the jurisdiction, in terms of Section 4(6) of the Payment of Gratuity Act, 1972. Further, it is pertinent to note that the order of dismissal passed as against the 3rd respondent went upto the Apex Court and got confirmed by the Hon'ble Supreme Court itself.



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While so, suppressing all the above said facts, the 3rd respondent made an application before the 2nd respondent to determine the amount of gratuity payable to him and after contest, though the 2nd respondent, by order dated 07.11.2014, dismissed the said application, the 1st respondent failed to do so and entertained the appeal preferred by the 3rd respondent and further, by the impugned order, set aside the order of the 2nd respondent dated 07.11.2014 and directed the petitioner to compute the amount of gratuity and pay the same to the 3rd respondent, which is wholly unsustainable, since the loss incurred by the petitioner bank amounts to around Rs.2 Crores, however, the gratuity amount of the 3rd respondent, forfeited by the petitioner bank is only for a sum of about Rs.2.5 Lakhs and odd and accordingly, prayed for appropriate orders.

4. Though paper publication was effected and the names of the respondents were printed in the cause list, there was no representation on their behalf before this Court today. However, considering the period of pendency of this Writ petition, this Court is inclined to dispose of this petition with the materials available on record.





norms and circulars issued by the bank and due to which, the petitioner bank sustained loss to the tune of around Rs.2 Crores. Hence, the petitioner bank, by invoking the provisions of Gratuity Act, forfeited the gratuity amount of the 3rd respondent. For better appreciation, the relevant Section is extracted hereunder:-

Section 4: Payment of gratuity

.....

(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.



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8. In the present case, as the act of the 3rd respondent had caused loss to the tune of around Rs.2 Crores, the petitioner bank, being an employer is entitled to forfeit the gratuity amount of the 3rd respondent employee to the extent of the damage or loss caused and the act of the petitioner bank in forfeiting the gratuity amount of the 3rd respondent to the tune of Rs.2,73,289/- is just and reasonable and the 2nd respondent, after elaborate consideration of all the said facts and the above said provision, dismissed the application made by the 3rd respondent.

9. It is pertinent to note that, the gratuity amount of the 3rd respondent forfeited by the petitioner bank is very much less when compared to the loss incurred by the petitioner bank due to the misconduct committed by the 3rd respondent. While so, the 1st respondent had mechanically allowed the appeal filed by the 3rd respondent by setting aside the order of the 2nd respondent and further directed the petitioner bank to compute the amount of gratuity and pay the same to the 3rd respondent, which is wholly unsustainable. Hence, the impugned order of the 1st respondent dated 16.02.2016 is set aside, confirming the order of the 2nd respondent.



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WEB COPY 10. With the above observations and directions, this Writ petition stands allowed. No costs. Consequently, the connected Miscellaneous petition is closed.

01.08.2023

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

To

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