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In the High Court of Judicature at Madras

Dated : 04.9.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.1375 of 2018
& WMP.No.1746 of 2018

1.The Chairman & Managing Director, Central Bank of India, Central Office, Chandra Mukhi Building, Nariman Point, Mumbai-21.

2.The Field General Manager, Central Bank of India, Zonal Office, No.48/49, Montieth Road, Egmore, Chennai-8. ...Petitioners

Vs

1.The Appellate Authority under the Payment of Gratuity Act-Deputy Commissioner of Labour (Central), 26, Haddows Road, Chennai-6.

2.The Controlling Authority under the Payment of Gratuity Act-Regional Labour Commissioner (Central), Kanaga Apartments, Suite No.3, I Floor, 13A, Lady Doak College



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Road, Chinna Chokkikulam,
Madurai-2.

3.Smt.P.Ilanjiam ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the first respondent in Gratuity Appeal No.4 of 2017 and quash its order dated 13.12.2017.

| | | |
|---|---|---|
| For Petitioners | : | Mr.G.Anand for<br>M/s.T.S.Gopalay & Co. |
| For R1 & R2 | : | No appearance |
| For R3 | : | Mr.K.M.Ramesh, SC for<br>Mr.S.Apunu |

ORDER

This is a petition filed by the petitioner bank seeking to quash the order dated 13.12.2017 passed by the first respondent in Gratuity Appeal No.4 of 2017.

2. The facts leading to filing of this case are as follows :

(i) The third respondent joined in the petitioner bank on 20.5.1992. While she was working as a Branch Manager at Cuddapah, A.P. from 12.10.2010 to 30.10.2012, she committed various irregularities in credit



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portfolio and the expected loss in the loan accounts sanctioned by the third respondent was to the tune of Rs.10,08,46,000/- lakhs. Thereafter, disciplinary action was initiated. As a result of the conclusion of the inquiry, by order dated 16.6.2015, the third respondent was awarded the punishment of compulsory retirement. The third respondent also failed to challenge the penalty order. Rather, she received all the benefits except gratuity.

(ii) A notice dated 29.12.2015 was sent to her asking her to show cause as to why the gratuity amount should not be forfeited. Further, by order dated 02.5.2016, the gratuity payable to the third respondent was forfeited. Pursuant to that, she approached the second respondent by filing an application to make payment of the gratuity amount. In that, the petitioner bank filed a counter. Ultimately, the second respondent, by order dated 31.8.2016, directed the petitioner bank to pay a sum of Rs.8,34,051/- towards gratuity along with interest on the ground that the petitioner bank had not instituted a full fledged inquiry in the matter, that the charges were proved only by preponderance of probabilities, that nowhere, the actual loss was quantified and that the forfeiture of gratuity was unfair and illegal.

(iii) Challenging the order dated 31.8.2016, the petitioner bank filed



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an appeal before the first respondent, before whom, certain additional documents were marked. After contest, the first respondent, by the impugned order, dismissed the appeal by confirming the order passed by the second respondent on the ground that the petitioner bank failed to establish the quantum of purported loss or damage caused by the third respondent by means of inquiry, that the law demanded that the employer, in such cases, were imperatively expected to hold an inquiry into the matter to come to a logical conclusion and then assess the quantum of loss, that on the basis of preponderance of probabilities, the petitioner bank had presumed the quantum of loss without following due process of law, that awarding the punishment of compulsory retirement, ipso facto, should not absolve the petitioner bank from following the due process of law and that the petitioner could not automatically derive powers to forfeit the gratuity of an employee. Challenging the same, the petitioner bank is before this Court.

3. One Mr.S.Sanjay Kumar, Chief Manager, Zonal Office, Chennai of the petitioner bank filed an affidavit dated 07.10.2020 on behalf of the petitioners giving details with regard to the current status of loan accounts,



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which were (i) closed on payment of the dues in full, in Annexure A; (ii) closed under one time settlement by relinquishing a part of the loan amount, in Annexure B; and (iii) still pending, in Annexure C.

4. The learned counsel for the petitioners submits that the similar issue that arises in this writ petition has come up for consideration before this Court in W.P.(MD).No.5573 of 2020 and W.P.No.37816 of 2015 vide orders dated 27.01.2023 and 27.08.2019 respectively wherein it was held that when a 'compulsory retirement' is imposed as a punishment, necessarily the employer is well within its rights to forfeit the gratuity payable to the third respondent by invoking Section 4(6) of the Payment of Gratuity Act.

5. He further submits that as per Section 4(6) of the Payment of Gratuity Act the gratuity of an employee shall be forfeited if his services were terminated for his wilful omission or negligence causing any damage or loss of destruction of property belonging to the employer. In the present case on hand, the third respondent has been terminated from service by imposing the punishment of compulsory retirement upon his act of wilful omission in



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the discharge of his duty due to his dishonest act and absolute lack of integrity and the petitioners are entitled to forfeit the gratuity payable to third respondent by invoking Section 4(6) of the Payment of Gratuity Act, which issue has already been considered by this Court in W.P.(MD).No.5573 of 2020 and W.P.No.37816 of 2015 dated 27.01.2023 and 27.08.2019. Hence, he prayed to allow this writ petition by following the said orders.

6. The learned Senior counsel appearing for the third respondent submits that the language imposed in the Gratuity Act is only for termination of an employee however, there is no term called "compulsory retirement". In the absence of such term forfeiting the gratuity cannot be sustained. He further submits that neither in the affidavit dated 07.10.2020 filed by the petitioners' bank nor in its annexures, the petitioners' bank gave the full worksheet for arriving at the loss caused to the bank in each loan transaction in Annexures B and C. In the absence of such calculation, forfeiting the gratuity is impermissible one. Accordingly, he prayed for dismissal of this writ petition.



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7. When the matter came up for admission on 23.1.2018, in the light of the ratio laid down in the case of ***UCO Bank Vs. Anju Mathur [reported in 2013 (2) LLR 2]*** and as it was stated that the entire amount had already been deposited, this Court granted an order of status quo.

8. Heard the learned counsel appearing on behalf of the petitioners and the learned Senior Counsel appearing on behalf of the third respondent.

9. Admittedly the petitioners' management forfeited the gratuity payable to the third respondent on the ground that the third respondent suffered the punishment of compulsory retirement. However, the issue involved in the writ petition is no longer res integra and this Court has already dealt with similar issue in W.P.No.37816 of 2015 dated 27.08.2019 wherein it was held as follows:

> *"37. The integrity of the person is foremost important and public money cannot be allowed to go to a person, who has caused loss to the Organization*



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*to the tune of of Rs.92 lakhs. It is seen that before preferring the Appeal, a sum of Rs.6,28,613/- together with interest has been deposited before the Controlling Authority. The 1st Respondent/employee must feel lucky that the Petitioner/Management has not invoked a major punishment contemplated under Regulation 54 of the FCI (Staff) Regulation, 1971.*

*38. 'Compulsory Retirement' is a punishment contemplated under FCI (Staff) Regulation, 1971. Even assuming that 'Compulsory Retirement' has to be taken as 'Golden Handshake also, the intention of the employer for imposing Compulsory Retirement has to be seen, as to whether it is by means of a punishment or merely a Golden Handshake. If it is merely a Golden Handshake, the Writ Petition needs to fail. But, if it is a case of 'punishment', then forfeiture of Gratuity is permissible.*

*39. In the present case on hand, the employer has imposed 'Compulsory Retirement' by way of penalty, and not by means of Golden Handshake, as the employee has caused loss to the*



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*Petitioner/Management to the tune of Rs.92 lakhs. Hence, the decision of the employer to deprive 50% of Gratuity to the 1st Respondent/employee, is perfectly valid in law, as 'Compulsory Retirement' is imposed on the employee only as a punishment, and the same has become final and it has not been questioned either in the Department Appeal or by way of any other proceedings before any forum.*

*40. In view of the foregoing, this Court accepts the contention of the Petitioner/Management and the order dated 04.11.2015 passed by the 2nd Respondent in Gratuity Appeal No.113 of 2015, confirming the order dated 17.12.2014 passed by the 3rd Respondent in Gratuity Application No.56 of 2014, is quashed. The Controlling Authority with whom, a sum of Rs.6,28,613/- is lying in deposit together with accrued interest, shall be refunded to the Petitioner/Management within 45 days from the date of receipt of a copy of this order.*

***In fine, the Writ Petition is allowed with the above direction**. No costs.”*



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10. This Court in W.P.No.5573 of 2020 vide order dated 27.01.2023**,** in paragraph Nos.81 to 84, has held as follows:

> *"81. Taking cue from Section 4 (6) (a) and (b), Regulations have been framed by the respondent, which has made 'compulsory retirement' as a major penalty in the (Discipline & Appeal) Regulations and based on the same Clause 46 (1) (e) has been provided for in the Service Regulations, which has provided for forfeiture of gratuity on termination of service in any other way except by way of punishment after completion of ten years of service. A harmonious reading of Section 4 (6) (a) and (b) would clearly show that any act, which has been committed by an employee, which has caused damage or loss to or destruction of property belonging to the employer or for any act of omission, gratuity shall be forfeited. In the case on hand, the enquiry report has clearly established the delinquency of the petitioner, in that the petitioner had caused loss to the respondent bank by his act of wilful omission, which loss has been quantified at Rs.85.88 lakhs. Therefore, invoking*



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*Section 4 (6) (a) and (b), the respondents have sought to enforce the Regulation provided under clause 46 (1) (e) and forfeited the gratuity payable to the petitioner, which cannot be said to be bad. Regulation 46 (1) (e) is in consonance with sub-section 6 of Section 4 of the Payment of Gratuity Act and there is no inconsistency between sub-section 6 of Section 4 of the Payment of Gratuity Act and Regulation 46 (1) (e).*

*82. For the reasons and discussions made above, the decision of the Full Bench in Anju Mathur's case has clearly analysed the implication of 'compulsory retirement' as a punishment and also as an administrative decision and has held that when 'compulsory retirement' is imposed as a punishment, necessarily the employer is well within its rights to pass orders with regard to the retiral benefits of the employee, more so, when the delinquency committed by the employee relates to financial irregularities, which has caused loss or damages to the employer. This Court is of the considered view that not only the ratio laid down by the Full Bench in Anju Mathur's case is within the four contours of law, but it is also*



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*logically the right interpretation insofar as imposition of punishment is concerned vis-a-vis the payment of gratuity and this Court is in respectful agreement with the ratio laid down above.*

*83. In the aforesaid backdrop, the charge being proved and punishment of 'compulsory retirement' has been imposed on the petitioner, the provisions of sub-section 6 of Section 4 of the Payment of Gratuity Act would squarely stand be attracted and it would be within the discretion of the respondent-employer to forfeit the gratuity payable to the Respondent. Accordingly, this Court holds that the punishment of 'compulsory retirement' imposed on the petitioner would definitely partake the character of 'termination' and, thereby, the respondents are entitled to forfeit the gratuity payable to the petitioner by invoking Regulation 46 (1) (e) and Section 4 (6) (a) and (b) (ii) of the Act.*

*84. Accordingly, for the reasons aforesaid, the writ petition fails and the same is dismissed. However, this order will not stand in the way of the petitioner to*



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> *file review as provided under Regulation 18 of the Syndicate Bank Officer Employees (Discipline & Appeal) Regulations, 1976 and in the event of such review being filed, the reviewing authority shall dispose of the review without in any way being influenced by any of the observations made in the above."*

11. In view of the issue having been settled already and the present case falls squarely within the four corners of the said decisions, this Court is inclined to allow this Writ Petition in the same line by following the above orders and the impugned order is set aside. However, the second respondent is directed to refund the amount paid by the petitioners within a period of four (4) weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is closed.

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

To



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