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W.P.No.19246 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.19246 of 2018

And

W.M.P.No.22633 of 2018

1.The Field General Manager,
Central Bank of India,
Zonal Office,
48/49, Montieth Road,
Egmore,
Chennai – 600 008.

2.The Chairman and Managing Director,
Central Bank of India,
Central Office,
Chandermukhi Building,
Nariman Point,
Mumbai – 400 021.

... Petitioners

Vs.

1.The Appellate Authority
under the Payment of Gratuity Act and
Deputy Chief Commissioner of Labour,
Shastri Bhawan,
Chennai – 6.

2.The Controlling Authority
under the Payment of Gratuity Act and
Regional Labour Commissioner (Central),
Madurai.

3.T.S.Sridhar

... Respondents



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Prayer:

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Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in G.A.No.22 of 2017 on the file of the first respondent and to quash the order dated 28.02.2018 made therein partly confirming the order of the second respondent dated 30.06.2017 in G.A.No.48/9/2016-R/M.

For Petitioner : Mr.T.M.Hariharan

For Respondents : Mr.N.Rajan for R1 and R2
Mr.K.M.Ramesh for R3
Senior Counsel
for M/s.S.Apunu

ORDER

The petitioners have filed this writ petition seeking issuance of Writ of Certiorari calling for the records in G.A.No.22 of 2017 on the file of the respondent and to quash the order dated 28.02.2018 made therein partly confirming the order of the second respondent dated 30.06.2017 in G.A.No.48/9/2016-R/M.

2.The case of the petitioner is that the third respondent joined the service of the petitioner Bank as a Clerk during the year 1982 and was subsequently promoted. When the third respondent was

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employed as Chief Manager, Scale IV in the Mylapore Branch from 21.08.2012 to 10.04.2014, it was found that the third respondent committed serious lapses of irregularities, omissions and commissions, involving moral turpitude while handling 'advances' portfolio, causing substantial financial loss to the Bank.

3.The further case of the petitioner is that, for the aforesaid allegations, disciplinary action was initiated as against the third respondent and charge memo dated 14.08.2014 was issued to the third respondent. Thereafter, after following due procedure, the third respondent was imposed with the punishment of dismissal from service vide order of the Disciplinary Authority dated 01.04.2015. Challenging the same, the third respondent preferred appeal before the first petitioner and the first petitioner vide order dated 21.07.2015, confirmed the punishment imposed on the third respondent.

4.The further case of the petitioner is that, thereafter, the third respondent preferred G.A.No.48/9/2016-R/M before the second respondent seeking payment of gratuity and the second respondent passed order dated 30.06.2017 directing the Regional Manager, Central Bank of India, Regional Office, Chennai, to pay gratuity



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amount of Rs.15,61,153/- to the third respondent along with penal interest at the rate of 10% per annum as per Notification No.874(E) dated 01.10.1987 from the date of gratuity amount became payable to till the date of payment. Aggrieved by the same, the petitioners preferred appeal in G.A.No.22 of 2017 before the first respondent and the first respondent vide order dated 28.02.2018 partly allowed the appeal by reducing the amount granted by the second respondent from Rs.15,61,153/- to Rs.10 Lakhs. Challenging the same, the petitioners have filed this writ petition.

5.The learned counsel appearing for the petitioner submitted that as per Section 4 (6) of the Payment of Gratuity Act, 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. However, without considering Section 4 (6) of the Payment of Gratuity Act, respondents 1 and 2 ordered for payment of gratuity, which is not sustainable one.

6.The learned Senior Counsel appearing for the third respondent workman submitted that as per Section 4 (6) (b) of the Payment of



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Gratuity Act, the gratuity payable to an employee may be wholly or partially forfeited, 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 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. As per the said clause, the workman is entitled for gratuity if there is no loss assessed by the employer. In the present case, the loss amount is not quantified in the charge memo and hence, the impugned order warrants no interference.

7. Heard the arguments advanced on either side and perused the materials available on record.

8. The facts in the present case is not in dispute. Admittedly, the third respondent is an employee of the petitioner Bank and disciplinary action was initiated as against the third respondent and charge memo dated 14.08.2014 was issued to him. Thereafter, after departmental enquiry, the third respondent was imposed with the punishment of dismissal from service vide order of the Disciplinary Authority dated 01.04.2015.



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9.The issue involved in the present writ petition is that after dismissal from service, whether the third respondent workman is entitled for gratuity or not. The issue involved is only in terms of Section 4 (6) of the Payment of Gratuity Act.

10.Section 4 (6) of the Payment of Gratuity Act, makes it clear that 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; the gratuity payable to an employee may be wholly or partially forfeited, 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 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.

11.In the present case, disciplinary proceedings was initiated against the third respondent on the allegations that the third



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respondent committed serious lapses of irregularities, omissions and commissions, involving moral turpitude while handling 'advances' portfolio, causing substantial financial loss to the Bank. However, the amount of loss has not been quantified in the charge memo. In the absence of quantification of the loss amount, the third respondent is entitled for gratuity amount.

12.However, the fact remains that the dismissal order dated 01.04.2015 passed by the Disciplinary Authority was challenged by the third respondent before the first petitioner and the first petitioner vide order dated 21.07.2015, confirmed the punishment imposed on the third respondent and the said order was not challenged before the appropriate forum. Without considering the above fact, the respondents 1 and 2 have arrived at a conclusion that the third respondent is entitled for gratuity, which is not sustainable one.

13.Hence, the order of the first respondent in G.A.No.22 of 2017 dated 28.02.2018 as well as the order of the second respondent dated 30.06.2017 in G.A.No.48/9/2016-R/M are subject to the result of the appeal that is to be filed by the third respondent challenging the order of dismissal dated 01.04.2015 passed by the Disciplinary Authority and



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confirmed by the first petitioner vide order dated 21.07.2015 before the appropriate forum.

14.In view of the above, the order of the respondents 1 and 2 cannot be acted upon till the disposal of the challenge that is to be made by the third respondent workman as against the dismissal order. Liberty is granted to the third respondent workman to implement the order of the respondents 1 and 2, if he succeed in setting aside the order of dismissal in the manner know to law.

15.The writ petition is disposed of with the above observation. No costs. Consequently, the connected miscellaneous petition is closed.

31.08.2023

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No



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M.DHANDAPANI,J.
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