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W.P. (MD) No.5573/2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
20.12.2022	27.01.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. (MD) NO.5573 OF 2020

V.Tamilselvan

... Petitioner

- Vs -

1. The General Manager (HR)
Syndicate Bank
Industrial Relations Division,
Corporate Office, Gandhi Nagar,
Bangalore 560 009.
Karnataka State

2. The Regional Manager
Syndicate Bank, Regional Office,
Plot No.15/20 First Floor
Indira Gandhi Road
Fairlands, Salem.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of certiorarified mandamus to call for the records pertaining to the impugned order in Ref. No.Form M:CRS401045:PGA192 dated 22.07.2019 on the file of the respondent No.2 and quash the same as illegal and consequently



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for a direction directing the respondents to disburse the eligible gratuity to the petitioner along with proportionate interest for the belated payment in accordance with the Regulation 46(1)(a) of the Syndicate Bank (Officers) Service Regulations 1979 within the time period stipulated by this Court.

For Petitioner : Mr. T.Lajapathi Roy

For Respondents : Mr. N.Dilipkumar

ORDER

The impugned order in and by which the gratuity payable to the petitioner was forfeited while being assailed in the present petition, direction is also sought for, for disbursement of the gratuity along with proportionate interest in terms with Regulation 46 (1) (a) of the Syndicate Bank (Officers) Service Regulations, 1979 by holding that the petitioner has retired from service upon being compulsorily retired.

2. It is the case of the petitioner that he was initially appointed as Clerk in the respondent Bank and through a series of promotions was promoted as Senior Manager in the year 2016. While so, on 26.12.2017, the petitioner was placed under suspension on contemplation of enquiry for certain delinquencies relating



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to KYC norms in the opening deposits and loan accounts. Thereafter charges were framed against the petitioner on 28.5.2019 to which the petitioner submitted his explanation denying all the charges by filing the written statement of defence on 4.6.2019.

3. Pending enquiry, the suspension of the petitioner was revoked and he was allowed to join duty on 21.06.2019. On completion of the enquiry, upon submission of enquiry report on 26.6.2019, by providing the enquiry report to the petitioner on 26.6.2019, explanation was called for to which the petitioner submitted his explanation on 27.6.2019, which was not accepted by the disciplinary authority, who imposed the punishment of compulsory retirement on the petitioner vide order dated 28.06.2019, a day prior to his date of retirement. Against the said punishment, appeal has been preferred by the petitioner before the appellate authority, which is pending consideration.

4. Pending consideration of the appeal, the petitioner sought for payment of his retirement benefits. However, the petitioner's claim for gratuity was rejected vide impugned order dated 22.07.2019 in terms of Regulation 46(1)(e) of



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the Syndicate Bank Officers' Service Regulations, 1979 (hereinafter referred to as 'the Regulations') and Section 4(6)(a) and (b)(ii) of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act'). Challenging the same, the present writ petition has been filed.

5. The learned counsel for the petitioner submits that upon submission of the enquiry report on 26.6.2019, necessary time was not given to the petitioner to submit his explanation and explanation was submitted on 27.6.2019 and immediately, the day after, the punishment of compulsory retirement was inflicted on the petitioner. Though appeal has been filed before the appellate authority, however, the same has not been decided till date.

6. It is the further submission of the learned counsel that the rejection of the representation of the petitioner for payment of gratuity is grossly incorrect, as it is not in consonance with the Act and the Rules. It is the further submission of the learned counsel that the petitioner having been retired from service compulsorily, the petitioner is entitled to payment of gratuity, as the Act and the



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Rules does not envisage forfeiture of gratuity in case of compulsory retirement of an employee.

7. It is the further contention of the learned counsel that the petitioner not having been terminated from service, forfeiture of gratuity is wholly impermissible. Only if an employee is terminated, forfeiture of retirement benefits, including is permissible. The petitioner not having been terminated from service, the respondents have no authority to forfeit the gratuity payable to the petitioner upon his retirement from service compulsorily. When the petitioner has not been terminated as defined in the Regulation, the rejection made by the respondents is not valid in the eye of law.

8. In support of the said plea, learned counsel relied on the decision of the Apex Court in ***Union Bank of India & Ors. – Vs - C.G.Ajay Babu & Anr. (2018 (9) SCC 529]***, wherein, the Hon'ble Apex Court held that in the absence of conviction of an employee for misconduct, there is no justification for the forfeiture of gratuity on the ground of misconduct proved against the delinquent.



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9. It is the further submission of the learned counsel that it is settled law that Act prevails over the Rules and in the event of any Regulation/Rules, which is not in consonance with the substance of the Payment of Gratuity Act, necessarily the provisions of the Act has to survive. It is therefore the submission of the learned counsel that the Payment of Gratuity Act having marked distinction between compulsory retirement and termination for the purpose of payment of terminal benefits, including gratuity, the Regulation, which is sought to be pressed into service by the respondents cannot stand the test of legal scrutiny.

10. The learned counsel also relied upon the decision of the Apex Court in ***Jaswant Singh Gill – Vs - Bharat Coking Coal Ltd., and others (2007) 1 SCC 663***, to contend that forfeiture of gratuity, either wholly or partially, is permissible under sub-section (6)(b)(ii) only in case of termination and not otherwise. In the case on hand, the petitioner having been compulsorily retired from service and not terminated from service, the forfeiture of gratuity by invoking Regulation 46 (1) (e) and Sections 4, 6 (a) and (b)(ii) of the Act is wholly unsustainable and, accordingly, prays for an affirmative direction to the respondents to release the gratuity.



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11. Learned counsel appearing for the petitioner also relied on the following decisions :-

i) *State Bank of Bikaner & Jaipur – Vs – Controlling Authority under the Payment of Gratuity Act (SB Civil W.P. No.7002/2008 – Dated 27.03.2012); and*

ii) *D.Kalaichelvan – Vs – Union of India & Anr. (W.P. No. 27311/2010 – Dated 25.07.2012)*

12. Per contra, learned standing counsel for the respondents submit that due to the petitioner's conduct, the bank sustained a loss to the tune of Rs.85.88 lakhs and the enquiry officer having drawn a finding against the petitioner, the disciplinary authority had imposed the punishment of compulsory retirement on the petitioner and the appeal against the same is pending.

13. It is the further submission of the learned standing counsel that the Regulations, more particularly Regulation 46 (1) (e) provides for forfeiture of gratuity upon termination of service of an employee in any other way except by way of punishment after completion of 10 years of service. Invoking the said Regulation, the gratuity payable to the petitioner was rightly forfeited, which cannot be said to be bad. It is the further submission of the learned standing



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counsel that unless the appeal is decided in favour of the petitioner, the petitioner is not entitled to gratuity, which has been forfeited on account of the wrongful loss caused by the petitioner to the respondent Bank.

14. It is the further submission of the learned standing counsel that the procedure with respect to forfeiture of gratuity was scrupulously followed by issuing show cause notice to the petitioner and upon obtaining explanation, the gratuity was forfeited and, therefore, there is no violation of of principles of natural justice and the said order is perfectly in order.

15. To buttress the aforesaid contention, learned standing counsel, placing reliance on the Full Bench of Punjab and Haryana in **UCO Bank and others – Vs - Anju Mathur (LPA No.566 of 2012)**, wherein the Full Bench, after elaborately discussing various judgments, more particularly, clause, 46 (1) (e) of the Regulations and Section 4 of the Act, held that the punishment of compulsory retirement would definitely fall within the ambit of 'termination' and, necessarily would attract forfeiture of gratuity provided for under clause 46 (1) (e) of the Regulations.



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16. Learned standing counsel also placed reliance on the decision of the Hon'ble Apex Court in ***Chairman cum Managing Director, Mahanadi Coal Fields Limited – Vs - Rabindranath Choubey (2020 (18) SCC 71)***, to emphatically impress upon this Court that where the charges when stood proved and punishment is imposed, the employer has every right to forfeit gratuity. Accordingly, he prayed for dismissal of the present petition.

17. This Court gave its anxious consideration to the rival submissions and perused the materials available on record.

18. Before advertng to the contentions and counter contentions as placed before this Court on behalf of the respective parties, it becomes imperative to point out a factum of the case, which has, hitherto, not been brought to the notice of this Court by either side, but which this Court, on its own, had found out upon skimming through the materials placed before it.

19. It is the pointed case of the petitioner that upon the imposition of punishment by the disciplinary authority, the petitioner has preferred appeal



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before the appellate authority, way back in the year 2019, more specifically on 09.08.2019. It is to be pointed out that when a remedy of appeal is available and a delinquent has resorted to the appellate remedy, a writ petition at that stage is not maintainable as the said remedy had not been exhausted. It was the specific plea before this Court by both sides that the appeal filed by the petitioner is pending consideration before the appellate authority and in such a backdrop, the normal course open to this Court would have been to relegate the petitioner to exhaust the appellate remedy before placing his case before this Court. However, before resorting to such a decision, this Court, in the interest of both the parties, carefully perused the entire materials placed before it to find out the status of the appeal said to have been filed by the petitioner. Upon careful scrutiny, it is evidenced from the materials available on record that vide order dated 30.06.2020, the appellate authority had considered the appeal of the petitioner and dismissed the same by concurring with the view and confirming the punishment imposed by the disciplinary authority. Therefore, in such a scenario, there is no deterrent or embargo for this Court to go into the merits of the issue raised in the present petition and adjudicate upon the same.



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20. It is evidenced from the materials available on record that even prior to the appeal being decided by the appellate authority, the respondents, through their communication dated 15.7.2019, had issued show cause notice to the petitioner calling upon him to show cause as to why his gratuity should not be forfeited for the loss caused by him to the bank. In fact, even in the charge sheet, more particularly in the Articles of Charge, the loss has been quantified at Rs. 85.88 Lakhs.

21. Pursuant to the said show cause notice, the petitioner, vide his reply dated 17.9.2019, had given his explanation and also the reasons which led to the loss incurred by the bank and had appealed to the competent authority to disburse the terminal benefits due to him, including the gratuity payable to him.

22. However, vide order dated 22.7.2019, the respondent rejected the explanation offered by the petitioner and directed forfeiture of the gratuity payable to the petitioner in terms of Regulation 46 (1) (e) and Section 4 (6) (a) and (b) (ii) of the Act citing the violations committed by the petitioner in the discharge of his duties as also the misconduct, commission and omission and the



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financial loss that has been caused to the bank, which has been quantified at Rs. 85.88 Lakhs.

23. The factum of the case culminating in the disciplinary proceedings and subsequent punishment of compulsory retirement imposed on the petitioner are not in dispute. The only issue that falls for adjudication of this Court relates to the rejection of the request of the petitioner for payment of gratuity upon the petitioner being compulsorily retired from service.

24. In this regard, the rejection of the respondents is premised on the imposition of punishment of compulsory retirement on the petitioner which will squarely fall within the four corners of termination and, therefore, as per clause 46 (1) (e) of the Regulations and Section 4 (6) (a) and (b) (ii) of the Act, the petitioner is not entitled to gratuity; however, the petitioner counters the same otherwise on the ground that compulsory retirement will in no way partake the character of termination so as to deny the petitioner the benefits of gratuity and the statutory prescription provided u/s 4 (6) (a) and (b) (ii) having not been



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fulfilled, the petitioner would be entitled for the gratuity, which is due and payable to him upon superannuation.

25. In the above backdrop, the following issue arise for determination of this Court in the present petition :-

“Whether the punishment of ‘compulsory retirement’ imposed on the petitioner would partake the character of ‘termination’ so as to enable the respondents 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.”

26. To address the issue raised above, it is necessary to advert to the relevant provisions, which have been pressed into service so as to forfeit the gratuity payable to the petitioner.

27. The petitioner is governed by the Bank’s Regulations which provides and caters to the terms of service of an individual during the course of employment in the bank. With regard to gratuity payable, the same is provided



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for under clause 46 of the Regulations and the same is quoted hereunder for ready reference :-

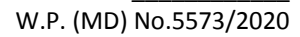
“46. (1) Every officer, shall be eligible for gratuity on :

- a) Retirement*
- b) Death*
- c) Disablement rendering him unfit for further service as certified by a medical officer approved by the Bank;*
- d) Resignation after completing ten years of continuous service; or*
- e) Termination of service in any other way except by way of punishment after completion of 10 years of service.*

** * * * **

28. Needless to mention that it is trite that an Act prevails over the Rules and Regulations. There is no quarrel that Payment of Gratuity Act prescribes the manner in which gratuity is payable to an employee and the contingent scenarios are sketched in the Act itself. Section 4 (6) of the Act relates to the circumstances when gratuity becomes payable to an employee and the same is quoted hereunder for easy reference :-

“4. Payment of Gratuity. (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, --



(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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around sub-clause (b) of Section 4. In the case on hand, the petitioner has been compulsorily retired from service 28.6.2019, which is the last working day of the month, the day on which the petitioner would have normally retired from service. Can the 'compulsory retirement', which has been inflicted on the petitioner be termed to be 'retirement' as is found in Clause 46 (1) (a) of the Regulation requires determination and deliberation at the hands of this Court.

30. The materials available on record reveal that on the very last day of his service, the petitioner was visited with a punishment of compulsory retirement and if not for the said punishment imposed, the petitioner would have normally retired from service, pending finality in the disciplinary proceedings.

31. The petitioner has not questioned the major penalty imposed on him; rather the grievance of the petitioner is only to the extent of forfeiture of gratuity, as the petitioner has been compulsorily retired from service on the very last day of his retirement, meaning thereby, that it is not a termination, but it is only a retirement and, therefore, he is entitled to gratuity and Clause 46 (1) of the Regulations would not be applicable.



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32. In fact, not only the petitioner has not questioned the imposition of punishment on him, considering the gravity of the charges, but the terminology used by the respondents has given the petitioner the ammunition to come before this Court with his prayer for release of gratuity due to him. In the above backdrop, this Court has to answer the issue, which has been formulated supra.

33. Before addressing the issue proper, it would be apposite to refer to the decision of the Hon'ble Apex Court in ***Chairman-cum-Managing Director, Mahanadi Coalfields Ltd. – Vs – Rabindranath Choubey (AIR 2020 SC 2978)***, relied on by the learned counsel for the respondents, wherein the issue before the Hon'ble Apex Court related to the permissibility of withholding of the gratuity pending the conclusion of the disciplinary proceedings even after the retirement/superannuation of the employee. In the said context, the Hon'ble Apex Court held as under :-

“9. Once it is held that a major penalty which includes the dismissal from service can be imposed, even after the employee has attained the age of superannuation and/or was permitted to retire on attaining the age of superannuation, provided the disciplinary proceedings were initiated while the employee was in service, Sub-section 6 of Section 4 of the Payment of Gratuity Act



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shall be attracted and the amount of gratuity can be withheld till the disciplinary proceedings are concluded.

9.1. Even otherwise, Rule 34.3 of the CDA Rules permits withholding of the gratuity amount during the pendency of the disciplinary proceedings, for ordering recovering from gratuity of the whole or part of any pecuniary loss caused to the company if have been guilty of offences/misconduct as mentioned in Sub-section 6 of Section 4 of the Payment of Gratuity Act, 1972 or to have caused pecuniary loss to the company by misconduct or negligence, during his service. It further makes clear that Rule 34.3 for withholding of such a gratuity would be subject to the provisions of Section 7(3) and 7(3A) of the Payment of Gratuity Act, 1972 in the event of delayed payment in the case of an employee who is fully exonerated. Rule 34.3 of the CDA Rules 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 Rule 34.3 of the CDA Rules. Therefore Section 14 of the Act which has been relied upon shall not be applicable as there is no inconsistency between the two provisions.

9.2. It is required to be noted that in the present case the disciplinary proceedings were initiated against the Respondent-employee for very serious allegations of misconduct alleging dishonestly causing coal stock shortages amounting to Rs. 31.65 crores and thereby causing substantial loss to the employer. Therefore, if such a charge is proved and punishment of dismissal



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is given thereon, the provisions of Sub-section 6 of Section 4 of the Payment of Gratuity Act would be attracted and it would be within the discretion of the Appellant-employer to forfeit the gratuity payable to the Respondent. Therefore, the Appellant-employer has a right to withhold the payment of gratuity during the pendency of the disciplinary proceedings.”

34. In the decision in **UCO Bank & Ors. – Vs – Anju Mathur (MANU/PH/0163/2013)**, which has been relied on by the learned counsel for the respondent, a Full Bench of the Punjab & Haryana High Court had occasion to consider the issue relating to forfeiture of gratuity upon termination of an employee on ‘compulsory retirement’ and in the said context, the Full Bench held as under :-

“13. We would like to emphasize that compulsory retirement is of two types. There can be an administrative order retiring an employee compulsorily from service when the employer finds that the employee has become deadwood. However, the compulsory retirement is also provided as one of the modes of punishment in the Disciplinary and Appeal Regulations, 1976 framed by the Bank. Whenever compulsory retirement is effected by way of penalty which is imposed after holding a regular enquiry, then the compulsory retirement leads to termination by way of punishment. Termination of service can result by various modes. It amounts to cessation of employment whereupon



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the employer-employee relation comes to an end. The purport of Regulation 46(1)(e) is very clear. Whenever it is a case of termination by any other mode than by way of punishment, gratuity is payable, but not when termination is occasioned by way of penalty on account of misconduct committed by an employee established in the regular departmental enquiry against such delinquent employee.

14. We are, therefore, of the opinion that Regulation 46(1) of the Officers' Regulations would not apply when termination is occasioned by way of compulsory retirement by way of punishment on account of misconduct proved against such an employee after regular departmental enquiry. To that extent, the judgment of Division Bench in Ashwani Kumar Sharma (supra) does not lay down correct law and is hereby overruled.

15. The next question is as to whether in all cases where the penalty of compulsory retirement is imposed, the gratuity is to be forfeited. Answer to this is to be found in Section 4(6) of the Payment of Gratuity Act, 1972. This sub-section reads as under:-

(6) Notwithstanding anything contained in sub-section(1) (a) the gratuity of an employee, whose services have been terminated for any act, willful 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,



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(c) 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

(d) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provide that such offence is committed by him in the course of his employment.

This sub-section gives the instances when the gratuity can be forfeited and the forfeiture can be whole or partial. We are concerned herein with Clauses (a) and (d). The gratuity can be forfeited if there is damage or loss suffered by the employer because of willful omission or negligence of the employee which act led to his termination. In that case, the forfeiture has to be to the extent of damage or loss caused. The gratuity can also be forfeited if the misconduct by the delinquent employee constitutes an offence involving moral turpitude and when such an offence is committed by him in the course of his employment.

16. The Karnataka High Court in the case of M/s. Bharath Gold Mines Ltd. v. The Regional Labour Commissioner (Central), Bangalore & Ors., reported in 1986 Lab.I.C. 1976 has held that before an employer takes steps to forfeit the entire gratuity, the employer has to take an independent decision after the termination of the service of an employee as to whether the gratuity payable should at all be forfeited and that decision must depend on the facts and circumstances of the case. Likewise, Bombay High Court in the case of Smt. Kamla Rameshchandra Sharma v. Maharashtra Rajya Wakhar



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Mahamandal, Pune, reported in MANU/MH/1601/2008 : 2009 (121) FLR 87 (DB) took the view that the penalty for recovery from pay of the whole or part of the pecuniary loss caused to the Corporation must be the actual pecuniary loss occasioned, by the misconduct of the employee. In that case the learned Bench noted that the penalty imposed on the delinquent refers to future events, which may or may not result in causing of loss to the Corporation and in that case the loss had not been quantified.”

(Emphasis Supplied_

35. Countering the above, learned counsel for the petitioner relied upon the decision of a learned single Judge of the Rajasthan High Court in ***State Bank of Bikaner & Jaipur – Vs – Controlling Authority under the Payment of Gratuity Act (SB Civil W.P. No.7002/2008 – Dated 27.03.2012)***, wherein the learned single Judge has held that ‘*compulsory retirement*’, even in the form of punishment cannot be brought within the ambit of ‘*termination*’ and in the said context, it has been held as under :-

“Perusal of the provision quoted above shows that as to when gratuity can be withhold. It is only in the case where one is terminated for any act of wilful omission or negligence causing any damage or loss to or destruction of property belonging to the employer and at the same time, if an employee is terminated for his riotous or disorderly conduct or any act of violence etc. In this



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case, respondent employee has not been terminated from service but was compulsorily retired by way of punishment. Reference of the judgment in the case of Tulsiram Patel (supra) has been given. It is necessary first to clarify that there are different terms used for discontinuance of an employee from service. It may be by way of termination, dismissal, removal and lastly by compulsory retirement. The effect of the above is nothing but discontinuance of service of an employee but effects are different. In case of removal and dismissal, in one case employee is not entitled for further employment, whereas, in other case, he can seek future employment with the same employer. Same way, compulsory retirement does not affect pensionary and other retiral benefits. So far as word 'termination' is concerned, it is a term used other than in the case of dismissal or removal by way of disciplinary action. All the four terms of discontinuance cannot have one meaning. The words used under section 4(6) of the Act of 1972 is termination which cannot be said to cover the case of compulsory retirement. If an employee is given compulsory retirement by way of punishment, it does not mean termination though it amounts to discontinuance of service. The termination results in denial of retiral benefits whereas compulsory retirement does not."

(Emphasis Supplied)

36. The decision of a learned single Judge of this Court in ***D.Kalaichelvan – Vs – Union of India & Anr. (W.P. No.27311/2010 – Dated 25.07.2012)*** has also



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been pressed into service by the learned counsel for the petitioner, which is on similar lines to that of the decision of the Rajasthan High Court, wherein the learned Judge has held as under :-

“25. This contention of the learned counsel is again misconceived. The regulation making authority clearly stipulated that an employee on retirement is entitled to payment of gratuity. The word 'retirement' would include compulsory retirement, therefore, the case of the petitioner is covered under regulation. 46. The compulsory retirement cannot be treated as termination by way of punishment, as the termination is one of the punishment under the regulations. If the regulation making authority had any intention to deny gratuity to employee imposed with punishment of compulsory retirement, it could have been provided under the regulations. It is not open to the Court to add words to statutory provisions, when these do not suffer from any ambiguity.”

(Emphasis Supplied)

37. Reliance has been placed on the decision of the Hon’ble Supreme Court in ***Jaswant Singh Gill – Vs – Bharat Cooking Coal Ltd. & Ors. (2007 (1) SCC 663)***, wherein the Hon’ble Supreme Court had considered the permissibility of withholding of gratuity pending a disciplinary proceeding on superannuation of



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an employee vis-à-vis the nature of penalty that could be imposed on such an employee on completion of the enquiry after the superannuation of the employee and in the said context, the Hon'ble Supreme Court held as under :-

“10. The provisions of the Act, therefore, must prevail over the Rules. Rule 27 of the Rules provides for recovery from gratuity only to the extent of loss caused to the company by negligence or breach of orders or trust. Penalties, however, must be imposed so long an employee remains in service. Even if a disciplinary proceeding was initiated prior to the attaining of the age of superannuation, in the event, the employee retires from service, the question of imposing a major penalty by removal or dismissal from service would not arise. Rule 34.2 no doubt provides for continuation of a disciplinary proceeding despite retirement of employee if the same was initiated before his retirement but the same would not mean that although he was permitted to retire and his services had not been extended for the said purpose, a major penalty in terms of Rule 27 can be imposed.

* * * * *

13. The Act provides for a closely neat scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. As noticed hereinbefore, sub-section (6) of Section 4 of the Act contains a



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non- obstante clause vis-à-vis sub-section (1) thereof. As by reason thereof, an accrued or vested right is sought to be taken away, the conditions laid down thereunder must be fulfilled. The provisions contained therein must, therefore, be scrupulously observed. Clause (a) of Sub-section (6) of Section 4 of the Act speaks of termination of service of an employee for any act, willful omission or negligence causing any damage. However, the amount liable to be forfeited would be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or damage. It was not found that the damages or loss caused to Respondent No. 1 was more than the amount of gratuity payable to the appellant. Clause (b) of Sub-section (6) of Section 4 of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude. Conditions laid down therein are also not satisfied.

(Emphasis Supplied)

38. At the very outset, even a glimpse of the decisions of the learned single Judges of the Rajasthan High Court and this Court by the learned counsel for the petitioner would not stand judicious scrutiny in the light of the decision of the Full Bench of the Punjab & Haryana High Court. Equally, the decision in *Jaswant*



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Gill's case (supra) need not be deliberated by this Court as the said decision has been taken into consideration by the Hon'ble Supreme Court in *Mahanadhi Coalfields case (supra)*, which is a Bench of higher composition.

39. It is further to be pointed out that the decision in *Mahanadhi Coalfields case (supra)* would not have a direct bearing to the case on hand, as the issue in the said case was totally different. In the said case, the issue before the Hon'ble Supreme Court was whether the employer is vested with power to withhold the gratuity pending a disciplinary proceeding, which has been initiated against the employee, while in service, but who has subsequently retired without prejudice to the departmental enquiry and on completion of the enquiry, whether the said employee could be visited with a major penalty, including termination/dismissal from service. The said issues were dealt with by the Hon'ble Supreme Court in the said decision, which was decided affirmatively holding that the employer is well within its right to withhold gratuity pending completion of enquiry and retirement of the employee would not be a bar to impose major penalty pursuant to the report of the enquiry, including the penalty



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of termination/dismissal from service. But the case on hand totally falls in a different sphere.

40. In the present case, the disciplinary proceeding was initiated against the petitioner while in service, which reached its conclusion by the disciplinary authority imposing the punishment of compulsory retirement on the petitioner on the very day when the petitioner was to attain the age of superannuation. So there was no question of withholding of the gratuity due and payable to the petitioner and it is only a case of gratuity payable to the petitioner being forfeited for the delinquency committed by the petitioner for which he was visited with the aforesaid punishment. Therefore, the severance of the employer-employee relationship got concluded even before the superannuation of the petitioner and in such a backdrop, the show cause notice was issued to the petitioner putting forth the intention of the employer to forfeit the gratuity payable to the petitioner due to the loss caused by the petitioner to the respondent bank.

41. In the decision in *Anju Mathur's case (supra)*, the Full Bench of the Punjab & Haryana High Court had considered the permissibility of



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withholding/forfeiture of gratuity upon the delinquency of the employee being found proved resulting in imposition of punishment of compulsory retirement. The said decision would stand attracted to the case on hand, but this Court is of the considered view that the Full Bench had merely held that compulsory retirement on the administrative side cannot be equated to compulsory retirement as a punishment and had gone on to hold that gratuity could be forfeited.

42. In the light of the decision of the Full Bench in *Anju Mathur's case* this Court is ordained with the task to consider whether it is open to the employer, viz., the respondent herein, to forfeit the gratuity inspite of imposing the punishment of '*compulsory retirement*' on a delinquent/employee.

43. There is no quarrel with the fact that an employee could be compulsorily retired on two grounds, viz., on administrative ground and as a punishment. However, what is to be determined is whether the '*compulsory retirement*' on both the occasion are equatable or is differentiable. In the aforesaid backdrop, it is necessary to find out the meaning of the term



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'retirement' and 'termination' and whether 'compulsory retirement' could be deemed to be a 'termination' when it is inflicted as a punishment.

44. The meaning of the term 'Retire' as per *Concise Oxford English Dictionary* (12th Edn.) is :-

"retire – leave one's job and cease to work, typically on reaching the normal age of leaving service.

(of a sports lover) cease to play competitively.

Withdraw from a race or match because of accident or injury.

Put out (a batter); cause (a side) to end a turn at bat. Withdraw to or from a particular place

....."

45. The meaning of the term 'Terminate' as per *Concise Oxford English Dictionary* (12th Edn.) is :-

"terminate – bring to an end. End before term by artificial means. (of a train or bus service) end its journey. (terminate in) have an end at (a specified place) or of (a specified form). End the employment of....."



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46. The definition of 'Retirement' as defined in *P.Ramanatha Aiyar's 'The*

Law Lexicon (5th Edn.) is :-

"Retirement means termination of the service of an employee otherwise than on superannuation."

47. The definition of 'Termination' as defined in *P.Ramanatha Aiyar's 'The*

Law Lexicon (5th Edn.) is :-

"Termination – Termination puts an end to a contract without putting an end to whatever rights and liabilities have already accrued."

There is no distinction between termination in accordance with contract and termination in accordance with the service rules. A person employed on temporary basis whose services can be dispensed with one month's notice would not attract Article 311. If the Civil Servant fails to make use of the opportunities provided to him and does not exhibit his ability, the termination of services in accordance with service rules does not amount to dismissal or removal from service under Article 311 of the Constitution.

.....

The expression 'termination' contained in the order of delegation is used in the limited sense of simple contractual termination and not termination by way of removal or dismissal as penalty or punishment for misconduct."



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48. The definition of “*superannuation*” as defined in P.Ramanatha Aiyar’s

‘The Law Lexicon (5th Edn.) is :-

“Superannuation in relation to an employee who is a member of the Pension Scheme, means the attainment, by the said employee, of such age as is fixed in the contract or conditions of service as the age on the attainment of which such employee shall vacate the employment.”

49. From the aforesaid definitions of ‘*retire*’ ‘*retirement*’ and ‘*termination*’ as meant in the Oxford Dictionary and Law Lexicon, it is evident that ‘*retirement*’ brings to end the services of an employee, otherwise than on superannuation, by terminating the service of the employee prematurely, even prior to superannuation.

50. From the above, it is evident that retirement could effectively be characterised as termination as well, as it is not age-centric unlike superannuation, which is age-centric. To be precise, retirement is nothing but the termination of the services of an employee in any other manner other than superannuation.



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51. In the above backdrop, it is necessary to look into the definition of 'retirement' and 'superannuation' as provided under Section 2 (q) and (r) of the Payment of Gratuity Act, which is quoted hereunder :-

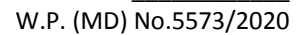
"2. Definitions. –

*(q) **retirement** means termination of the service of an employee otherwise than on superannuation.*

*(r) **superannuation** in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment."*

52. From the definition provided u/s 2 (q) of the Payment of Gratuity Act, it is clear that retirement would take within its fold the termination of the services of an employee otherwise than on superannuation. In effect, on retiring an employee otherwise than on superannuation, the employee is terminated from service, whereas on superannuation, the employee vacates the position which he was occupying.

53. In the case on hand, what is curious to be noted is the fact that the date on which the punishment of '*compulsory retirement*' has been inflicted on



54. If normally an employee is allowed to superannuate, the employee would be entitled to all the benefits relatable to his service. In the said backdrop, the employee, for the purpose of gratuity and other retiral benefits, would be deemed to have been retired, thereby, clause 46 (1) (a) of the Regulation would stand attracted for the purpose of payment of gratuity, meaning thereby, the employee had retired from service upon superannuation by vacating the post. There can be no quarrel with regard to the aforesaid proposition.

34
https://www.mhc.tn.gov.in/judis



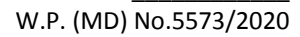
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necessary reply and, thereafter, rejecting the reply. Clause 46 (1) (e) provides that where the services of the employee is terminated in any other way except by way of punishment after completion of ten years of service, gratuity is not payable to the said employee.

56. The meaning of clause 46 (1) (e) resultantly is that, where the termination of an employee is by way of punishment and where the employee has put in ten years of service, consequent upon which gratuity becomes due and payable to the said employee, the employee would not be entitled to gratuity. To put it in a nutshell an employee, who has put in service of ten years or more and who has been sent out of service on account of punishment imposed, the employee would not be entitled to any gratuity, whereas, where the termination of the employee is not by way of punishment, the employee is entitled to gratuity after completion of ten years of service. .

57. The petitioner, in the present case, does not fulfil the requirement of Section 2 (r), he having not been superannuated from service by vacating the employment on his attaining the specific age; rather, the services of the



58. The definition of the word ‘*termination*’ as defined under the Law Lexicon, which has been extracted supra, provides that “*if the civil servant fails to make use of the opportunities provided to him and does not exhibit his ability, the termination of services in accordance with the service rules does not amount to dismissal or removal of services as provided under Article 311 of the Constitution*”.

59. From the above, what transpires is that where an employee fails to properly utilise the opportunity provided to him and fails to exhibit his ability, thereby, failing to prove his necessity to be continued in the post, then the termination of the service of the said employee by the employer would not



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amount to dismissal or removal from service as provided under Article 311 of the Constitution, even though the employee is compulsorily sent out from service.

60. In this backdrop, the decision of the Full Bench of the Punjab & Haryana High Court assumes significance, wherein the Full Bench has held that '*compulsory retirement*' of an employee cannot always enure to the benefit of the employee enabling him to all the retiral benefits and only when the termination is on administrative ground, the employee would be entitled to all the retiral benefits and in case of compulsory retirement being inflicted as a punishment, the said compulsory retirement would partake the character of termination and the employee would be deemed to have been removed or dismissed from service necessitating forfeiture of gratuity.

61. In the case on hand, it is the admitted case of the parties that upon enquiry being conducted and report being tabled, the disciplinary authority had acted upon it and inflicted the punishment of compulsory retirement on the petitioner. The punishment of '*compulsory retirement*' imposed on the petitioner by the disciplinary authority is not on account of the petitioner's inability to



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exhibit his ability and make use of the opportunities provided to him so as to make the termination of his service in accordance with the service rules and, therefore, the said order is amenable to Article 311 of the Constitution.

62. As aforesaid, in the case on hand, the termination of the services of the petitioner is not on account of his ability to exhibit properly and make use of the opportunities provided; rather, the service of the petitioner has been terminated on account of his integrity and dishonesty in the discharge of his duties, which is evident from the order passed by the disciplinary authority, which has not been questioned by the petitioner. For better appreciation, the operative portion of the order of the disciplinary authority, which gives a clear picture of the mind of the disciplinary authority, is quoted hereunder for better clarity :-

“Public servants and more so the Bank employees are required to be sincere and devoted towards the interest of the employer while discharging their duties as they are dealing with public money held in trust. In the instant case, it is observed that V.Tamilselvan, the CSOE has misused the trust reposed in him and indulged in indiscriminate sanction of loan in a fraudulent manner in the name of the purported borrowers at the instance of the middleman based on forged documents and thereby unduly accommodated the middleman. He has failed to discharge his



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duties with honesty and displayed absolute lack of integrity by his above acts and acted in a manner prejudicial to the interests of the Bank. The reckless sanctioning of numerous facilities at Annadanapatti Branch with fraudulent intention is quite clearly established by the documents and evidence on record. Therefore, taking into consideration the gravity of the irregularities proved against him and all other aspects and circumstances of the case, I pass the following :

ORDER

For breach of Regulation No.3 (1) read with Reg. No.24 of Syndicate Bank Officer Employees'(Conduct) Regulations, 1976, Shri V Tamilselval be and is hereby compulsorily retired from the services of the Bank.

* * * * *

63. From the findings and reasoning given by the disciplinary authority in the order aforesaid, it is manifestly clear that what weighed with the disciplinary authority to terminate the service of the petitioner by compulsorily retiring him from service is the act of dishonesty and his lack of integrity, which are concomitant of an authority handling financial affairs, more particularly public money. The act of the petitioner in displaying dishonesty and lack of integrity has



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resulted in the infliction of punishment, even on the very day when the petitioner was due to superannuate.

64. Upon imposition of the punishment, as already aforesaid, the petitioner has unsuccessfully challenged the punishment. In the interregnum, the show cause notice has been issued by the respondent to the petitioner seeking his explanation as to why the gratuity payable to him should not be forfeited for the loss of Rs.85.88 lakhs caused by the act of the petitioner and upon receipt of explanation, the order of forfeiture has been passed, which is under challenge. Therefore, not only the act of the disciplinary authority clearly shows that the intention of the disciplinary authority was to offset the loss caused by the petitioner due to his dishonest act on account of lack of integrity, but it is in consonance with Article 311 of the Constitution, as enquiry has been conducted before imposing the punishment and, thereafter, before the order forfeiting gratuity is passed, show cause notice has been issued and explanation obtained from the petitioner. Therefore, there is no infringement of Article 311 of the Constitution.



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65. Further, one other aspect, which also weighs in the mind of this Court is the reply given by the petitioner to the show cause notice seeking to invoke the provisions of the Payment of Gratuity Act for forfeiting the gratuity payable to the petitioner. For better appreciation, the relevant portion of the reply given by the petitioner is quoted hereunder :-

“2. I was issued with a charge sheet towards the end of my career. Inquiry was conducted and the matter was disposed off by the Disciplinary Authority vide his proceedings No. 546/HRD:IRD/DA-6 dated 28.06.2019 by awarding me the punishment of “Compulsory Retirement from the Services of the Bank”.

3. After the above proceedings, I am yet to receive my monthly pension and other terminal benefits like gratuity. I have been now served with your notice cited above asking me to show cause as to why you should not order for the forfeiture of full amount of gratuity payable to me by invoking Section 4 (6)(a) of the Payment of Gratuity Act.

4. I submit that I had been discharging my duties in Annadanapatti branch just as I was discharging my duties elsewhere in the Bank prior to that posting. During the course of business I received various proposals which were dealt by me in the normal course of functioning of a prudent banker.

5. When the role of a sanctioning authority is to take financial decisions as to sanction a loan or not, there is every possibility



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that such decisions may go wrong for various reasons and external factors which are beyond his control. As such those accounts may slip into NPAs for which the sanctioning authority cannot be held responsible.

6. The same was the case in mine also. As the Branch Manager, I had to sanction so many loans and some of them have gone bad for reasons which are beyond my control.

7. Lending of loans by banks involve such business risks and it was such a business risk that I took while discharging my duties.

8. I am not personally liable for the business decisions which I took while discharging my duties and the circumstances under which I took such decisions were also clearly brought out during the course of the inquiry proceedings.

* * * * *

66. From the above, it transpires that the petitioner has been clear that he has been visited with an order of punishment of compulsory retirement from the services of the bank. Therefore, for all intent and purposes, the petitioner was aware that he was not superannuated from service, though it was his last day in office. A plain reading of the reply of the petitioner, leaves a sour taste in the mouth of this Court, as the petitioner has not repented, but has the temerity to go ahead and state that mistakes are incidence of service and bad decisions



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resulting in any loss to the bank are incidence of business, which cannot be fastened on the petitioner, though being the Branch Manager. While less said the better, further, the petitioner would also have been aware of Regulation 46 (1) (e) relating to payment of gratuity and the persons, who would be entitled to the same. However, the petitioner having accepted that it is a punishment imposed on him in and by which the petitioner was sent out from service, has unsuccessfully appealed the said order before the appellate authority.

67. If really the intent of the disciplinary authority was not to enforce Regulation 46 (1) (e) on the petitioner, inspite of the loss caused by him, which has been quantified at Rs.85.88 Lakhs, there was no necessity for the disciplinary authority to impose a punishment of compulsory retirement as on the very same day, the petitioner would have otherwise retired on superannuation. Therefore, clearly reading Regulation 46 (1) (e), the disciplinary authority, on careful application of mind, had imposed the punishment of compulsory retirement on the petitioner in and by which the petitioner was terminated from the services of the bank and was not allowed to superannuate. Therefore, the stand of the petitioner that no forfeiture of gratuity payable to him can be made by invoking



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Regulation 46 (1) (e) is nothing but an ingenious attempt on the part of the petitioner to absolve his act and at the same time receive all the benefits that would be due and payable to an employee, who has retired on superannuation.

68. Merely because the terminology used while terminating the service of the petitioner is '*compulsory retirement*', the said punishment cannot be said to be not a case of dismissal or removal from service. As pointed out by the Full Bench of the Punjab & Haryana High Court in *Anju Mathur's case (supra)*, '*compulsory retirement*' on administrative grounds stands on a totally different footing from the '*compulsory retirement*' imposed as a punishment on an employee. On the administrative ground, the inability of the employee to make use of the opportunities and exhibit his ability, which in turn, affects the administrative efficiency in the functioning of the administration, resulting in '*compulsorily retiring*' an employee from service cannot be equated to the '*compulsory retirement*' which is inflicted on an employee, whose honesty and integrity has been put in issue and which stood proved in the enquiry resulting in the ousting of the employee by terminating his service.



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69. The '*compulsory retirement*' of an employee passed on two different heads, would be totally different and is not equatable. As goes the *oft* quoted saying that "*two unequals cannot be treated as equals*", in the same manner, two different acts, of different dimension and impact, leading to a similar result cannot be equated on the same scale as the act in each case would be the guiding factor in determining the manner of applicability of the provisions of the service regulations relating to the terminal benefits due and payable to the employee and the similarity in the result is of no consequence in deciding the payment of terminal benefits.

70. In the case on hand, as already pointed out above, the dishonesty and absolute lack of integrity of the petitioner had resulted in the conduct of the enquiry and consequently the imposition of punishment of compulsory retirement on the petitioner, that too on the day, when the petitioner is to have superannuated. At the risk of repetition, it is to be pointed out that the very act of the disciplinary authority in imposing the punishment, knowing fully well the superannuation of the petitioner on the very same day, clearly reveals the



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intention of the disciplinary authority to subject to the petitioner to a major penalty, which has its due consequence.

71. Further, it is to be pointed out that '*compulsory retirement*' is provided as a major penalty under Regulation 4 (h) of the Syndicate Bank Officer Employees (Discipline & Appeal) Regulations, 1976. For better appreciation, the penalties provided in the aforesaid Regulations are as under :-

"4. Penalties :

The following are the penalties which may be imposed on an Officer Employee for acts of misconduct or for any other good and sufficient reasons.

Minor Penalties :

- a) Censure;*
- b) Withholding of increments of pay with or without cumulative effect;*
- c) Withholding of promotion;*
- d) Recovery from pay or such other amount as may be due to him, of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of orders;*
- e) Reduction to a lower stage in the time-scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting officer's pension.*

Major Penalties :



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f) Save as provided for in (e) above, reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the officer will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay.

g) Reduction to a lower grade or post.

h) Compulsory Retirement;

i) Removal from service which shall not be a disqualification for future employment;

j) Dismissal which shall ordinarily be a disqualification for future employment.”

72. From the above, it is evident that not only ‘*compulsory retirement*’ is shown as a major penalty, but there is a clear demarcation with regard to disqualification of an employee for future employment when removal or dismissal from service is imposed as punishment on an employee. However, the penalty of ‘*compulsory retirement*’ has no tags attached to it and for all purposes, it not only amounts to removal from service, but would be termination simpliciter without any strings attached, which would benefit the employee.



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73. It is also to be pointed out that knowing fully well that a major penalty of compulsorily retiring has been imposed without allowing the petitioner to superannuate on the last day of his service, the petitioner has not thought it fit to challenge the order of compulsory retirement imposed on him before this Court inspite of the appeal preferred by him having been rejected way back on 30.06.2020. Further, no review has also been filed against the said order of the appellate authority. However, under the garb of a technical objection, the petitioner tries to achieve something, which he could otherwise not achieve, as he is entitled to it.

74. Therefore, the proposition of law laid down by the Full Bench in *Anju Mathur's case (supra)* that '*compulsory retirement*', imposed as a punishment for delinquency of an employee for infraction of Section 4 (6) (a) and (b) of the Payment of Gratuity Act would partake the character of termination and would definitely have an impending effect on the payment of the retiral benefits of the employee.



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75. Insofar as the decision of the learned single Judge of the Rajasthan High Court in *State Bank of Bikaner & Jaipur case (supra)*, which has been relied on by the learned counsel for the petitioner, the said decision, in fact, favours the respondent more than the petitioner, as the learned single Judge, in the said decision, upon perusal of the provision, more especially Section 4 (6) (a) and (b) of the Payment of Gratuity Act has held that “*It is only in the case where one is terminated for any act of wilful omission or negligence causing any damage or loss to or destruction of property belonging to the employer and at the same time, if an employee is terminated for his riotous or disorderly conduct or any act of violence etc.*”. In the case on hand, the petitioner has been terminated from service by imposing the punishment of compulsory retirement upon his act of willful omission in the discharge of his duty due to his dishonest act and absolute lack of integrity. In such a backdrop, Section 4 (6) (a) and (b) would squarely stand attracted to the case on hand.

76. In the case of *Kalaichelvan (supra)*, it has been held by the learned Judge that “*The word 'retirement' would include compulsory retirement, therefore, the case of the petitioner is covered under regulation 46. The*



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compulsory retirement cannot be treated as termination by way of punishment, as the termination is one of the punishment under the regulations". In the said case, a categorical finding has been recorded therein that 'termination' was a form of punishment provided in the Regulation, however in the case on hand, 'termination' is not provided as a major punishment and, therefore, the said decision would not have any application to the present case.

77. Insofar as the decision in *Jaswant Singh Gill (supra)* is concerned, the ratio laid down in the said decision has been held to be bad by a larger Bench of the Hon'ble Apex Court in *Mahanadhi Coalfields case (supra)*. Even barring the said overruling, it is to be pointed out that in the said case, the Hon'ble Apex Court has held the applicability of Section 4 (6) (a) and (b) of the Payment of Gratuity Act, but has only set aside the forfeiture on the ground that the amount of loss has not been quantified. However, in the case on hand, the loss has been quantified even in the charges framed against the petitioner and, therefore, the said decision cannot be pressed into service.



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78. An ancillary contention has also been advanced on behalf of the petitioner, in that it is submitted that the provisions of the Payment of Gratuity Act would prevail over the Regulations and, therefore, Section 46 (1) (e) cannot override the provisions of the Act.

79. There is no quarrel with the proposition that the provisions of the Act would have a march over the Regulations framed by the employer and would prevail over the said Regulations. However, it is to be pointed out that the Payment of Gratuity Act has carried the definition of '*retirement*' and '*superannuation*' u/s 2 (q) and (r). If gratuity is really required to be paid to an employee even upon termination other than superannuation, then there would have been no necessity for incorporation of Section 4 (6) (a) and (b), which points out the scenario in which an employee would stand terminated prematurely. That is the main reason why superannuation is attached with a string of age, where an employee is superannuated only on attaining a particular age, while it is not so with retirement, which may be for multifarious reasons. Therefore, with caution and wisdom, Parliament has thought it fit to define '*retirement*' in the Payment of Gratuity Act. In fact, all sorts of termination from service has been



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brought within the ambit of retirement and punishment for reasons specified u/s 4 (6) (a) and (b) of the Act alone are permit forfeiture of gratuity. In the case on hand, the act of the petitioner falls squarely within the four corners of Section 4 (6) (a) of the Act, as the act of omission of the petitioner in the discharge of his duties effectively and honestly has resulted in loss/damages to the respondent, which has been quantified even in the charges, which stood proved and, resultantly, resulting in forfeiture of gratuity payable to the petitioner.

80. The wisdom of the Parliament in defining '*retirement*' to mean a termination other than by way of superannuation, gains force by the provision provided for u/s 4 (6), which has already been extracted above. Sub-sections (a) and (b) to Section 4 (6) provides for the forfeiture of gratuity of an employee if the termination is for certain acts, as provided for under clauses (i) and (ii) of sub-section (b) and (a) to Section 4 (6). The broad meaning, which the Parliament intended to give to such termination provided for under clause (i) and (ii) of sub-sections (b) and (a) of Section 4 (6) would definitely carry within its fold '*compulsory retirement*', which is inflicted as a punishment on an employee for



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acts of omission and negligence perpetrated by the employee in the course of the discharge of his duties.

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 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.



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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 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



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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 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.

27.01.2023

Index : Yes / No

Neutral Citation : Yes / No

RR/GLN



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WEB COPY To

1. The General Manager (HR)
Syndicate Bank
Industrial Relations Division,
Corporate Office, Gandhi Nagar,
Bangalore 560 009.
Karnataka State

2. The Regional Manager
Syndicate Bank, Regional Office,
Plot No.15/20 First Floor
Indira Gandhi Road
Fairlands, Salem.



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W.P. (MD) No.5573/2020

M.DHANDAPANI, J.

RR/GLN

**PRE-DELIVERY ORDER IN
W.P. (MD) NO.5573 OF 2020**



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W.P. (MD) No.5573/2020

**Pronounced on
27.01.2023**