



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

984 WRIT PETITION NO. 889 OF 2022

Sharad Baburao Pote,
Age 58 years, occ. Retired,
R/o House No.794, Samta chowk,
Mali Galli, Bingar, Ahmednagar,
Tq. and Dist. Ahmednagar.

...Petitioner

VERSUS

Maharashtra State Road Transport Corporation
Ahmednagar Division, Ahmednagar
Sarjepura Kotla, Ahmednagar
Through its Divisional Controller.

...Respondent

...

Advocate for the Petitioner : Mr. Barde Parag Vijay
Advocate for Respondent : Mr. Anand D. Wange

...

CORAM : ARUN R. PEDNEKER, J.

Dated : September 19, 2024.

ORAL JUDGMENT :-

1. Rule. Rule made returnable. With consent of the parties, heard finally.
2. The question that arises for consideration in the present writ petition is whether the petitioner is disentitled to receive gratuity from the respondent, MSRTC, in view of the bar created under Section 4, sub-section (6)(b)(ii) of the Payment of Gratuity Act.
3. The brief facts leading to the filing of the writ petition are noted below : -

The petitioner was appointed as a Conductor on 15/01/1988 with the respondent, MSRTC. After rendering 25 years of service, the petitioner was dismissed for misappropriation of funds following the conclusion of a departmental inquiry. This dismissal was challenged up to this Court, and the dismissal order was upheld. **It is not disputed that there was no criminal complaint / First Information Report filed against the petitioner for misappropriation of funds.** Subsequently, the petitioner applied for payment of gratuity, which was denied. Consequently, the petitioner approached the Competent Authority/Labour Court seeking payment of gratuity.

4. In response, the respondent filed a written statement denying the allegations. It was stated that the petitioner had been terminated for misappropriating funds collected from bus passengers. The respondent argued that, based on the petitioner's misconduct, he was dismissed from service on 09/08/2013 and is not entitled to gratuity in view of the bar created under Section 4, sub-clause (6)(b)(ii) of the Payment of Gratuity Act. It was further contended that the petitioner's act of misappropriation of the fare collected from the passengers constitutes an offence involving moral turpitude, justifying the forfeiture of gratuity.

5. The Labour Court, after considering the material and relying on

the judgments in ***M.P. State Road Transport Corporation vs. Dy. Labour Commissioner M.P., Indore and Others, reported in 1993 (67) F.L.R. 585***, and ***Laxman Balu Deualkar vs. Chief Executive Officer, Kolhapur District (Central Co-op. Bank Ltd.), reported in 2018 III CLR 8***, held that the petitioner's actions amounted to an offence involving moral turpitude. Consequently, the Court dismissed the petitioner's application for gratuity by its order dated 09/03/2020.

6. The petitioner challenged the order dated 09/03/2020 of the Lower Court passed under the Payment of Gratuity Act before the Appellate Authority in Appeal (P.G.A.) No. 01/2021. The same contentions were raised before the Appellate Authority. The Appellate Authority relied on the following judgments of the Hon'ble Supreme Court and this Court : -

(i) Union Bank of India and Ors. vs. C.G. Ajay Babu and Anr., reported in AIR 2018 SC 3792,

(ii) Shivaji Kerba Paikrao vs. Union of India and Others, reported in 2018 (5) Mh.L.J. 349, and

(iii) Maharashtra Gramin Bank through its Chairman and Others vs. Bharatibai Ramesh Kambale and Others, reported in 2020 (5) Bom.C.R. 62,

The Appellate Authority held that the petitioner's actions leading to his dismissal amounted to an offence involving moral turpitude,

rendering him ineligible for gratuity, and dismissed the appeal.

7. In the present petition, the petitioner challenges the above mentioned orders passed by the Labour Court and the Appellate Court contending that both courts have misinterpreted the judgment in **C.G. Ajay Babu (Supra)** of the Hon'ble Supreme Court. It is submitted that in **C.G. Ajay Babu**, it was categorically held that for an employee to forfeit gratuity under Section 4(6)(b)(ii) of the Act, the misconduct must involve moral turpitude, and such misconduct must be established as an offence in a competent court of law. In the absence of a finding by a Court of competent jurisdiction that the dismissed employee's conduct involved moral turpitude and constituted an offence, forfeiture of gratuity is not permissible.

8. The learned Counsel **Mr. Barde Parag Vijay** for the petitioner has relied upon paragraphs 16, 17, and 18 of the judgment in **C.G. Ajay Babu** and submits that in the instant case, no offence was registered against the petitioner as such the petitioner's gratuity amount cannot be forfeited under Section 4(6)(b)(ii) of the Act. He has also relied upon the judgments of this Court in the following cases : -

(i) **Union Bank of India and Ors. vs. C. G. Ajay Babu and Anr., reported in AIR 2018 Supreme Court 3792,**

(ii) **Western Coal Fields Limited Nagour vs. Presiding Officer,**

Appellate Authority Under The Payment of Gratuity Act, 1972 and Dy. Chief Labour Commissioner (C), Nagpur, reported in 2020 (5) ABR 445,

(iii) Babarao Narayanrao Wankhade vs. Maharashtra State Road Transport corporation (MSRTC) and Others, reported in 2022 DGLS (Bom.) 4223.

(iv) The Divisional Controller, MSRTC, Ahmednagar vs. Shridhar Baburao Lokhande, (Writ Petition No.7838/2018 and other connected matters, decided on 20/01/2021).

9. He submits that the reliance placed by the lower courts on the judgments in ***Bharatibai Ramesh Kambale (Supra)*** and ***Laxman Balu Deualkar (Supra)*** is misplaced. This is because the judgment in ***Laxman Balu Deualkar (Supra)*** was subsequently reviewed and the order was recalled. The reliance on that judgment in the ***Bharatibai*** case is unsustainable, as the same is based on Judgment of ***Deualkar (Supra)*** which was later reviewed and recalled.

10. He further contends that in the case of ***Shivaji (Supra)***, there is no reference to the Supreme Court's judgment in ***C.G. Ajay Babu (Supra)***. Moreover, in the subsequent judgments of this Court in the cases of ***Western Coal Fields Limited Nagpur (Supra)***, ***The Divisional Controller, MSRTC, Ahmednagar (Supra)***, and ***Babarao Narayanrao Wankhade (Supra)***, this Court has relied upon ***C.G. Ajay Babu (Supra)*** and consistently held that unless the employee is held

to be involved in an offence involving moral turpitude established by a court of competent jurisdiction, gratuity cannot be forfeited under Section 4(6)(b)(ii) of the Act.

11. *Per contra*, the learned Counsel **Mr. Anand D. Wange** appearing for the respondent submits that the judgment in the case of ***Bharatibai (Supra)*** was challenged before the Supreme Court, and the Supreme Court dismissed the Special Leave Petition (SLP). He further relies on the judgment in ***Bharatibai*** and submits that this Court should uphold the reasoning in that case and dismiss the writ petition.

12. Taking into consideration the rival submissions, at the outset, it is necessary to refer to the relevant provision of Section 4(6)(b)(ii) of the Payment of Gratuity Act, which is quoted below :-

“4. *Payment of Gratuity :*

(6) *Notwithstanding anything contained in sub-section (1) - (a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused ;*

(b) *the gratuity payable to an employee may be wholly or partially forfeited --*

(i) *if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or*

(ii) *if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude,*

provided that such offence is committed by him in the course of his employment."

13. The Hon'ble Supreme Court in the case of **C.G. Ajay Babu (Supra)**, has examined the scope of Section 4 (6)(b)(ii) of the Payment of Gratuity Act and at paragraphs 16, 17, and 18, has held as under : -

"16. Under sub-Section (6)(a), also the gratuity can be forfeited to only to the extent of damage or loss caused to the Bank. In case, the termination of the employee is for any act or wilful omission or negligence causing any damage or loss to the employer or destruction of property belonging to the employer, the loss can be recovered from the gratuity by way of forfeiture. Whereas under sub-Clause (b) of sub-Section (6), the forfeiture of gratuity, either wholly or partially, is permissible under two situations- (i) in case the termination of an employee is on account of riotous or disorderly conduct or any other act of violence on his part, (ii) if the termination is for any act which constitutes an offence involving moral turpitude and the offence is committed by the employee in the course of his employment. Thus, sub-Clause (a) and sub-Clause (b) of sub-Section (6) of Section 4 of the Act operate in different fields and in different circumstances. Under sub-Clause (a), the forfeiture is to the extent of damage or loss caused on account of the misconduct of the employee whereas under sub-Clause (b), forfeiture is permissible either wholly or partially in totally different circumstances. Sub-Clause (b) operates either when the termination is on account of- (i) riotous or (ii) disorderly or (iii) any other act of violence on the part of the employee, and under Sub-Clause (ii) of sub-Section (6)(b) when the termination is on account any act which constitutes an offence involving moral turpitude committed during the course of employment."

"17. 'Offence' is defined, under The General Caluse Act, 1897, to

mean “any act or omission made punishable by any law for the time being in force”.

“18. Though the learned Counsel for the appellant-Bank has contended that the conduct of the respondent-employee, which leads to the framing of charges in the departmental proceedings involves moral turpitude, **we are afraid the contention cannot be appreciated. It is not the conduct of a person involving moral turpitude that is required for forfeiture of gratuity but the conduct or the act should constitute an offence involving moral turpitude. To be an offence, the act should be made punishable under law. That is absolutely in the realm of criminal law. It is not for the Bank to decide whether an offence has been committed. It is for the court. Apart from the disciplinary proceedings initiated by the appellant- Bank, the Bank has not set the criminal law in motion either by registering an FIR or by filing a criminal complaint so as to establish that the misconduct leading to dismissal is an offence involving moral turpitude. Under sub-Section (6)(b) (ii) of the Act, forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, and convicted accordingly by a court of competent jurisdiction.**”

14. The Hon’ble Supreme Court in the case of **C.G. Ajay Babu (supra)** held that it is not merely the conduct of a person involving moral turpitude that is required for forfeiture of gratuity, but the conduct or act must constitute an offence involving moral turpitude. To qualify as an offence, the act must be made punishable under law, which falls strictly within the realm of criminal law. It is not for the

employer to decide whether an offence has been committed; that is for the Court to determine. Therefore, in addition to disciplinary proceedings initiated by the employer, it is necessary for the employer to set the criminal law in motion, either by registering an FIR or by filing a criminal complaint, to establish that the misconduct leading to dismissal is an offence involving moral turpitude. Under Section 4(6)(b) (ii) of the Act, forfeiture of gratuity is permissible only if the termination of an employee is for misconduct that constitutes an offence involving moral turpitude, and the employee has been convicted accordingly by a court of competent jurisdiction.

15. In the instant case, it is undisputed that the MSRTC did not set the criminal law in motion, and as such, there has been no prosecution or conviction of the petitioner for the alleged misconduct that constitutes an offence involving moral turpitude.

16. Similarly, in the cases of ***Western Coal Fields Limited Nagour (Supra)*** and ***Babarao Narayanrao Wankhade (Supra)***, the Nagpur Bench of this Court placed reliance on the judgment in ***C.G. Ajay Babu (Supra)*** and held that The termination of an employee must be for misconduct that constitutes an offence involving moral turpitude and for which the employee has been convicted by a court of competent jurisdiction.

17. In the case of **Bharatibai Ramesh Kambale**, this Court relied on the judgment in **Laxman Balu Deualkar**. In the case of **Bharatibai** this Court at paragraph 31 held as under :-

“31. Considering the view expressed by my Brother (Justice S. C. Gupte) in Laxman Balu Deualkar (supra) and the law holding the filed, I am also of the view that after an employer proves an offence in disciplinary proceeding against an employee, which involves moral turpitude, the employer is not required to go to the police station and initiate a proceeding for proving the said charge in a Court having criminal jurisdiction.”

18. It is important to note that the judgment in **Laxman Balu Deualkar** was subsequently recalled by this Court in Review Petition No.60/2019 in Writ Petition No.9044/2017. Paragraph No.3 of the review order is observed as follows : -

“3. Learned Counsel for the Respondent is not right in submitting that the facts of the case before the Supreme Court in C.G. Ajay Babu case were different from the facts of the present case. The decision of the Supreme Court in C.G. Ajay Babu case was on the basis of a proposition of law regardless of particular facts of that case, such proposition being that forfeiture of gratuity under 4(6)(b) (ii) of the Act was permissible only if the termination was for a misconduct which constituted an offence involving moral turpitude, and where the employee was convicted on the basis of such offence by a court of competent jurisdiction. There being no case of actual offence or even prosecution for any such offence in a criminal court of competent jurisdiction in the present case, there is no warrant for forfeiture of gratuity under sub-section (6)(b)(ii) of Section 4 of the Act.”

19. The only judgment that takes a contrary view is ***Bharatibai Ramesh Kambale (Supra)***, which placed reliance on the case of ***Laxman (Supra)***. However, the judgment in ***Laxman*** has now been recalled and reviewed.

20. The Hon'ble Supreme Court's decision in ***C.G. Ajay Babu*** established a legal principle that forfeiture of gratuity under Section 4(6)(b)(ii) of the Act is only permissible if the termination resulted from misconduct constituting an offence involving moral turpitude, and where the employee was convicted by a competent court for misconduct. Since in the instant case there was no offence registered or prosecution launched against the petitioner, forfeiture of gratuity under this provision is unwarranted. In light of this, and the fact that the Supreme Court has categorically held that forfeiture of gratuity under Section 4(6)(b)(ii) of the Act is permissible only if the termination was due to misconduct constituting an offence involving moral turpitude, and where the employee was convicted of such an offence by a court of competent jurisdiction, this Court finds that the petitioner's gratuity has been unlawfully forfeited. Accordingly, the impugned judgments are set aside.

21. The writ petition is, therefore, allowed and it is held that the petitioner is entitled to gratuity. The respondent to pay amount of gratuity to the petitioner along with 9% interest from the date of his application before the competent authority till payment.

Rule is made absolute in above terms.

(ARUN R. PEDNEKER, J.)

vj gawade/-.