IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10904 OF 2024

Ashok Rangu Zende ....*Petitioner*

: Versus :

Union Bank of India & Ors. ....*Respondents*

Mr. Ashok D. Shetty*, for the Petitioner.*

Mr. Yogendra M. Pendse, *for the Respondents.*

CORAM : **SANDEEP V. MARNE, J.**

Dated : **16 DECEMBER 2024.**

P.C. :

1) The petition challenges order dated 28 March 2024 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 dismissing the Appeal preferred by the Petitioner-Bank and confirming the order dated 31 January 2022 passed by the Controlling Authority awarding gratuity of Rs.10,00,000/- alongwith simple interest at the rate of 10% p.a. for the period from 13 November 2013 till actual payment of gratuity.

2) I have heard Mr. Shetty, the learned counsel appearing for the Petitioner-Bank and Mr. Pendse, the learned counsel appearing for Respondent No.1.

3) It appears that the Petitioner was initially dismissed from service after being found guilty in a domestic enquiry by order dated 20 January 2011. He preferred an appeal against the punishment of dismissal which came to be rejected by order dated 24 October 2011. However, the Review Petition filed by the Respondent was partly allowed by order dated 13 November 2013 and the penalty of 'dismissal from service' was reduced to that of 'compulsory retirement'. The reasons recorded by the Reviewing Authority while reducing the penalty to that of compulsory retirement read thus:

> However, taking into consideration the various mitigating factors viz. That Shri. Nikesh T. Shah was considered to be a reputed/valued customer of the branch at the relevant point of time, the CBS system introduced in the Bank had not been fully stabilised as also the fact that the amount of Rs.10.00 crores which had gone out of the system has since been recovered by the Police Authorities and is lying with the Court Receiver, I am inclined to take a lenient view and to reduce the penalty imposed on him by the Disciplinary Authority and upheld by the Appellate Authority to that of major penalty of 'Compulsory Retirement from the services of the Bank.

4) Mr. Shetty would submit that under the provisions of Regulation 46 of the Union Bank of India (Officers') Service Regulations, 1979, an employee who is terminated from service as a major penalty, is not entitled to payment of gratuity. He would then invite my attention to Regulation 4 of the Union Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976 under which '*compulsory retirement*' is one of the major penalties.

5) Regulation 46 of the Union Bank of India (Officers') Service Regulations, 1979, reads thus:

> **46. Gratuity**
> (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.

(2)The amount of gratuity payable to an Officer shall be one month's pay for every completed year of service, subject to a maximum of 15 months' pay.

Provided that where an Officer has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years.

Provided further that pay for the purpose of Gratuity for an Officer who ceased to be in service during the period 1-7-1993 to 31-10-1994 shall be with regard to scale of pay as specified in sub regulation (1) of Regulation 4.

Provided also that pay for the purpose of Gratuity of an officer who ceased to be in service during the period 1.4.1998 to 31.10.1999 shall be with regard to scale of pay as specified in sub-regulation (2) of Regulation 4.

Note : If the fraction of service beyond completed years of service is 6 months or more, gratuity will be paid pro rate for the period.

6) Thus, under Regulation 46, every officer who retires from the service of the Bank is eligible for gratuity. The term '*retirement*' would encompass various kinds of retirement such as voluntary retirement, compulsory retirement as a major penalty, retirement on medical grounds, retirement as a measure of chopping the deadwood, etc. Therefore, every retiree, irrespective of the manner in which he is retired, would be entitled to gratuity under the provisions of Regulation 46. In fact, since the Reviewing Authority decided to reduce the penalty of dismissal from service to that of compulsory retirement, the same was done with a view to ensure that the Respondent receives his retiral benefits. Mr. Shetty would fairly accept the position that on account of imposition of reduced penalty of compulsory retirement, the Respondent is drawing pension. Thus, the intention on the part of the Reviewing Authority in ensuring payment of retiral benefits to the Respondent is more than apparent. Gratuity is one of the facets of retiral benefits drawn by an employee.

7) In my view therefore, the Controlling Authority and the Appellate Authorities have not committed any patent error in directing payment of gratuity to the Respondent. Therefore, no interference is warranted by this Court in exercise of extraordinary jurisdiction under Article 227 of the Constitution of India.

8) There is only area where limited interference by this Court is warranted. It appears that the Controlling Authority has awarded interest at the rate of 10% p.a. on the gratuity amount w.e.f. 13 November 2013, on which date substituted penalty of 'Compulsory Retirement' was imposed on Respondent No.1. It appears that after issuance of the order of compulsory retirement, Respondent No.1 applied for payment of gratuity on 10 December 2013. A show cause notice for forfeiture of gratuity was issued to him on 24 March 2014. He gave explanation dated 22 April 2014 and thereafter order of forfeiture was passed on 27 May 2014. Though, there is no provision for Appeal, Respondent No.1 filed Appeal dated 9 July 2014 which was turned down by communication dated 27 July 2014. Respondent slept over the issue for next 5 long years and filed application before the Controlling Authority for payment of gratuity on 7 May 2019. In my view, since Respondent No.1 slept over his rights for over 5 years in not filing proceedings for payment of gratuity after passing of order dated 27 May 2014, Petitioner-Bank cannot be saddled with liability to pay exorbitant rate of interest at the rate of 10% p.a. on the amount of gratuity. No doubt, it is the duty of the employer to pay gratuity. However, in the present case, there was dispute between the parties, whether gratuity itself was payable to the Respondent-employee or not. The dispute finally got adjudicated before the Controlling Authority. If Respondent-employee was to raise timely dispute before the Controlling Authority, the Bank would not have incurred liability to pay excessive interest at the rate of 10% p.a. on the amount of gratuity. It is in the light of these peculiar facts and circumstances of the case that some modification in the order is warranted by directing that interest on the amount of gratuity would be payable from the date of filing of the application before the Controlling Authority. This course of action is however adopted in the unique facts and circumstances of the case, which shall not be treated as a precedent.

9) Accordingly, the orders passed by the Controlling Authority and the Appellate Authority are upheld to the extent of direction to pay gratuity of Rs.10,00,000/-. However the orders shall stand modified to the extent that simple interest at the rate of 10% p.a. on the amount of gratuity would be payable from the date of filing of the application before the Controlling Authority. With these directions, the Writ Petition is **disposed of.**

[SANDEEP V. MARNE, J.]

NEETA SHAILESH SAWANT

Digitally signed by NEETA SHAILESH SAWANT
Date: 2024.12.18 14:52:23 +0530