IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 17877 OF 2024

Shivaji Sahakari Bank Ltd. Gadhinglaj ... **Petitioner**

Versus

Sudhir Ramchandra Desai ... **Respondent**

Ms. Kadambari Patil *a/w Ms. Bhargavi Patil for the Petitioner.*
Mr. Deepak Lad *for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

DATE : 17 DECEMBER 2024.

ORAL ORDER :-

1) ***Rule.*** Rule made returnable forthwith. With the consent of the learned counsel appearing for the parties, Petition is taken up for hearing and disposal.

2) By this Petition, Petitioner-Bank challenges Judgment and Order dated 23 July 2024 passed by the Appellate Authority, Kolhapur under the Payment of Gratuity Act, 1972, dismissing Appeal (PGA) No. 1 of 2019 preferred by the Petitioner-Bank and confirming the Order dated 2 January 2019 passed by the Controlling Authority allowing the Application (PGA) No. 27 of 2016 filed by the Respondent. The Controlling Authority has directed the Petitioner-Bank to pay to the Respondent gratuity amount of Rs.4,28,400/- with interest at the rate of 8% per annum from the

date on which the gratuity became payable till the date of its realization.

3) Facts of the case, in brief, are that Petitioner is co-operative bank registered under the provisions of Maharashtra Co-operative Societies Act, 1960 (**MCS Act**). The Respondent was employed in the Petitioner-Bank on the post of General Manager. While working in the Bank as General Manager, domestic enquiry was initiated against him alleging the misconduct of misappropriation of some of the amounts by disbursing loans without the approval of managing committee, issuing no dues certificates despite outstanding in the loan account etc. The Petitioner-Bank issued show cause notice to the Respondent. Respondent attempted to stall the penalty order by approaching Cooperative Court but could not succeed in those proceedings. After receipts of Respondent's response, order dated 6 March 2013 was passed imposing the penalty of dismissal from service on him. The dismissal order dated 6 March 2013 was challenged by the Respondent by filing Complaint (ULP) No. 34 of 2013 alleging unfair labour practices under provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act 1971. The Complaint was however dismissed as not maintainable. Thus, the dismissal order dated 6 March 2013 has attained finality.

4) It appears that while imposing the punishment of dismissal from service on the Respondent, Petitioner-Bank had further directed that the Respondent shall not be entitled to payment of any retirement benefits on account of commission of misappropriation by him.

5) After delay of three long years from the date of issuance of dismissal order dated 6 March 2013 forfeiting the retirement benefits, Respondent approached the Controlling Authority under the Payment of Gratuity Act, 1972 by filing Application (PGA) No. 27 of 2016 in June 2016. The Controlling Authority has allowed the application filed by the Respondent by its judgment and order dated 2 January 2019 directing the Petitioner-Bank to pay to the Respondent gratuity of Rs. 4,28,400/- together with interest at the rate of 8% per annum. The Appellate Authority has confirmed the order passed by the Controlling Authority by dismissing the Appeal preferred by the Petitioner by Judgment and Order dated 23 July 2024. Aggrieved by the Orders passed by the Controlling Authority and Appellate Authority, Petitioner has filed the present Petition.

6) I have heard Ms. Patil, the learned counsel appearing for the Petitioner and Mr. Lad, the learned counsel appearing for Respondent. I am also gone through the findings recorded by the Controlling and Appellate Authorities as well as the relevant records of the case placed alongwith the Petition.

7) Perusal of the dismissal order dated 6 March 2013 passed by Petitioner-Bank would indicate that Respondent is found guilty of serious misconduct of misappropriation of funds. It appears that on account of increase in the NPA ratio, Reserve Bank of India had suspended the Board of Directors by order dated 22 December 2010 and appointed Administrator on the Bank. The Administrator took notice of the functioning of the Respondent, who was posted as General Manager of the bank. It was revealed that the Respondent had issued no dues certificate to M/s. Sunderdatta Radios City even though an amount of Rs.1,13,389/- plus interest was due from him.

Similar certificates were found to have issued to Shri. Amar Ramchandra Chavan, Surykant Malgonda Patil and Mohan Rajaram Niungare. It also got revealed that in respect of some of the customers even though amounts were received from them, the Respondent did not give credit in respect of those amounts in the account of the customers and misappropriated those amounts. It got further revealed that they were financial irregularities in respect of the account of Matoshri Ramabai Ambedkar Sahkari Sutgirni Maryadit, Kodoli. The Bank accordingly issued notice to the Respondent proposing to dismiss him from service. Respondent challenged the said notice before Co-operative Court, which initially stayed the show cause notice. The Bank approached Co-operative Appellate Court and its Appeal was allowed and accordingly interim order of the Co-operative Court was set aside. The Bank thereafter proceeded to impose punishment of dismissal from service on the Respondent by order dated 6 March 2013.

8) Perusal of the orders passed by the Controlling and the Appellate Authority would indicate that both the Authorities have heavily relied upon judgment of the Apex Court in ***Union Bank of India & Ors. Vs. C. G. Ajay Babu & Anr***.[1]. In my view however the Judgment of the Apex Court in ***C. G. Ajay Babu*** (supra) has absolutely no application to the facts and circumstances of the present case. The judgment would have relevance only where the gratuity sought to be forfeited under provisions of Section 4(6)(b)(ii) of the Payment of Gratuity Act. It is only when services of the employee are terminated for an act which constitutes an offence involving moral turpitude, that the judgment in ***C. G Ajay Babu*** (supra) can be relied upon for demonstrating that unless the

[1] (2018) 9 SCC 529

employee is convicted of an offence involving moral turpitude, gratuity cannot be forfeited under sub-clause (ii) of Clause (b) of sub-section 6 of Section 4 of the Payment of Gratuity Act. In the present case the gratuity of the Respondent is forfeited under Clause (a) of sub-section (6) of Section 4 as the Respondent is found to have caused damage or loss to the employer. There are findings recorded in the dismissal order about Respondent causing damage and loss to the employer.

9) It would be opposite to reproduce provisions of sub Section 6 Section 4 which reads thus:

> (6) Notwithstanding anything contained in sub-section (i),—
> (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 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.

10) Since gratuity of the Respondent is forfeited on account of his termination resulting out of an act causing damage and loss to the employer, in my view the judgment of the Apex Court in ***C.G. Ajay Babu*** would have no application to the present case.

11) The learned counsel for the Respondent has relied upon judgment of this Court in ***Vasant B. Bhujbal Vs. Controlling Authority***[2] in which this Court has held in paragraph 4 as under:

[2] 2021 (3) Mh.L.J. 585

> "**4.** It is not in dispute that forfeiture of the Petitioner's gratuity has been ordered by the Respondent without any show cause notice. No such show notice was issued by the Respondent purportedly on the basis that there was already an enquiry held into the Petitioner's misconduct and that no fresh opportunity before forfeiture of gratuity was necessary to be afforded to the Petitioner. This court, in its order passed in the case of *Nanubhai Nichhabhai Desai Vs. Deputy General Manager, UCO Bank*, 2017 (4) Mh.L.J. 271 = 2017 (4) All MR 1, has considered the issue as to whether an employer is bound to issue a separate show cause notice to a delinquent employee before forfeiture of his gratuity in a case where the employee is terminated by a departmental enquiry held into his misconduct. After considering the case law on the subject, including the decision of the Supreme Court in the case of ***Board of Mining Examination Vs. Ramjee***, AIR 1977 SC 965, the court held that *if there was no proven case against the employee of an offence involving moral turpitude, the question as to whether the act of the delinquent employee complained of amounts to a willful omission or negligence causing any damage to or destruction of property belonging to the employer, needs to be examined by issuance of a separate show cause notice*. Such show cause notice should be for finding out whether there was any willful omission or negligence on the part of the employee; whether such omission or negligence caused any damage or loss, or destruction of property belonging, to the employer; and what is the extent of the damage or loss so caused. The action of the employer in forfeiting the delinquent employee's gratuity without issuing a show cause notice and giving an opportunity to the latter to show cause to such forfeiture, would be bad in law; such order of forfeiture cannot be sustained. This law clearly governs the facts of the present case."
>
> (emphasis added)

12) It is sought to be contended that in absence of issuance of a show cause notice, gratuity cannot be forfeited. It appears that in ***Vasant B. Bhujbal*** (supra), this Court referred to the judgment in ***Nanubhai Nichhabhai Desai Vs. Deputy General Manager, UCO Bank***[3] which in turn referred to the judgment of the Apex Court ***Board of Mining Examination Vs. Ramjee***[4]. The Apex Court held that it is only where there is no proven case against the employee involving moral turpitude, a separate show cause notice is necessary for examining the act of the delinquent employee for finding of whether it caused any loss or damage to the employer. In the present case, the misconduct of misappropriation causing loss to the employer has been proved by way of dismissal order dated 6 March 2013. The said order was unsuccessfully tested before the Industrial Court by filing Complaint (ULP) No. 34 of 2013. Before

[3] 2017 (4) Mh.L.J. 271
[4] AIR 1977 SC 965

passing of the dismissal order dated 6 March 2013 Respondent also tried his luck by filing proceedings before the Co-operative Court to stop his dismissal from service. Thus, the dismissal order dated 6 March 2013 has already undergone judicial scrutiny and Respondent has not been able to get the same set aside. Thus, what continues to subsist is not just the punishment of dismissal, but also the findings of misappropriation and causing of loss to the employer. Therefore, following the ratio of the judgment of the Apex Court in ***Board of Mining Examination*** (supra), the case involves proof of allegations of cause of loss to the employer. In my view, therefore, it was not necessary to issue a separate show cause notice once the order dated 6 March 2013 itself directed forfeiture of all retirement benefits including gratuity. The learned counsel for the Respondent has also relied upon judgment of this Court in ***Western Coal Fields Limited Vs. The Presiding Officer***[5] in which this Court held in paragraphs 15 and 16 of the judgment as under:

> "**15.** The crucial question that arises for consideration is, as to whether such misconduct proved in a departmental enquiry, which had attained finality could be equated with "an offence involving moral turpitude". In this context, the appellate authority is justified in examining as to what could be defined as an offence. The standing orders obviously cannot be referred to find the definition of the expression "offence". In the Code of Criminal Procedure, 1973, "offence" means any act or omission punishable by any law for the time being in force. The question is whether the findings rendered in departmental enquiry conducted by the petitioner (employer) would be enough to conclude that the act of the respondent No.2, which stood proved and led to the termination of his service, constitutes an "offence" involving moral 10 wp6006.2016.odt turpitude. The answer has to be in the negative, because whether an act constitutes an offence can be decided only by a Competent Court. This is because, whether the material on record and acts attributed to a person indicate the ingredients of an offence would have to be judged on the basis of proceedings under criminal jurisprudence. The further question as to whether such an offence involves moral turpitude could perhaps be in the domain of a proceeding other than that under criminal jurisprudence, but what would constitute an offence, could

[5] Writ Petition No. 6006 of 2016 decided on 29 January 2020

> certainly not be within the purview of departmental enquiry or any such enquiry by an employer.
>
> **16.** Therefore, for an employer to deprive an employee of gratuity under Section 4(6)(b)(ii) of the said Act, would necessarily require initiation of criminal proceedings that would culminate in conviction for an "offence". The employer could then come to a conclusion that such an offence does involve moral turpitude and then forfeit the gratuity of an employee. This is because the said provision has to be interpreted strictly as it has the consequence of depriving an employee of gratuity for which he would otherwise be eligible, based on long years of continuous service."

In my view this Court in ***Western Coal Fields Limited*** (supra) has decided the same issue as was involved before the Apex Court in ***C. G. Ajay Babu*** (supra). For the reasons recorded hereinabove, both judgments of the Apex Court in ***C. G. Ajay Babu*** (supra) as well as of this Court in ***Western Coal Fields Limited*** (supra) would have no application to the facts and circumstances of the present case.

13) Mr. Lad relies upon the order dated 28 June 2022 passed by Minister Co-operation allowing the Appeal filed by Respondent and setting aside the proceedings initiated under Section 88 of the MCS Act for recovery of alleged loss caused to the Bank. Perusal of the order dated 28 June 2022 passed by the learned Minister would indicate that following reasons are recorded for setting aside the report of the Enquiry Officer dated 11 August 2020:

> "माझ्यासमोर अर्जदार यांच्या वकिलांनी सादर केलेला युक्तीवाद तसेच प्रकरणासोबतची कागदपत्रे यांचे अवलोकन केले असता असे निदर्शनास येते की, महाराष्ट्र सहकारी संस्था अधिनियम १९६० चे कलम ८८ मधील तरतुदींचा विचार करता पाच वर्षाच्या मागच्या व्यवहाराची तपासणी करून त्याची जबाबदारी निश्चित करता येत नाही. असे असताना चौकशी अधिकारी यांनी सन २००९ ते २०१० या काळातील व्यवहाराची चौकशी करून अर्जदार यांचेवर नुकसानीची रक्कम निश्चित केलेली आहे. अर्जदार यांचेवर जबाबदारी निश्चित करण्याबाबतचा सुधारीत आदेश पारित करण्यापुर्वी चौकशी अधिकारी यांनी अर्जदार यांना त्याची बाजू मांडण्याची संधी दिलेली नाही. एका तारखेलाच सुनावणी घेऊन आदेश पारित केला आहे. मुळ चौकशीचे आदेश हे दि. ०१.०४.१९९८ ते दि. ३१.०३.२०१० पर्यंतच्या कालावधीचे फेरलेखापरीक्षण अहवालाआधारे कलम ८८ प्रमाणे करण्यात आले होते. त्यानुसार

दि. ०२.०२.२०१० पासून दि. ३१.०३.२०१० पर्यंतच्या व्यवहाराशी अर्जदार श्री. देसाई यांचा संबंध येत होता. त्या व्यवहारापुरतीच जबाबदारी अर्जदार यांच्यावर निश्चित करणे आवश्यक होते तसे न करता चौकशी अधिकारी यांनी दि. ३१.०३.२०१० नंतरच्या ज्या कालावधीचे फेरलेखापरीक्षण आलेले नव्हते त्या कालावधीतील व्यवहाराची जबाबदारी बसवून फेरजबाबदारीचे आदेश पारित केलेले आहेत. त्यामुळे ते रद्द करावेत अशी विनंतीअर्जदार यांची आहे. अर्जदार श्री. देसाई यानी उद्योगना ठेवीच्या रक्कमा परत दिलेल्या आहे. त्यामध्ये व्याजाची आकारणी चुकीची केलेली आहे त्यासाठी अर्जदार यांना दोषी धरले आहे. मात्र व्याज आकारणी कशी चुकीची आहे हे चौकशी अहवालात कोठेही स्पष्ट केलेले नाही. अर्जदार श्री. देसाई हे बँकेच्या मुख्यालयात कामकाज करीत होते व त्यांना ज्या आरोपामध्ये जवाबदार धरून नुकसानीची रक्कम निश्चित केली आहे ते सर्व व्यवहार बँकेच्या गडहिंग्लज शाखेतुन केलेले आहेत. त्याचा मुख्य कार्यालयाशी काहीही संबंध नसताना अर्जदार याचेवर नुकसानीची जवाबदारी निश्चित केली आहे अर्जदार यांनी उपरोक्ता नमुद केलेला युक्तीवाद विचारात घेवून प्रतिवादी क्र.१ यांचा दि.११.०८.२०२० रोजीचा चौकशी अहवाल व प्रतिवादी क्र.३ यांचे दि.१५.०६ २०२१ रोजीचे आदेश रदद करावेत अशी अर्जदार यांनी केलेली विनंती सकृतदर्शनी योग्य व कायदेशीर असल्याने मान्य करण्यात येत आहे."

Thus, the report of the Enquiry Officer dated 11 August 2020 is set aside essentially on the ground of the claim being time-barred, non grant of opportunity to the Respondent etc. No finding is recorded by the learned Minister that Respondent has not committed any misappropriation or that no loss is caused to the Petitioner-Employer. Merely because the Bank is prevented from making a recovery against Respondent under provisions of Section 88 of the Maharashtra Co-operative Societies Act, it cannot be contended that a clean chit is given to him in respect of the misconduct committed by him. So long as the order of dismissal dated 6 March 2013 together with findings recorded therein continues to subsist, mere dropping of enquiry initiated under Section 88 of the MCS Act would have no bearing on the issue entitlement of Respondent for gratuity.

14) Lastly Mr. Lad would submit that Petitioner-Bank has initiated criminal prosecution against the Respondent and so far the prosecution has not resulted in his conviction. This again cannot be a ground for releasing the forfeited amount of gratuity to the Respondent. After detection of misappropriation of funds by the Petitioner, the Bank has initiated various actions such as

i) subjecting Respondent to disciplinary proceedings and dismissing from service after issuance of show cause notice, ii) filing criminal prosecution against him for ensuring punishment to him, iii) attempting to recover the amount of loss caused to the Bank by the acts of the Respondent under section 88 of the MCS Act, and iv) forfeiting the retirement benefits (including gratuity) payable to him. In such circumstances mere outcome of the criminal case would not have any bearing in the facts and circumstances of the present case as the gratuity is forfeited not on account of conviction for offences involving moral turpitude but for loss caused to the employer under provisions of Section 4(6)(a) of the Payment of Gratuity Act.

15) The Petitioner-Bank has already suffered on account of Respondent's actions and is unable to recover losses suffered by it. Permitting Respondent to walk away with forfeited amount of gratuity in such circumstances would amount to putting a premium on the misconduct proved against the Respondent. The least that the Respondent therefore must suffer is non-payment of gratuity on account of specific finding of cause of loss to the employer on account of his acts of misappropriation.

16) The Controlling Authority has misdirected itself by enquiring into the manner in which the punishment of dismissal from service is imposed on the Respondent. The Controlling Authority has failed to appreciate that while deciding claim of the Respondent for gratuity, it was not supposed to go into the issue of correctness of procedure followed for imposition of penalty of dismissal from service on the Respondent. Respondent has already initiated two proceedings before the Industrial Court and Co-operative Court questioning his dismissal from service. Therefore, it

was beyond the scope of the Controlling Authority to record any finding about non-conduct of domestic enquiry before issuance of the dismissal order.

17) I am therefore of the view that the orders passed by the Controlling and the Appellate Authorities are indefensible and are liable to be set aside. Writ Petition is accordingly succeeds and I proceed to pass the following order:

a) Order dated 23 July 2024 passed by the Appellate Authority as well as order dated 2 January 2019 passed by the Controlling Authority are set aside.

b) Application (PGA) No. 27 of 2016 filed by the Respondent is dismissed.

18) With the above directions, the Writ Petition is **allowed.** Rule is made absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]