



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 5286 of 2013

(1) Chairman and Managing Director
Indian Bank Corporate Office,
254-260 AVVAI Shanmugam Salai,
Royapettah, Chennai.

(2) Deputy General Manager / Zonal
Manager of Indian Bank
Zonal Office, 3rd Floor,
Progress House
54, Shivaji Nagar
Pune – Mumbai Road, Pune (MS)

... Petitioners

- Versus -

(1) Shri Deorao Sadashiv Mule - Age 68 years,
R/o : 12 Near Shri Ram Mandir
Galli No. 2, Sangani Nagar,
Amravati (M.S.)

Amendment
carried out
as per
Court's
order dtd.
01-10-2024

(2) Assistant Labour Commissioner
(Central) cum Controlling Authority
Nagpur. Office at -1st Floor, Block-C,
CGO Complex, Seminary Hills,
Nagpur-440006.

... Respondents

Mr. S. S. Ghate with Mr. Devdatta Sukhadev, Advocates for the
petitioners

Mr. S. S. More, Advocate for respondent no. 1

Ms. N. G. Chaubey, Advocate for respondent no. 2

CORAM : ANIL L. PANSARE, J.

Date of reserving order : 12-12-2024

Date of pronouncing order : 20-12-2024

P.C.

The petitioners are aggrieved by the order passed by controlling authority and the first appellate authority under the provisions of the Payment of Gratuity Act, 1972.

2. The respondent no. 1 was in employment with the petitioners since 9-10-1974 to 12-3-2009. The allegation against the respondent was that while discharging duties as Assistant Branch Manager at Akola during 3-6-2008 to 17-9-2008, he has unauthorisedly debited certain amounts from the customers account and transferred the funds to his family member's account and thereafter withdrawn the same. The amount of fraudulent transaction was found to be Rs. 1,16,700/-. It was then found that similar such fraudulent transactions were made by him at his earlier posting at Navsari. The amount therein was Rs. 70,012/-. Thus, the total amount of fraudulent transaction was Rs. 1.87 Lakhs which were allegedly misappropriated by the respondent no. 1.

3. Accordingly, charge-sheet dated 23-10-2008 was issued to respondent no. 1. He submitted reply and accepted the charges. The disciplinary authority, after conducting disciplinary enquiry, vide order dated 12-3-2009, imposed penalty of removal from service not

amounting to disqualification for future employment. The respondent no. 1 challenged the finding in appeal but suffered adverse order. Thereafter review petition was filed but of no avail.

4. The petitioners then intimated respondent no. 1 in terms of clause (ii) of Rule 8 of Payment of Gratuity Central Rules 1972 that he is not entitled for payment of gratuity in terms of Regulation 4(i) of the Indian Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 (hereinafter referred to as 'Regulation of 1976'). The petitioners had also informed the respondent no. 1 that since his services were terminated by way of punishment, he is not entitled for gratuity under the Officers' Service Regulations, 1979 (hereinafter referred to as 'Regulation of 1979').

5. Learned counsel for the petitioners has invited my attention to Clause 46(1) of the Regulations of 1979 which 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; or

(d) resignation after completing ten years of continuous service.

(e) termination of service in any other way except by way of punishment after completion of 10 years of service.”

6. Learned counsel for the petitioners submits that in terms of clause 46(1)(e), if the service is terminated by way of punishment, the officer will be not eligible for gratuity. He has then invited my attention to the letter dated 19-6-2009 addressed to respondent no. 1 by the Chief Manager of the petitioner – bank stating therein that since punishment of ‘removal from service’ was imposed upon him in terms of clause 4(i) of the Regulations of 1976, he is not entitled for gratuity under the Regulations of 1979.

7. Mr. Ghate, learned counsel for the petitioners submits that the intimation-cum-order has been passed by the disciplinary authority and, therefore, the Controlling Authority under the Payment of Gratuity Act, 1972 has no jurisdiction to go into the legality of the said order. In support, he has placed reliance upon the judgment of Hon’ble Supreme Court in the case of ***Chairman-cum-Managing Director, Mahanadi Coalfields Limited Vs. Rabindranath Choubey [(2020) 18 SCC 71]***. The Supreme Court referred to the case of ***Jaswant Singh Gill Vs. Bharat Coking Coal Ltd. [(2007) 1 SCC 663]*** wherein the Court *inter alia* held that the rules framed by Coal India Limited were not statutory rules and in view of the provisions of the Payment of Gratuity Act, they cannot prevail. The Supreme Court did not agree with the aforesaid finding for following reasons.

“41. We are unable to agree with the decision rendered in Jaswant Singh Gill case inter alia for the following reasons :

41.1. The order of termination was not questioned, nor the authority under the Payment of Gratuity Act, 1972, had jurisdiction to deal with it.

41.2. The validity or enforceability and vires of service Rules 34.2 and 34.3 were not questioned.

41.3. The Controlling Authority under the Payment of Gratuity Act, 1972, had no jurisdiction to go into the legality of order of the disciplinary authority.

41.4. The scope of the case before this Court was confined to validity of order of the Controlling Authority and to questions which could have been dealt with by the Controlling Authority.

41.5. No fetter is caused on the efficacy of the Rules by Section 4(1) and 4(6) of the Payment of Gratuity Act, 1972. The Rules need not be statutory to have efficacy as they are not repugnant to the Payment of Gratuity Act, 1972. This Court did not consider the scope of provisions of the Gratuity Act and provisions of Rule 34.2, providing legal fiction of employee deemed to be in service even after superannuation.

41.6. The Controlling Authority had no jurisdiction to deal with Rules 34.2 and 34.3 or to pronounce upon validity thereof or of dismissal. Thus, the observations made, traveling beyond the scope of the proceedings, cannot be said to be binding and cannot constitute the ratio with respect to continuance of departmental inquiry after superannuation and what kind of punishment can be imposed by an employer. The jurisdiction of authority was only to consider payment of gratuity under Section 4(6) of the Payment of Gratuity Act, 1972.

42. Thus, we overrule the decision in Jaswant Singh Gill.”

Accordingly, the decision in *Jaswant Singh Gill's* case was overruled. The fact relevant to the present petition, however, is that the Supreme Court held that the Controlling Authority under the Payment of Gratuity Act, 1972 has no jurisdiction to go into the legality of the order passed by the disciplinary authority.

8. In the present case, the disciplinary authority has vide its communication-cum-order dated 19-6-2009 informed the respondent no. 1 that he is not entitled for gratuity in terms of regulation 4(i) of the Regulations of 1976 read with Regulation 46 of the Regulations of 1979.

9. This issue has been not dealt with by both the authorities below. They have examined the matter in terms of the provisions of the Payment of Gratuity Act, 1972 and found respondent no. 1 entitled for gratuity amount of Rs. 7,60,099/- along with interest on delayed payment.

10. Thus, neither the Controlling Authority nor the appellate authority have delve upon the effect of Regulation 4(i) of the Regulations of 1976 read with Regulation 46 of the Regulations of 1979. They have further not considered the effect of failure by the

respondent no. 1 to challenge the order-cum-communication dated 19-6-2009 passed/issued by the disciplinary authority.

11. Learned counsel for respondent no. 1 though made an attempt to justify the order, he failed to convince that in absence of challenge to communication-cum-order dated 19-6-2009, the claim as filed by the respondent no. 1 was maintainable before the Controlling Authority. He however, seeks liberty to do so either before the Controlling Authority or appropriate forum. Liberty granted.

12. It will be, therefore, necessary to remand the matter back to the Controlling Authority under the Payment of Gratuity Act, 1972 to consider the claim preferred by respondent no. 1 afresh.

13. Resultantly, writ petition is partly allowed. Order dated 11-7-2012 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 and the Assistant Labour Commissioner(Central), Nagpur in No. ALCN/48(22)/2011-PGA and order dated 16-5-2013 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 and Regional Labour Commissioner(C), Nagpur in P.G. Appeal No. N-48(16)/2012-PGA are quashed and set aside.

14. The matter is remanded back to the Controlling Authority under the Payment of Gratuity Act, 1972 and the Assistant Labour Commissioner(Central), Nagpur for decision afresh in accordance with law and in the light of what has been stated in the body of order with liberty to respondent no. 1 to challenge the communication-cum-order dated 19-6-2009 as permissible under law.

(Anil L. Pansare, J.)

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