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W.A.No.905 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.06.2024

Delivered on: 20.09.2024

CORAM :

THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE P.DHANABAL

W.A.No.905 of 2023
and CMP.No.9076 of 2023

N.Balaguruamy

...Appellant

-VS-

1.M/s. Indian Overseas Bank,
Rep. by its General Manager- Personnel & Administration,
Central Office, 763, Anna Salai,
Chennai- 600 002.

2. The Appellate Authority under the Payment of
Gratuity act, 1972 and Dy. Chief Labour Commissioner
(Central), Chennai, No.26, III Block, 5th Floor,
Shastri Bhavan, Haddows Road,
Chennai-600 006.

3. The Controlling Authority under the Payment of
Gratuity act, 1972 and Regional Labour Commissioner
(Central), Madurai, New No.5, Old No.1-A(II Floor),
Lady Doak College Road,
Madurai-625 002.

...Respondents.

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the
impugned judgment passed by the Learned Single Judge in W.P.No.1561 of



W.A.No.905 of 2023

2018 dated 16.09.2022.

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For Appellant: Mr.K.M.Ramesh, Senior counsel
for Mr.V.Subramani.

For Respondents : Ms.Rajeni Ramadoss for R1
R2 and R3- No appearance.

JUDGMENT

J.NISHA BANU, J.

This Writ Appeal is preferred as against the order passed in W.P.No.1561 of 2018, whereby the learned Single Judge allowed the writ petition and quashed the order passed by the Controlling Authority dated 06.12.2016 and the Appellate Authority order dated 30.11.2017.

2. The short facts of the case necessary for the disposal of this writ appeal is as follows:-

(i) The appellant was working in the 1st Respondent Bank from 1981 as a Messenger; later promoted as clerk in 1992. In 2010, charges were framed in respect of unauthorised transfer of money in the SB Accounts and misusing the password of staff of another branch.



W.A.No.905 of 2023

(ii) The Disciplinary authority conducted enquiry and found the acts of the appellant are prejudicial to the interest of the bank. A show cause notice was issued to the appellant proposing to award the punishment of dismissal. The disciplinary authority held that in as much as charges are serious in nature, the period of suspension shall not be treated as one spent on duty and he would not be entitled to any monetary or other benefits other than subsistence allowance already paid and that he would not be entitled to seek any amounts towards gratuity.

(iii) Aggrieved by the order of disciplinary authority, the appellant filed appeal to the Controlling Authority under Gratuity Act seeking payment of Gratuity as the management failed to pay the gratuity despite several representations.

(iv) The Controlling Authority allowed the application and passed order directing respondent Bank to make payment of Gratuity in G.A.No.167/2015.

(v) As against the order passed by the Controlling Authority, Bank preferred Review petition. The Authority directed the Respondent bank to prefer appeal as per Section 7(7) of the Act. Thereafter the Appeal preferred by



W.A.No.905 of 2023

the Bank in Appeal No. 9 of 2017 has been dismissed. The bank challenged the decision by filing W.P.No.1561 of 2018. The learned Single Judge, quashed the order passed by the controlling authority dated 06.12.2016 which has been confirmed by the Appellate Authority. Hence, the employee filed the present appeal.

3. The learned counsel for the appellant would state that Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972 does not apply to the appellant's case, because the domestic inquiry conducted by the 1st respondent Bank was based on preponderance of probabilities rather than concrete evidence. The bank failed to issue show cause notice before taking a decision to forfeit payment of gratuity to the Appellant and also failed to follow the mandatory provision of the Act. The action of the bank in denying gratuity to the appellant is wholly illegal.

4. The learned counsel for the appellant in support of his submissions that the Bank had not quantified, assessed or proved the amount of loss sustained by them as against the appellant. Further in absence of any findings or conviction by the appropriate criminal court that the loss had been sustained out of the appellant's fraudulent and dishonest act, the first respondent cannot



W.A.No.905 of 2023

conclude that the appellant is guilty of the said act. In support of the said submissions, the learned counsel relied on the following judgments:-

- a) Jaswant Singh Gill vs. Bharat Coking Coal Ltd. And others reported in (2007) 1 SCC 663
- b) UCO Bank and others Vs AnjuMathur reported in 2013 (3) LLJ 22
- c) Jyotirmay Ray Vs Field General Manager, Punjab National Bank and others in 2023Vsc OnLine SC 1452
- d) Vijaya Bank and Ors Vs Mohan Das Ramana Shetty reported in MANU/KA/0366/2008.
- e). Union of India and others vs. C.G. Ajay Babu and another reported in 2018 9 SCC 529.

5. Per contra, the learned counsel for the 1st respondent- Bank would state that the claim made by the appellant should have been dismissed due to the significant delay of four years from the date of the dismissal order, which was passed on 30.11.2010. The dismissal order stated that all emoluments were forfeited as the charges against the Appellant were of a grave nature, involving moral turpitude, justifying dismissal under Clause 6(a) of the Memorandum of Settlement dated 10.04.2002. According to Section 4(6)(b)(ii) of the Gratuity Act, an employee dismissed for moral turpitude during employment is



W.A.No.905 of 2023

disqualified from receiving gratuity. The appellant's gratuity was forfeited accordingly. Despite this, the Controlling Authority, on 6.12.2016, condoned the delay and ruled in favor of the appellant, ordering the bank to pay Rs. 4,00,094/- as gratuity with 10% interest. The bank was instructed to pay within 30 days. The Bank, dissatisfied with the order dated 06.12.2016, filed an appeal, depositing Rs. 6,11,199/- as gratuity and interest. However, the Appellate Authority dismissed the appeal on 30.11.2017, upholding the original order and instructing the release of the deposited gratuity. The grounds raised by the 1st respondent Bank in respect of incorrect gratuity calculation was not considered, and the Pay and Accounts Officer (PAO) was directed to release the funds. Challenging both the orders, the bank filed W.P.No. 1561 of 2018 to quash the same. The learned Single Judge rightly allowed the writ petition by setting aside the order dated 30.11.2017 passed by the Appellate Authority in G.A.No.8/17 confirming the impugned order dated 06.12.2016 passed by the Controlling Authority.

6. The observation made by the Learned Single Judge in W.P.No.1561 of 2018 dated 16.09.2022 is as follows:-

“20. The decisions relied upon by the learned counsel for the 3rd respondent referred to supra has no bearing to the facts of the instant case. The question of issuance of notice to



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the 3rd respondent before forfeiture of Gratuity amount will not arise in view of the fact that the finding of the Disciplinary Authority dismissing the 3rd respondent from service has attained finality. The charges framed against the 3rd respondent was that he has caused loss to the petitioner bank to a Rs.4,22,950/- on account of the 3rd respondent's dishonest and sum of fraudulent transfer of the money to various account. When the charges have been proved and the findings have attained finality, the question of issuance of notice to the 3rd respondent prior to forfeiture will not arise. All the decisions relied upon by the learned counsel for the respondent did not relate to the facts of this cases, the act 3 case. In those findings with regard to fraudulent and dishonest of the delinquent was not proved. Just because the Payment of Gratuity Act, is a welfare legislation, the 3rd respondent cannot as a matter of right claim Gratuity that too when Section 4(6) of the Payment of Gratuity Act, 1972, makes it clear that the petitioner has a right to forfeit the Gratuity amount in case, they have suffered any loss due to the dishonest and fraudulent act of the 3rd respondent. Since the charges against the 3rd respondent have been proved and the findings have attained finality, the 3rd respondent cannot contend that the Payment of Gratuity Act, being a welfare legislation, necessarily he has to be paid the Gratuity amount.

21. For the foregoing reasons, the impugned orders, dated 06.12.2016 passed by the 2nd respondent which has been confirmed by the 1st respondent /Appellate Authority by its order dated 30.11.2017 have to be quashed and the writ petition will have to be allowed. Accordingly this writ petition is allowed. costs. Consequently, connected miscellaneous petitions are closed.”

7. Aggrieved by the said order of the writ court, the appellant preferred the present Writ Appeal.



W.A.No.905 of 2023

8. Upon hearing the submissions made by the learned counsel for the appellant and the learned counsel for the 1st respondent Bank, the point for determination in this appeal is as to whether the appellant is entitled for payment of gratuity under The Payment of Gratuity Act, 1972?

9. The scheme of the Payment of Gratuity Act and the provisions of Section 4(6)(a) and (b) shows that for depriving an employee his statutory right to receive gratuity, an order must be passed forfeiting the gratuity and conscious decision to be taken with regard to reasons specified in Sub-section (a) and to damage or loss so caused. The Sub section (b) after its amendment by Act would govern that gratuity may be wholly or in part forfeited, gives discretion to the employer and thus postulates application of mind of recording of reasons.

10. The Hon'ble Supreme Court in the case of ***Jaswant Singh Gill Vs. Bharat Cooking Coal Ltd., & others*** reported in ***2007 1 LLJ 795*** has held as follows:-

“A vested right like gratuity cannot be taken away without invoking Section 4(6) and to invoke Section 4(6), the conditions laid down therein must be fulfilled. When Gratuity



W.A.No.905 of 2023

WEB COPY

is to be adjusted against a loss / damage, it is necessary for the employer to quantify the loss or damage.”

11. In the case on hand, it is very clear that the Bank violated the legal requirement as enshrined under the Act and Rules and acted in excess in terms of the dictums laid down by the Honourable Supreme Court. In the case on hand, the appellant was dismissed from service without conducting a full-fledged enquiry into the matter and further there was no assessment of purported loss alleged to have been committed by the appellant. In such circumstances, the decision to forfeit the gratuity is in violation of the statutory provision of the Act. The respondent Bank by merely awarding punishment of dismissal from service shall not ipso-facto absolve himself from following the due process of law and shall not automatically derive powers to forfeit Gratuity of an employee.

12. As far as appeals before the Gratuity Authorities are concerned, the same were decided in favour of the appellant. The disciplinary authority has not quantified the amount of loss. As already discussed above, under Section 4(6) of Payment of Gratuity Act, conditions contained therein must be scrupulously followed. In the present case, the loss caused by the appellant is not quantified.



W.A.No.905 of 2023

WEB COPY

13. As far as delay in filing Gratuity Application is concerned, Payment of Gratuity Act, 1972 is silent about time limit for filing application before the Controlling Authority. Rule 10 of the Payment of Gratuity Rules, 1972 prescribes 90 days for making claim for direction before the Controlling Authority. Proviso to Rule 10 states that the Controlling Authority may accept any application under the Sub-rule, on sufficient cause being shown by the applicant, after expiry of the specified period.

14. Rule 7(5) of the Payment of Gratuity (Central) Rules, 1972 states as under:-

“An application for payment of gratuity filed after the expiry of the period specified in this rule shall also be entertained by the employer, if the applicant adduces sufficient cause for the delay in preferring his claim, and no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period. Any dispute in this regard shall be referred to the controlling Authority for his decision.”

Therefore, the Controlling Authority is perfectly justified in stating that there is no provision in the main Act prescribing any time limit for preferring claim



W.A.No.905 of 2023

before the Controlling Authority. Claiming gratuity beyond the period of limitation is not found to be delayed claim because Gratuity Act is a beneficial legislation. The very purpose of the provision is to provide an employee with gratuity which is paid for his past service. It has been held in various cases by the Apex Court that payment of gratuity is a statutory compulsion and it is no longer a bounty or bonanza.

15. In the facts of the present case, prior to passing of an order of forfeiture of gratuity, opportunity of hearing has not been afforded to the appellant. In such circumstances, the judgment in ***Jyotirmay Ray Vs. Field General Manager, Punjab National Bank and other*** reported in ***2023 SCC Online SC 1452*** would squarely apply to the facts of the present case, wherein, it is held that prior to passing of an order of forfeiture of gratuity, particulars of the loss to the Bank to be indicated and after giving opportunity of being heard final orders to be passed. Therefore, in the background of the case and well-settled principles laid down on the point, the order of the learned Single Judge, in setting aside the Controlling Authority and Appellate Authority, in our considered opinion, is not sustainable.



W.A.No.905 of 2023

WEB COPY

16. For the reasons aforementioned, the impugned judgment passed by the Writ Court is unsustainable, which is set aside accordingly. The Writ Appeal is allowed. The order of the Controlling Authority and Appellate Authority is restored. The 1st respondent-Bank is directed to pay the gratuity amount as ordered by the Controlling Authority along with accrued interest to the appellant within three months from the date of receipt of a copy of this order. No costs. Consequently, connected MP is closed.

Internet: Yes/No
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(J.N.B.J.) (P.D.B.J)
20.09.2024



W.A.No.905 of 2023

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W.A.No.905 of 2023

**J.NISHA BANU ,J.
and
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Judgment in

W.A.No.905 of 2023

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