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W.A. No.302 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2024

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN
and
THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No.302 of 2024 & C.M.P. No.1842 of 2024

Union Bank of India
(erstwhile Corporation Bank)
Zonal Office
represented by its Chief Manager
Kakumanu Nirmala
No.139, Prakasam Road
Mannadi Police Colony
George Town
Chennai – 600 001, Tamil Nadu

Appellant

v

- 1 The Deputy Chief Labour Commissioner (Central)
(The Appellate Authority under the
Payment of Gratuity Act, 1972)
No.26, III Block, V Floor
Shastri Bhawan
Haddows Road
Nungambakkam
Chennai 600 006
- 2 The Assistant Labour Commissioner (Central)
(The Controlling Authority under the
Payment of Gratuity Act, 1972)
DMS Compound
Teynampet
Chennai 600 006

- 3 M. Swaminathan

Respondents



W.A. No.302 of 2024

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 29.08.2023 passed in W.P. No.3957 of 2018.

For appellant Mr. K.S. Viswanathan, Sr. Counsel
for Mrs. T. Hemalatha

JUDGMENT

(delivered by S. VAIDYANATHAN, J.)

This writ appeal has been preferred questioning the legality and validity of the order dated 29.08.2023 passed by a Single Bench in W.P. No.3957 of 2018.

2 For the sake of convenience, the parties will be alluded to as per their rank in this writ appeal.

3 The third respondent, having rendered 37 years of service, claimed payment of Gratuity payable to him under the Payment of Gratuity Act, 1972. The second respondent, who is the Controlling Authority, *vide* order dated 11.04.2017, after condoning the delay in filing the Gratuity Application, took up the matter and held that the third respondent, who had joined the services of the appellant in 1977 and got superannuated on 30.09.2014, would be entitled to a sum of Rs.10 lakhs as Gratuity together with simple interest @ 10% per annum. The said order was upheld by the first respondent, who is the Appellate Authority, *vide* order dated 30.11.2017.



4

The order of the Appellate Authority was challenged by the appellant in W.P. No.3957 of 2018, wherein, the Single Bench, *vide* order dated 29.08.2023, upon being informed that pursuant to the order of the Controlling Authority, the entire amount was deposited by the appellant, before the Controlling Authority, and that the said amount also was subsequently withdrawn by the third respondent, closed the writ petition as no further adjudication is necessary.

5

The correctness of the aforesaid order of the Single Bench upholding the order of the Appellate Authority, is called into question in this writ appeal.

6

Heard Mr. K.S. Viswanathan, learned Senior Counsel representing Mrs. T. Hemalatha, learned counsel on record for the appellant.

7

The contention of the appellant is that the third respondent is governed by Regulation 46(2) of the Corporation Bank (Employees) Pension Regulations, 1995, and having the benefit of the Regulations, the third respondent cannot claim any more benefit than what is provided thereunder and that the authority under the Payment of Gratuity Act has no authority to consider the plea of the third respondent and determine the amount of Gratuity payable to the third respondent. In support of his contention, the learned Senior Counsel relied on the

Single Bench judgment of the Karnataka High Court in **Corporation Bank v**



B.Vishnumoorthy Aggithaya and others¹, as per which, the Regulations of the bank to withhold payment of Gratuity under specific circumstances will prevail and that the Payment of Gratuity Act will not have an overriding effect.

8 For the sake of convenience and better appreciation of the issue on hand, Regulation 46 (2) of the Corporation Bank (Employees) Pension Regulations, 1995 and Sections 14 and 4(6) of the Payment of Gratuity Act are reproduced below:

“46. Provisional Pension:

(2) In such cases the gratuity shall not be paid to such an employee until the conclusion of the proceedings against him. The gratuity shall be paid to him on conclusion of the proceedings subject to the decision of the proceedings. Any recoveries to be made from an employee shall be adjusted against the amount of gratuity payable. Explanation:- In this chapter, (a) the expression “serious crime” includes a crime involving an offence under the Official Secrets Act, 1923 (19 of 1923); (b) the expression “grave misconduct” includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in section 5 of the Official Secrets Act, 1923 (19 of 1923) which was obtained while holding office in the Bank so as to prejudicially affect the interests of the general public or the security of the State. (c) the expression “fraudulently” shall have the meaning assigned to it under section 25 of the Indian Penal Code, 1860 (45 of 1860); (d) the expression “criminal breach of trust” shall have the meaning assigned to it under section 405 of the Indian Penal Code, 1860 (45 of 1860); (e) the expression “forgery” shall have the meaning assigned to it under section 463 of the Indian Penal Code, 1860 (45 of 1860); ”

“14. Act to override other enactments, etc. The provisions of this Act or any rule made there under shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.”



“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.”

9 Section 14 of the Payment of Gratuity Act, extracted *supra*, makes it abundantly clear that the said Act will have effect notwithstanding anything contained inconsistent therewith. That apart, payment of Gratuity to the employee can be forfeited, provided it falls under Section 4(6) of the Payment of Gratuity Act.

10 At this juncture, apropos it is to point out that the Apex Court, way back in 2011, in **Shambu Sharan Singh v CMD, UCO Bank and Others**², has held that the Payment of Gratuity Act, vis-a-vis Regulation 46 of the Corporation Bank (Employees) Pension Regulations, the Payment of Gratuity Act shall have the effect with regard to withholding and forfeiture of Gratuity. Further, Section 14 of the Payment of Gratuity Act, extracted *supra*, leaves no room for doubt that superior status has been vested in the provisions of the said Act *vis-a-vis* any other enactment, including a contract inconsistent therewith, other than the said Act or any instrument or contract.



11

On appreciation of the facts obtaining in this case and the position of law, we are of the considered view that the Controlling Authority has rightly come to the conclusion that in terms of Section 7 of the Payment of Gratuity Act, the third respondent would be entitled to the maximum amount of Gratuity, viz., Rs.10 lakhs. However, now, the Gratuity ceiling has been increased though the same is not applicable to the instant case. Hence, we have no incertitude in holding that the order of the Controlling Authority directing the appellant to pay a sum of Rs.10 lakhs together with interest, to the third respondent towards Gratuity, is perfectly valid, which was rightly not interfered with by the Appellate Authority. The Single Bench also, finding that the amount deposited before the Controlling Authority has been withdrawn by the third respondent, has closed the writ petition as no further adjudication is warranted, which, in our view, is perfectly justified, inasmuch as, the issue now has become purely academic.

12 As regards the reliance placed by the learned Senior Counsel on

B.Vishnumoorthy Aggithaya, *supra*, the same may not be applicable, since, though the Regulations of the Bank have a force in the eye of law, the said Regulations, if contrary to the provisions of the Payment of Gratuity Act, more so, Section 14, *ibid.*, the provisions of the Payment of Gratuity Act alone will prevail.



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According to the learned Senior Counsel, a criminal case has been registered against the third respondent by the C.B.I. for the offences under Sections 120-B read with Sections 409 and 420 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and that the same is pending. We make it clear that in the event of the third respondent being convicted in the criminal case and if any amount is due from the third respondent, the appellant is at liberty to initiate proceedings to recover the same from the third respondent.

In fine, this writ appeal is dismissed with the above observation. Costs made easy. Connected C.M.P. is closed.

(S.V.N., J.) (K.R.S., J.)
18.01.2024

cad

To

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