# BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**RESERVED ON : 30.06.2023**

**PRONOUNCED ON: 08.03.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**W.P.(MD)No.13503 of 2020**
**and**
**W.M.P.(MD)No.11264 of 2020**

S.Ayyamani ... Petitioner

Vs.

1. The Managing Director & CEO,
   Human Resources Committee of the
   Board of Directors,
   Indian Bank, Corporate Office,
   254-260, Avvai Shanmugham Salai,
   Chennai – 600 014.

2. The Assistant General Manager,
   Disciplinary Authority,
   Indian Bank, Circle Office,
   21-C/1, S.N.High Road, M.K.M.Complex,
   Tirunelveli.

3. The Deputy General Manager(VG),
   Concurrent Appellate Authority,
   Head Office Vigilance Department,
   Indian Bank, 66, Rajaji Salai,
   Chennai – 600 001. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus,calling for the records on the file of the 2nd and 3rd respondents in respect of disciplinary proceedings initiated vide charge sheet vide reference No.CO.TNY.VIG.5.2009-10 dated 31/07/2009 and quash the impugned orders No.CO.TNY.VIG. 36.2010-2011 dated 29/06/2010 passed by the 2nd respondent and duly confirmed by 3rd respondent in rejecting the petitioner appeal by order vide ref No. VG.TRY.4169.2010-2011 dated 11/03/2011 and grant all terminal and consequential benefits to the petitioner.

For Petitioner : Mr.Abhinav Parthasarathy, for Mr.S.Parthasarathy.

For Respondents : Mr.N.Dilipkumar, Standing counsel.

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**<u>O R D E R</u>**

Heard both sides.

2.The writ petitioner was employed as Branch Manager in the respondent Bank. He was dismissed from service vide order dated 29.06.2010 passed by the Assistant General Manager / second respondent herein. Aggrieved by the same, the petitioner filed an appeal before the third respondent. The appeal was also dismissed on 11.03.2011. The petitioner wants this Court to direct the respondents to grant him the petition-mentioned service benefits. The case of the employer is that since the petitioner by his fraudulent acts had caused loss to the bank to the tune of almost Rs.4 Crores of Rupees, he has to be denied relief.

3.The question that calls for consideration is whether the petitioner is entitled to payment of gratuity and provident fund amount with interest.

4.As rightly pointed out by the learned standing counsel for the bank, the question of disbursing gratuity may not really arise in view of the decision of the Hon'ble Supreme Court reported in ***(2020) 18 SCC 71 (CMD, Mahanadi Coal Fields Ltd., V. Rabindranath Choubey).*** As regards the payment of provident fund amount, in the counter affidavit, it has been clarified that the employee's contribution has already been remitted to the petitioner's savings bank account and that he can withdraw the same. It the account has become dormant, it is open to the petitioner to activate the same and withdraw his contribution to the tune of Rs.8,02,062/- with interest. This stand of the employer is placed on record. In taking such a stand, the employer has not given any special concession. It is in consonance with the settled legal position. For instance, in the repealed Income Tax Act, 1922, Chapter 9 A contained special provisions relating to certain classes of provident funds. Section 58C contained the conditions to be satisfied by a recognised provident fund. It provided that the employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund. In such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest (simple and compound) credited in respect of such contributions and accumulations thereof, in accordance with the regulations of the fund. Section 2(38) of the Income Tax Act, 1961 defines "recognised provident fund". It stipulates that it should be in accordance with the rules contained in Part A of the Fourth Schedule. Rule 4 (f) is also on the same lines as that of Section 58(C) of the 1922 Act.

5.When the learned counsel for the petitioner relied on the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the learned standing counsel drew my attention to Section 1 (3) of the Act. It is as follows :

> "**1.Short title, extent and application.—** (1)This Act may be called the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.]

......

[(3) Subject to the provisions contained in section 16, it applies-

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which [twenty] or more persons are employed, and

(b) to any other establishment employing [twenty] or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than [twenty] as may be specified in the notification.]

The Ministry of Labour and Employment issued notification bearing S.O 444(E) dated 10.02.2016 in exercise of the powers conferred by Clause (b) of sub-section (3) of Section 1 r/w. Section 16 of the Act specifying that the Act shall apply to all banks employing twenty or more number of persons as a class of establishment in respect of those employees who are not entitled to the benefit of Contributory Provident Fund or old age pension in accordance with any Scheme or rule framed by the Central

Government or the State Government or by the respective banks established under the Banking Regulations Act, 1949 (10 of 1949). This notification was published in the Gazette of India No.379 dated 10.02.2016. I am satisfied that till the issuance of this notification, the respondent bank did not fall within the purview of the Central Act No.19 of 1952. The petitioner had been dismissed from service much earlier. Therefore, reliance on the provisions of the Act will not be of any avail to the petitioner.

6.The scope of controversy stands narrowed down to whether the employer's contribution should also be directed to be paid or if the bank can recover the same from the provident fund account of the petitioner. The learned Standing counsel appearing for the bank states that the employees are governed by the Indian Bank Staff Provident Fund Rules. He relied on Rules 11 and 17. They read as follows :

> "11.Where the employee is dismissed, discharged, compulsorily retired or removed from service for misconduct causing financial loss to the Bank, the Bank shall be entitled to recover such loss from the provident fund account of the employee concerned as follows :

> In such cases the recoveries made by the Bank shall be limited to the contributions made by the Bank to the individual account of an employee and to the interest (simple and compound) credited in respect of such contributions and to the accumulations thereof in accordance with the regulations of the Fund contained in these presents."
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> 17." If a member causes financial loss to the Bank by misconduct, fraud, gross negligence or other like conduct and is dismissed, discharged, compulsorily retired or removed from the service of the Bank or is permitted to leave the service of the Bank in consequence of such misconduct, fraud, gross negligence or other like conduct, the amount of such financial loss sustained by the Bank shall be deducted by the Trustees from the Bank's contribution to the fund together with interest thereon payable to the member and be paid to the Bank."

7.Rules 11 and 17 have to be read together. They provide for forfeiture of the amount in the employee's provident fund account representing the employer's contribution together with accrued interest. I have already held that on account of the inapplicability of Central Act 19 of 1952, the petitioner cannot bank on Section 10 which provides for protection against attachment. The said Act became applicable to the employees to the respondent bank only with effect from 10.02.2016. The petitioner had ceased to be its employee by then. The issue that has to be answered is whether the employer-bank is entitled to take the stand before this Court that the petitioner cannot demand payment of the entire amount lying in his provident fund account. Section 4(6) of the Payment of Gratuity Act, 1972 contains forfeiture clause. This clause was considered by a learned Judge of this Court in the decision reported in ***2011 SCC OnLine Mad 2935 (Special Officer v. Joint Commissioner of Labour***). It was held therein that the employer will have to specifically pass an order of forfeiture and that it must be simultaneously passed along with the order of termination. Whether this proposition still holds good in the context of the gratuity law is beside the point. It certainly applies to the case on hand because both Rule 11 as well as Rule 17 of the Indian Bank Staff Provident Fund Rules employ the expression "is dismissed etc". They do not envisage the right of the bank to recover from the provident fund account of an employee who "was" dismissed or visited with the penalties mentioned therein. The expression "is" indicates that the forfeiture order must be contemporaneously passed and simultaneously issued.

8.One may wonder whether in the absence of a similar provision in the context of provident fund law, I am justified in invoking the proposition propounded in the context of Section 4(6) of the Payment of Gratuity Act, 1972. I am inspired by the approach of Justice Markandey Katju, former Chief Justice of Madras High Court and a former Judge of Supreme Court of India. He had edited K.S.Sarkar's in Tagore Law Lectures "Mimansa Rules of Interpretation". His Lordship in the preface writes thus:- "On reading the book I realized I had come across a veritable treasure of knowledge lying unearthed which could be of profound use in judicial work. Principles of interpretation are very important in interpreting statutes and till then I had known only of Maxwell's book on 'Interpretation of Statutes' and other books which are all based on Maxwell's work, e.g. the books of Craies, Crawford, Sutherland, G.P.Singh, V.P.Sarathy, Jagdish Swarup, etc. My earnest hope and wish is that with the publication of this book the use of the Mimansa principles of interpretation will begin in our law Courts. If that happens, I will have the satisfaction that my efforts were not in vain."

9. There is a reference to Principle of "Atidesha. It means that a rule found to be good with regard to one case is applicable to other

analogous cases. Of course, this principle of analogy should not be strained or forced. The book contains a judgment of His Lordship rendered in C.M.W.P. No.8249 of 1990, dated 11.10.1992 (Sardar Mohammad Ansar Khan v. State of U.P.). The writ petitioner therein invoked Rule 3(1)(b) of the U.P. Intermediate Education Rules, 1983 which stated that if two or more teachers are appointed on the same date, their inter se seniority shall be fixed on the basis of age. Though the rule applied to teachers, the Hon'ble Judge observed that the rule is sound and fair and applied it to non-teaching employees also, particularly since there was no rule applicable to non-teaching employees for fixing seniority of employees appointed on the same day. I had extracted the entire judgment in WP(MD)No.16879 of 2020.

10.The Hon'ble Supreme Court in the recent decision reported in ***(2023) SCC OnLine SC 1452 (Jyotirmay Ray V. Field General Manager, Punjab National Bank and Others)*** held that before passing forfeiture order, an opportunity of hearing must be afforded to the delinquent employee. The Hon'ble Supreme Court affirmed the decision of Hon'ble Full Bench of Punjab and Haryana High Court in ***LPA No. 566 of 2012 UCO Bank V. Anju Mathur, dated 07.03.2013***. In this case, no such forfeiture order has been passed against the petitioner. The disciplinary authority vide order dated 29.06.2010 imposed the penalty of dismissal from service which would be disqualification for future employment. The appellate authority vide order dated 04.03.2011 confirmed the punishment. Both the orders do not speak about the right of the bank to recover the employer's contribution from the petitioner's provident fund account. This stand cannot be taken subsequently. The rules only enable the employer to quantify the loss caused by the employee and direct the trustee of the fund to withdraw the same and pay the same to the bank. As already held by the Hon'ble Supreme Court, before doing so, an opportunity should be provided.

11.For the foregoing reasons, the impugned order is interfered with to the extent mentioned above. I direct the respondents to permit the petitioner to withdraw the entire amount lying in his provident fund account. This will include the employer's contribution also. It will carry interest @ 6% p.a. This writ petition stands partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

**08.03.2024**

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU/skm

**To:**

1. The Managing Director & CEO,
   Human Resources Committee of the
   Board of Directors,
   Indian Bank, Corporate Office, 254-260, Avvai Shanmugham Salai,
   Chennai – 600 014.

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3. The Deputy General Manager(VG),
   Concurrent Appellate Authority,
   Head Office Vigilance Department, Indian Bank, 66, Rajaji Salai,
   Chennai – 600 001.

**G.R.SWAMINATHAN, J.**

PMU/skm

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