218

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-24022-2014 (O&M)
Date of Decision: 24.04.2024

S.K. Verma ..... Petitioner

Versus

Sarva Haryana Gramin Bank and another ..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sandeep Verma, Advocate,
for the petitioner.

Mr. G.S. Bajwa, Advocate,
for the respondents.

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JASGURPREET SINGH PURI, J. (ORAL)

CM-4017-CWP-2016

For the reasons mentioned in the application, the same is allowed and the amended petition is taken on record.

CWP-24022-2014

1. The present petition has been filed under Article 226 of the Constitution of India for issuance of a writ, order or direction in the nature of *certiorari* for quashing the impugned order dated 15.12.2009 (Annexure P-5) vide which the petitioner has been compulsorily retired without giving any proper opportunity of hearing and further to quash the impugned letter dated 01.03.2014 (Annexure P-14) whereby respondents have forfeited the Gratuity of the petitioner with a further prayer in the nature of *mandamus* directing the respondent to reinstate the petitioner or in case the petitioner is not reinstated then release pension and other pensionary/retiral benefits for

the post which he last held along with interest.

2. At the threshold the learned counsel for the petitioner has submitted that he does not wish to press his prayer for quashing of the order dated 15.12.2009 (Annexure P-5) by which he was compulsorily retired and his prayer for quashing of the order 01.03.2014 (Annexure P-14) only be considered and the same may be quashed.

3. The brief facts of the present case are that the petitioner was working as a Manager in the respondent-Bank from the year 1982. Vide Annexure P-1 dated 29.11.2006, he was issued a show-cause notice by the respondent-Bank by making various allegations including the allegations pertaining to negligence and embezzlement. The headings of allegations are reproduced as under:-

A. Your extorting bribe from one Sh. Amin Hazi for arranging Tractor Loan to him and the irregularities committed by you in arranging the said loan.
B. Wrongful Encahsment of FDs.
C. Wrongful Pecuniar, Gain through your O.D. A/c.
D. Strained relations with staff and negative attitude towards Branch Business.
E. Wrongful Pecuniary Gain through false T.E. Bills.
F. Deficient working and lack of internal control.
G. Your Unauthorized absence from duty.
H. Wrong maintenance of records of keys in office order book.

4. To the aforesaid show-cause notice dated 29.11.2006 (Annexure P-1), the petitioner filed reply vide Annexure P-2. Thereafter, vide Annexure P-3, dated 05.06.2007, a charge-sheet was issued against the petitioner on the aforesaid allegations. The articles of charges in the aforesaid charge-

sheet are reproduced as under:-

"ARTICLES OF CHARGES

The following articles of charges are laid down against you in respect of your various acts of omission and commission as Manager at Bhinguri Branch.

1. *That while working as Manager at Bhinguri Branch you extorted bribe from one Sh. Amin Hazi in consideration of arranging a tractor loan, thereby indulging in corruption.*

2. *That you arranged the above said tractor loan in violation of lending norms and procedures of the Bank and in gross misuse of your official position, exposing massive funds of the Bank to grave risk and acting against the interests of the Bank.*

3. *That you kept FDRs. Issued in your own name as blank to yourself. gain undue pecuniary gain for*

4. *That you exceeded your OD limit against CD A/c No. 1/06 frequently. The maturity amount of Rs.23417/- of CD 1/06 was transferred to FD-11/06 on 26.8.06, Instead of depositing the amount in your OD A/c where said amount stood an security. You also claimed interest on the said F.D. 11/06 from back date wrongfully.*

5. *You did not pay B.C.T.T. while withdrawing an amount 40000/-on 28.08.06 from the said OD A/c.*

6. *That you mentioned excess mileage in your T.E. Bill dated 13.09.06 in order to acquire undue pecuniary gain for yourself.*

7. *That your working as Manager, Bhinguri Branch has been grossly deficient as the progress of the branch was also poor.*

8. *That you had been habitual of staying away from duly without properly handing over custodian keys to the next officer.*

By the above acts of yours, you have committed gross misconduct under regulations 17 and 19 read with regulation 38(1) of Gurgaon Gramin Bank (Officers & Employees) Service Regulations 2001.

5. During the enquiry which was in the nature of disciplinary proceedings, the petitioner admitted the charges and pleaded guilty and this admission of charges was voluntary and unconditional. Apart from the above, he also stated to the enquiry officer that he has admitted the charges voluntarily and unconditionally and also assured that in future he will continue to work with honesty, faithfulness and sincerity for the Bank. He also requested to take a lenient view in this matter. On the basis of his admission, the enquiry officer closed the enquiry and stated that he has no option but to close the enquiry. The relevant portion of the same is reproduced as under:-

> *"SUBMISSIONS BY THE C.O:*
>
> *Sir, I have already admitted the charges voluntarily and unconditionally. I also humbly submit that I have already submitted photocopy of affidavit of Sh. Amin vide which he has withdrawn his complaint against me. I further submit that after revocation of my suspension, I had joined Malab Branch as Manager in December 2006. At that time the internal work of the Branch was in poor shape Balancing work of Malab branch was pending. Our current Account with Syndicate Bank was not taillied. Now as on June 2007 1.e. in about 6 months of my joining the Branch all the pending balancing work has been updated. Our account with syndicate bank has been reconciled. Malab Brach has achieved five out of six quarterly targets as on June 2007. I assure that in future I will continue to work with the honesty, faithfulness and sincerity for the Bank. I humbly request you to take the matter leniently this time.*
>
> *Sir, I have learned from past follies and assure you that I will not give any chance of complaint in future. With this I close my submission.*
>
> *Sd/-*
> *C.O:*

Sd/- Sd/- Sd/-
CO MR EO

At this stage when versions of both Management and defence stand closed, I have no option but to close this enquiry. Both M.R. and C.O. have the option to submit written arguments to me on the enquiry proceedings but both of them have declined to submit any written arguments. Accordingly now at 3.0 P.M. of the day the departmental enquiry into the above charge sheet No. CS-03/BR-20/IRD/2007 dated 05.06.2007 issued to Sh. S.K. Verma stands closed.

Sd/- Sd/- Sd/- Sd/-
EO CO MR EO

Today's enquiry proceedings from page No. 1 to 3 have been typed by me.

Sd/-
(ANIL GUPTA)
TYPIST

Today's enquiry proceedings from page No. 1 to 3 have been received by me.

Sd/- Sd/-
CO MR"

6. Thereafter, vide Annexure P-5, dated 15.12.2009, an order of punishment was passed against the petitioner. This order of punishment was passed under Regulation 38(1)(b)(iii) read with Regulations 17, 19 and 38 of Gurgaon Gramin Bank (Officers & Employees) Service Regulations, 2001 by which a major punishment of compulsory retirement was imposed upon the petitioner with immediate effect by observing that punishment is commensurate with the gravity of misconduct. The relevant portion of the same is reproduced as under:-

"I have carefully reconsidered the matter of Charge-

sheet No.CS-03/BR-20/IRD/2007 Sheet dated 05.06.2007 issued to Sh. S.K. Verma (C.O.) with reference to the related material in the wake of personal hearing then to him. I find that the contentions made by Sh. Verma in the personal hearing are not satisfactory/ tenable in the light of evidence brought on record of the departmental enquiry as well as his own voluntary and unconditional admission of charges. I find that the punishment proposed by me vide my letter No. 241: CS-03/07: IRD: 2009 is commensurate with the gravity of misconduct proved against Sh. S.K. Verma. There are no extenuating grounds before me to reduce/waive the penalty already proposed by me.

Accordingly, under regulation 38 (1) (b) (iii) read with regulations 17,19 and 38 of Gurgaon Gramin Bank (Officers & Employees) Service Regulations 2001. I hereby impose the following penalty on Sh. S.K. Verma following order. (C.O.) and pass the following order.

ORDER

SH. S.K. VERMA, OFFICER EMP.NO.362, BE AND IS HERE COMPULSORILY RETIRED FROM THE SERVICES OF THE BANK

WITH IMMEDIATE EFFECT

If Sh. S.K. Verma, so desires, he may prefer an appeal against the above penalty to the Board of Directors of the Bank within 45 days of receipt of this order.

Sd/-
CHAIRMAN
(DISCIPLINARY AUTHORITY)"

7. Thereafter, the petitioner filed an appeal which was dismissed.

8. After the aforesaid punishment order became final, the petitioner gave a legal notice dated 29.10.2013 vide Annexure P-10, seeking

the retiral benefits including Gratuity. The aforesaid legal notice was not decided by the respondent-Bank and therefore, he was constrained to file a writ petition bearing CWP-27752-2013 which was disposed of on 17.12.2013 vide Annexure P-12 with a direction to the Chairman, Gurgaon Gramin Bank, Gurgaon to consider the claim of the petitioner in the aforesaid legal notice by passing a speaking order, taking into consideration the relevant Regulations, applicable to the service conditions of the petitioner. It was also directed that in case the petitioner is held entitled to the Pension, Provident Fund and Gratuity etc., the said benefits be released to him within a period of next one month. It was also further directed that the ratio of ruling in "***UCO Bank and others Vs. Anju Mathur*** *" **(LPA-566-2012, decided on 07.03.2013)*** will also be taken into consideration. The aforesaid order passed by this Court is reproduced as under:-

> *"The petitioner claims that he has been compulsorily retired on 15.12.2009 but the provident fund, pension and gratuity, as per the regulations of the bank, have been withheld without any sufficient reason. In this context, the petitioner has already sent a legal notice dated 29.10.2013 (Annexure P-10) to the Chairman, Gurgaon Gramin Bank, Gurgaon.*
>
> *Without expression of any opinion on merits of the case, I deem it appropriate to dispose of this petition at this stage with a direction to the Chairman, Gurgaon Gramin Bank, Gurgaon to consider the claim of the petitioner in legal notice dated 29.10.2013 (Annexure P-10) within a period of one month after the receipt of a certified copy of the order, by passing a speaking order, taking into consideration the relevant regulations, applicable to the service conditions of the petitioner. In*

case the petitioner is held entitled to the pension, provident fund and gratuity etc., the said benefits be released to him within a period of next one month. It is further directed that the ratio of ruling in UCO Bank and others vs. Anju Mathur (LPA No. 566 of 2012 decided on 7.3.2013) will also be taken in to consideration.

December 17, 2013 *Sd/-*
JUDGE"

9. Thereafter vide Annexure P-14, the respondent-Bank had passed the impugned order. However, the aforesaid order appears to have been passed by the General Manager despite the fact that the aforesaid direction was issued to the Chairman categorically. Since in the aforesaid order, it has been so stated that it is to inform to the petitioner that the Gratuity has been forfeited but there is nothing on record to show that whether separate order has been passed by the Chairman or not. The aforesaid impugned order is reproduced as under:-

"SARVA HARYANA GRAMIN BANK
HEAD OFFICE: DELHI ROAD ROHTAK
DAC
Ref No.HO/DAC/CS-03/07/2014/434 Dated: 01.03.2014

Sh. S.K.Verma
H.No.A/38/R
New Colony
Palwal

Sub: Forfeiture of your gratuity

Ref: Civil Writ Petition NO.27752 of 2013 filed by you in Punjab & Haryana High Court.

This is with reference to the show cause notice NO.HO/DAC/CS-03/07/2014/196 dated 05.02.2014 issued to you in the above matter and your reply dated

18.02.2014 to the said show cause notice.

The undersigned, in his capacity as competent Authority, has considered all aspects of the matter in the light of your reply to the show cause notice date 05.02.2014. It is observed that the Hon'ble High Court of Punjab and Haryana has not passed any judgment, under the cited CWP, on your compulsory retirement from services of erstwhile Gurgaon Gramin Bank effected vide order dated 15.12.2009, much less terming the compulsory retirement as illegal, as contended by you. As such there is no observation of the Hon'ble High Court on the charges leveled against you vide charge sheet dated 05.06.2007 including the following charges which constitute moral turpitude on your part:-

1. Extorting bribe from one Sh. Amin Hazi for arranging a tractor loan to him and the irregularities committed by you in arranging the said loan. (Details given in the charge sheet).

2. Wrongful encashment of F.D,s by you. (Details given in the charge sheet)

3. Your making wrongful pecuniary gain through your O.D account. (Details given in the charge sheet).

4. Your making wrongful pecuniary gain through false T.E Bill. (Details given in the charge sheet).

As such, your reply to the show case notice dated 05.02.2014 is far from the facts and thus is not convincing and tenable.

Accordingly, this is to inform you that your gratuity stands forfeited under section 4 (6) of payment of gratuity act-1972 on account of acts of moral turpitude on your part.

Sd/-
General Manager"

10. The petitioner has challenged both the impugned order and order of compulsory retirement, but during the course of arguments, he has relinquished his claim with regard to challenge to the order of compulsory retirement (Annexure P-5) but has pressed on the prayer for challenge to Annexure P-14 by which his gratuity was forfeited under the Payment of Gratuity Act, 1972.

11. Learned counsel for the petitioner submitted that when the petitioner earlier filed a petition before this Court which was disposed of vide Annexure P-12 on 17.12.2013, a specific direction was issued to the respondents to take into consideration the ratio of ***UCO Bank and others Vs. Anju Mathur's case (supra)***. However, when the aforesaid order vide Annexure P-14 was passed, there is no reference to the aforesaid judgment. He further submitted that the reason as to why the aforesaid judgment was required to be considered was that it was held by a Full Bench of this Court in the aforesaid judgment that when an action is taken for forfeiture of Gratuity under the provisions of Section 4(6) of the Payment of Gratuity Act, 1972, then it is on the basis of Clause (1)(a) & (1)(b) where the services have been terminated on the basis of allegation of loss caused to the respondents when a show-cause notice is issued then it has to be ascertained as to what was the pecuniary loss caused and in case the Gratuity is to be forfeited then it can be forfeited only to that extent of loss caused. He submitted that the aforesaid case was also pertaining to compulsory retirement and the present is also a case of compulsory retirement.

12. Learned counsel for the petitioner further submitted that however a difference in the present case is that in the present case as per

impugned letter dated 01.03.2014 (Annexure P-14), the Gratuity has been forfeited not because of any loss caused to the Bank but by pressing into service Section 4(6)(1)(b)(ii) of the Payment of Gratuity Act, 1972 which provides that the Gratuity payment of the employee may be wholly or partially forfeited 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. He submitted that in this way the action which has been taken against the petitioner for forfeiture of the Gratuity was not because of any pecuniary loss but because of the aforesaid provision in which the action is taken because of involvement in an offence pertaining to moral turpitude which is clear from the language of impugned letter dated 01.03.2014 vide Annexure P-14 wherein it has been so stated that the Gratuity stands forfeited under Section 4(6) of the Payment of Gratuity Act, 1972 on account of acts of moral turpitude.

12. Learned counsel for the petitioner further also submitted that in the present case a bare reading of the impugned letter (Annexure P-14) would show that even in the first paragraph of the same it has been so stated that the order has been passed in reference to the show-cause notice dated 05.02.2014 whereas Annexure P-13 is not a show-cause notice but it is only a reply to the legal notice given by the Bank to the petitioner. He submitted that in this way, in the absence of any show-cause notice and without affording any opportunity of hearing to the petitioner, no order could have been passed for forfeiting of the Gratuity because it was in violation of *principles of natural justice*.

13. Learned Counsel for the petitioner submitted that even otherwise also a perusal of the provisions of Section 4(6)(1)(b)(ii) of the Payment of Gratuity Act, 1972, would show that the Gratuity may be wholly or partially forfeited only when an employee has been terminated for any act which constitutes an offence involving moral turpitude whereas the petitioner was compulsorily retired not because of his involvement in any offence involving moral turpitude and therefore, even the aforesaid provisions could not have been a ground for termination of his service. He submitted that in view of the aforesaid facts and circumstances the impugned order is liable to be set aside and a direction may be issued to the respondent to pay the entire retiral benefits to the petitioner including the Gratuity along with interest.

14. On the other hand Mr. G.S. Bajwa, appearing on behalf of the respondents-Bank submitted that so far as the issuance of a show-cause notice to the petitioner is concerned, a perusal of the reply to the show-cause notice (Annexure P-13) would show that it has been so specifically stated at the end of the aforesaid reply that a separate show-cause notice has been issued although the aforesaid show-cause notice has not been placed on record but it is clear from the aforesaid concluding part of the reply that a separate show-cause notice was issued to the petitioner and therefore, it cannot be said that there had been a violation of *principles of natural justice.* He further submitted that so far as the forfeiture of Gratuity of the petitioner is concerned, the same has been done only on the ground of his involvement in the allegations pertaining to moral turpitude and therefore, the Bank has rightly pressed into service Section 4(6)(1)(b)(ii) and it was within the rights

of the Bank to have forfeited the Gratuity in case the petitioner was involved in an offence pertaining to moral turpitude since he had admitted his guilt of embezzlement and other negligence as per the articles of the charges. He also submitted that even otherwise also in case the Gratuity and other benefits are granted to the petitioner, then it would also earn a bad name for the Bank and therefore, the present petition is liable to be dismissed.

15. I have heard the learned counsels for the parties.

16. The subject matter of the present petition now remains only to the extent with regard to the impugned letter (Annexure P-14) whereby the Gratuity of the petitioner has been forfeited under Section 4(6)(1)(b)(ii) of the Payment of Gratuity Act, 1972 since the learned counsel for the petitioner stated at the threshold that he does not wish to press his prayer for challenging the order of compulsory retirement. When the petitioner earlier approached this Court by filing a writ petition bearing CWP-27752-2013 and it was disposed of vide order dated 17.12.2013 (Annexure P-12), a specific direction was issued to the Chairman of the Bank to take into consideration the judgment of this Court in ***UCO Bank and others Vs. Anju Mathur's case (supra)***. However, a perusal of the impugned order (Annexure P-14) would show that the aforesaid judgment was never considered while passing the impugned order. The aforesaid judgment is a Full Bench judgment of this Court wherein the scope of Section 4(6) of the Payment of Gratuity Act, 1972 has been considered. The ratio of the aforesaid judgment was that when an action is to be taken for considering the forfeiture of Gratuity under Section 4(6) of the Payment of Gratuity Act, 1972 and a show-cause notice is to be issued then it has to be ascertained as

to what was the pecuniary loss to the Corporation/Organization and on the basis of the same when a final order is passed then the recovery can only be made to the aforesaid extent of ascertainment. However, in the present case on facts there is a little difference. In the present case, the provisions of Section 4(6) of the Payment of Gratuity Act, 1972 although has been invoked but Clause (a) has not been invoked in the present case but Clause (b)(ii) has been invoked. Section 4(6) of the Payment of Gratuity Act, 1972 is reproduced as under:-

> *"(6) Notwithstanding anything contained in sub- section (1)*
>
> *(a) The gratuity of an employee, whose service have been terminated for any act, willful omission or negligence causing any damage or loss to, belonging or destruction to of property 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 constitute an offence involving moral turpitude, provide that such offence is committed by him in the course of his employment".*

17. A perusal of the aforesaid provision would show that by virtue of Section 4(6)(1)(b)(ii) of the Payment of Gratuity Act, in case, the Gratuity which is payable to an employee is to be wholly or partially forfeited and in

case the services of such an employee have been terminated or any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment only then the same can be forfeited. When the aforesaid provision of Section 4(6)(1)(b) of the Payment of Gratuity Act is dissected, then it makes very clear that firstly whenever an action is to be taken for the forfeiture of Gratuity of an employee, then the same can be forfeited either wholly or partially which means that it is not necessary to forfeit the entire Gratuity. In other words, there has to be a conscious decision of the competent authority while forfeiting the Gratuity if at all as to whether the whole or partial Gratuity is to be forfeited or not. However, in the present case, there is no consideration of the aforesaid aspect at all in the impugned Annexure P-14 nor the show-cause notice, if any, has been placed on record by the respondents-Bank which would mean that no conscious application of mind has been made by the competent authority as to whether the Gratuity is to be forfeited either wholly or partially which would, therefore, defeat the spirit of the aforesaid provision. Secondly, in case it is to be considered as to whether the Gratuity is to be forfeited wholly or partially, then by virtue of Clause (ii), if the services of an employee has been terminated for any act which constitutes an offence involving moral turpitude during his employment only then the same can be forfeited. However, in the present case the order of compulsory retirement has been passed under the provisions of Regulations 38(i)(b)(iii) read with Regulations 17, 19 and 38 of Gurgaon Gramin Bank (Officers & Employees) Service Regulations, 2001 which has been reproduced at page No.27/28 of the Paperbook which has been passed as a measure of major punishment. In other words, the services of the petitioner have not been terminated for any act which constitutes an offence involving moral turpitude. The order of punishment and even the enquiry report or even the show-cause notices issued earlier before the disciplinary proceedings were initiated, there is no mention at all of any kind of an offence involving moral turpitude. A query was raised to both the learned counsel for the parties at the time of argument that as to whether in the present case any criminal case etc. was instituted against the petitioner or not, to which they stated that no criminal case was ever instituted against the petitioner. A perusal of the order of compulsory retirement (Annexure P-5) and also order of forfeiture of Gratuity (Annexure P-14) would show that the services of the petitioner were never terminated on the basis of his involvement for his acts which constitutes an offence involving moral turpitude. A mere reference which has been made to the letter vide Annexure P-14 by the General Manager that the Gratuity of the petitioner stands forfeited under Section 4(6) of the Payment of Gratuity Act on account of act of moral turpitude on his part would not satisfy the ingredients of Section 4(6)(1)(b)(ii) of the Payment of Gratuity Act at all.

18. So far as the grant of opportunity of hearing to the petitioner before issuance of the aforesaid impugned order (Annexure P-14) is concerned, as per the learned counsel for the respondents-Bank a separate show-cause notice was issued to him and therefore, this Court would not go into the aforesaid aspect as to whether he was granted opportunity of hearing or not.

19. In view of the aforesaid facts and circumstances of the present

case, the present petition is allowed. The impugned order dated 01.03.2014 (Annexure P-14) is hereby set aside. The respondent-Bank is directed to calculate the entire retiral benefits including the Gratuity of the petitioner and pay to him within a period of three months today along with interest @ 6% per annum (simple). In case, the aforesaid amount is not paid to the petitioner within a period of three months from today, then the petitioner shall be entitled for future interest @ 9% per annum (simple) instead of 6% per annum (simple). However, there shall be no order as to costs.

24.04.2024 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No