



2024:DHC:5022



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 10th April, 2024**
Pronounced on: 9th July, 2024

+ **W.P.(C) 7247/2022 & CM APPL. 24276/2022 & CM APPL. 24277/2022**

PUNJAB NATIONAL BANK Petitioner
Through: **Mr. Rajat Arora, Mr. Ravi Ranjan Mishra, Mr. Sourabh Mahla and Ms. Sneh Vardhan, Advocates**

versus

SH NIRAJ GUPTA & ANR. Respondents
Through: **Mr. N. C. Gupta, Advocate for R-1 Mr. Farman Ali, Ms Usha Jamnal and Mr. Krishan Kumar, Advocates for R-2.**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition has been filed on behalf of the petitioner under Article 226 of the Constitution of India seeking issuance of a writ of certiorari for quashing of the Order dated 7th April, 2022 passed by the learned Appellate Authority under the Payment of Gratuity Act, 1972 ("the Act" hereinafter) in Appeal No. 36(09)/2021 P.A.DYC and a subsequent Notice dated 26th April, 2022 issued by the respondent no.2 bearing no. ALC-I/36(88)2018.



FACTUAL MATRIX

2. The petitioner i.e., Punjab National Bank (“petitioner Bank” hereinafter) is a nationalised bank involved in carrying out the task of providing various banking services to the people, having its headquarters in New Delhi and various subsidiaries across the world. In the year 1984, the petitioner Bank appointed the respondent no.1 (“respondent employee” hereinafter) at the post of ‘Management Trainee’.
3. In the year 2015, the respondent employee while working at the post of Deputy General Manager was deputed as the MD and CEO of the Punjab National Bank International Ltd., a subsidiary of the petitioner Bank incorporated under the relevant laws of the United Kingdom.
4. Subsequently, on 13th August, 2015, a complaint for sexual harassment was filed by one Ms. Neeta Teggi, the customer care executive who was assigned as a secretary to the respondent employee. Pursuant to the filing of the complaint, a preliminary investigation was conducted by the Punjab National Bank International Ltd., at London, United Kingdom.
5. On 19th September, 2015, a decision was taken by the petitioner Bank to send the respondent employee back to India, followed by a suspension order issued by the Executive Director of the petitioner Bank dated 24th September, 2015.
6. Eventually, on 28th September, 2015 the petitioner Bank constituted an Internal Complaints Committee (“ICC” hereinafter) which submitted its findings on 19th October, 2015 thereby, holding the respondent employee guilty of the allegations of sexual harassment alleged against him.



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7. On 7th November, 2015 a charge-sheet is issued against the respondent employee by the petitioner Bank wherein, it was alleged that the actions of the respondent employee being an officer of the petitioner Bank are inappropriate and constitute a misconduct as per the Conduct Regulations of the Bank.

8. Taking into consideration the findings of the report dated 19th March, 2016 submitted by the Enquiry Officer, the Disciplinary Authority of the petitioner Bank, *vide* order dated 30th March, 2016, imposed a punishment of 'Dismissal which shall ordinarily be a disqualification for future employment' as per the terms prescribed under Regulation 4(j) of the Punjab National Bank Employees (Discipline and Appeals) Act, 1977.

9. Furthermore, the respondent employee preferred an Appeal against the aforementioned order which was rejected by the Appellate Authority *vide* order dated 28th June, 2016. Thereafter the respondent employee filed a review application against the order of the Appellate Authority

10. During the pendency of the Review Petition filed by the respondent employee against the aforementioned order, a show cause notice dated 23rd December, 2016 was issued to him by the petitioner Bank for forfeiture of gratuity for his acts amounting to moral turpitude as per Section 4(6)(b)(ii) of the Act.

11. Thereafter, the respondent employee filed his reply to the above said show cause notice on 4th January, 2017 which was *vide* order dated 15th February, 2017, found to be unsatisfactory resulting in forfeiture of his gratuity for being violative of Section 4(6)(a) of the Act.



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12. Subsequently, the review petition of the respondent employee was rejected by the Reviewing Authority of the petitioner Bank *vide* its order dated 6th February, 2017.

13. The respondent employee in August, 2017 preferred a Writ Petition (Civil) bearing No. 6726/2017 before the Coordinate Bench of this Court thereby, challenging the punishment imposed upon him by the Disciplinary Authority *vide* order dated 30th March, 2016, wherein Notice had been issued by this Court *vide* order dated 8th August, 2017 and the matter is *sub-judice*.

14. Aggrieved by the forfeiture of gratuity, the respondent employee on 25th September, 2018 moved an application before the learned Controlling Authority, Delhi under the Act seeking payment of his gratuity.

15. Upon completion of pleadings and leading of evidence by both the parties, the learned Controlling Authority *vide* order dated 15th January, 2021 allowed the above-said application thereby, directing the petitioner Bank to pay to the respondent employee his gratuity amounting to Rs.10 Lakhs along with interest @ 10% w.e.f. 30th March, 2016.

16. The petitioner Bank being aggrieved by the above said order, preferred an Appeal under Section 7(7) of the Act before the Appellate Authority under the Act and also deposited a sum of Rs.15 Lakhs with the Appellate Authority.

17. Subsequently, the learned Appellate Authority *vide* order dated 7th April, 2022 (“impugned Order” hereinafter) dismissed the Appeal preferred by the petitioner Bank thereby, holding that since the essential conditions as stipulated under Section 4(6)(b)(ii) of the Act are not



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proved against the respondent employee by a Court of competent jurisdiction, the action of the petitioner Bank to forfeit the gratuity payable to the him is not justified and is unlawful.

18. Furthermore, the learned Appellate Authority upheld the order passed by the learned Controlling Authority and directed to take an appropriate action in terms of Rule 18(7) and 18(8) of the Act.

19. Pursuant to the above, the respondent no.2 i.e., The Regional Labour Commissioner (Central) passed an order dated 26th April, 2022 whereby, the gratuity deposited by the Deputy Chief Labour Commissioner (Central), New Delhi under the Head of Account “8443-Civil Deposits-Personal Deposits” vide Challan No.04 dated 7th April, 2021 amounting to Rs.15 Lakhs was directed to be released in favour of the respondent employee.

20. Aggrieved by the impugned Order, the petitioner Bank has preferred the instant writ petition seeking quashing of the same.

PLEADINGS

21. The petitioner Bank filed the instant writ petition on 5th February, 2022 and submitted the below stated arguments:

“....A. Because the order passed by the Ld. Appellate Authority as also the Ld. Controlling Authority are bad in law as the acts complained of and proved against the respondent were acts involving 'moral turpitude'. The action of the Bank was after complying with the principles of natural justice, the notice for forfeiture was given. The departmental charge sheet issued to the respondent was on account of the acts complained and proved against the respondent. The Internal Complaints Committee (ICC)



constituted by the petitioner bank had found the respondent guilty of the allegations leveled against him.

B. Because charges leveled against the Respondent in the Chargesheet were proved in the Disciplinary Proceeding initiated by the Bank against the Respondent where the Applicant was given full opportunity to 'defend himself'. As a result of which the Respondent was found guilty to Sexual Harassment against Ms Neeta Teggi amounting to Moral Turpitude. Being found guilty of such misconduct the Respondent was dismissed from the Bank vide its speaking orders dated 30-03-2016 which was upheld by the Appellate Authority as well as Reviewing Authority vide their speaking order.

C. Because the action of the Bank in forfeiting the gratuity was in accordance with the provisions of the Act and Rules made thereunder. The acts committed by the respondent were depicting his moral depravity and certainly amounted to moral turpitude.

D. Because no evidence was led by the respondent before the Ld. Controlling Authority and infact a statement was made that the respondent does not want to lead any evidence in the case. The respondent had stated in thy proceedings dated 5-11-2020 that he does not want to lead any evidence. Hence there was no evidence of the respondent before the Ld. Controlling Authority and thus there was no case before the Controlling Authority and hence the Ld. Appellate Authority erred in rejecting, the appeal filed by the petitioner Bank.

E. Because the dismissal order was passed in pursuance to the charge sheet dated 7-11-2015 and after holding a valid and enquiry as per law relating to mental and sexual harassment to Ms. Neeta Teggi, who was working as a customer service assistant who was working as Secretary, to the applicant. The order of Dismissal was upheld by the Appellate Authority and subsequently by the Reviewing Authority. That such orders have attained finality as far as the Bank authorities are concerned. The orders of the departmental authorities are already under challenge before the High Court in the Writ Petition filed by him. The Ld.



Controlling Authority and the Appellate Authority, when the matter is sub judice could not have awarded gratuity to the respondent.

*F. Because the Hon'ble Supreme Court' in the cases of **Suresh Pathrella Vs Oriental Bank of Commerce 134 (2006) DLT 516 (SC)** and **State Bank of India Vs Ram Lal Bhaskar 2011 (10) SCC 249** has taken the view that Departmental Authorities are the best judge to impose penalty on the proven charges against a delinquent officer.*

G. Because the understanding of the Ld. Controlling Authority as upheld by the Ld. Appellate Authority, that for an offence on moral turpitude there must be a criminal case against the respondent is incorrect understanding of law. The conduct of a person may itself amount to 'moral turpitude'. It is the conduct of an individual which may or may not amount to 'moral turpitude'. Any conduct which is against the morals of the society is a conduct of 'moral turpitude' the filing of a criminal case or conviction for that matter in the same may not be necessary.

H. Because as per the guidelines laid by the Hon'ble. Supreme Court of India in Vishaka & Ors vs State of Rajasthan, the employer is duty bound to ensure that a safe working environment is created to ensure the safety of its women employees and in case of any alleged misconduct then it is the duty of employer to take strict and immediate action against such misconduct. Further, the comprehensive inquiry conducted by the bank proved that the Respondent is guilty of Mental and Sexual Harassment to Ms. Neeta Teggi. Furthermore, having regard to the gravity and seriousness of the offence the offence of sexual harassment amounts to moral turpitude as the employee of an Officer cadre is expected to conduct himself with integrity and dignity. The Respondent was himself working as Managing Director and Chief Executive Officer and being an officer on such an important post it is safe to assume that it is his responsibility to ensure that appropriate work conditions are provided in respect of work. No authority can be permitted to dilute the standard 'of moral behavior of employee to any extent.



I. Because the Hon'ble High Court of Gauhati in Union Of India & Ors vs Sujit Suklabaidya (2207)1 GLR 766 observed that, "After the judgment of the Apex Court in the case of Vishaka (supra) the guilt of moral turpitude need not confine to substantive sexual harassment. To say differently any unnatural behaviour by a male staff with women in the work place connected with sexual activity would bring the offence within the parameters of moral turpitude." The court further observed that, "In our considered opinion the statements clearly 'make out a case of moral turpitude and sexual harassment in the context of wider definitions of the said offence given in the case of Vishaka (supra).' It is desired 'by the law makers that the definition of Moral Turpitude be given a Liberal interpretation for ensuring that justice is seen to be done.

J. Because after the dismissal orders were passed against the applicant, a show cause notice dated 23/26-12-2016 was issued to the applicant asking him to show cause as to why his gratuity be not forfeited under the Payment of Gratuity Act, since no gratuity is payable under the Officer Service Regulations as per Regulation 46. That after receiving his response he orders elated 15-2-2017 was passed by the General Manager of the non applicant Bank forfeiting the gratuity of the applicant. The said orders being legal and in accordance with ' law should have been upheld by the Ld. Controlling Authority.

K. Because the respondent cannot pursue two independent remedies at the same time. Further the Service Regulations nowhere provide that the gratuity would be payable to an officer employee who is dismissed in accordance with the Discipline & Appeal Regulations. That under Regulation 46 of the Service Regulations it is provided that in cases of punishment no gratuity is payable. The Officer Service Regulations are statutory Regulations and all the Officers including applicant are bound and governed by the same. The respondent enjoyed the benefits of Service Regulations during his employment with the petitioner Bank.



L. Because under the impugned orders reliance has been placed on the decision of the Hon'ble Supreme Court in the case of *Union Bank of India Vs CG Ajay Babu*. The judgment in the case of *CG Ajay Babu* only states that the question of 'moral turpitude' cannot be decided by the employer and it is to be decided by some Court/Forum. The Controlling Authority as also the Appellate Authority are a Court for the purposes of the Code of Civil Procedure and hence could adjudicate as to whether the acts complained off against the applicant constitute moral turpitude. Moreover the judgment in the case of *CG Ajay Babu* places heavy reliance on the case of *Jaswant Singh Gill*, which itself has been overruled by the Hon'ble Supreme Court in the case of ***Chairman & MD, tylanadi Coalfields Ltd. Vs. Rabindranath Choubey AIR 2020 SC Z978***. Hence the judgment of *CG Ajay Babu* in fact supports the case of petitioner bank. The judgment in the case of *CG A jay Babu* refers to the. Bipartite Settlement which is not applicable to the Officer staff like the applicant herein. That the Hon'ble Supreme Court in the case of ***Beed District Central Cooperative Bank Vs State of Maharashtra 2006 (8) SCC 514*** has laid down that a delinquent employee cannot have the benefits of both the regulations and the Act. The Supreme Court further in the case of ***BCH Electric Ltd. V s.Pradeep Mehra 2020 III LLN 545 (SC)*** has re affirmed that a person cannot take the benefits both under the Act and also the service rules/regulations. A person has to choose the Act or the Service Regulations.

M. Because under the Bank rules gratuity is not payable to a dismissed employee/officer. The statutory regulation under regulation 46 also provides no gratuity' for an officer who has suffered the punishment. The claim for gratuity as made for Rs.27,86,809 was beyond the limit prescribed under the Act as on the date of dismissal i.e. 30-3-2016.

N. Because the documents in defence filed before the Controlling Authority had been taken on record and proved through the evidence of the Bank. In the affidavit filed by the petitioner Bank through Sh. Sanjay Gupta, DGM of the Bank



the documents have been proved. That the affidavit of the witness Sh. Gupta in para 10 of his affidavit lists various documents to establish the guilt of the respondent. That looking to the allegations of sexual harassment against the respondent by Ms. Neeta Teggi, the Internal Complaints Committee (ICC) was constituted. Their report was received and examined. The PNB International Ltd. also carried out their own investigation. The respondent participated in various meetings, submitted his version, duly signed documents and proceedings. All these documents had been filed and show that after enquiry/investigation/show cause notice the gratuity was forfeited vide orders dated 15-2-2017. In fact it is the applicant who had stated in the proceedings dated 5-11-2020 that he does not want to lead any evidence. That in the orders of the Ld. Controlling Authority and the Appellate Authority none of the documents filed by the petitioner Bank find a mention. The complete set of documents relating to the investigation in respect of the allegations and the proceedings of the Internal Complaints Committee are annexed as ANNEXURE P-10.

O. Because the reliance, placed on the case of Union Bank of India Vs CG Ajay Babu AIR 2018 SC 3792 was misplaced by the ld. Controlling Authority and the Appellate Authority. The same would not be applicable for the following reasons :

- (i) The Court itself observes in para 18 that the issue of moral turpitude is to be determined by the Court. This Hon 'ble Authority can very well determine whether the acts as complained of against the applicant constitute 'moral turpitude ' or not.*
- (ii) The case of Ajay Babu places heavy reliance on the case of Jaswant Singh Gill, which itself stand over ruled in the case of Chairman & MD, Mahanadi Coalfields Vs Rabindranath Cltaubey AIR 2020 SC 2978.*
- (iii) The case of CG Ajay Babu was decided on the basis of the provisions of the Bipartite Settlement as*



noted in para 15 of the judgment. Here the applicant was in the Officer cadre.

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Q. Because the Hon'ble Supreme Court in the case of CG Ajay Babu has observed as under :

18. Though the learned Counsel for the Appellant-Bank has contended that the conduct of the Respondent-employee, which leads to the framing of charges in the departmental proceedings involves moral turpitude, we are afraid the contention cannot be appreciated. It is not the conduct of a person involving moral turpitude that is required for forfeiture of gratuity but the conduct or the act should constitute an offence involving moral turpitude. To be an offence, the act should be made punishable under law. That is absolutely in the realm of criminal law. It is not for the Bank to decide whether an offence has been committed. It is for the court. Apart from the disciplinary proceedings initiated by the Appellant-Bank, the Bank has not set the criminal law in motion either by registering an FIR or by filing a criminal complaint so as to establish that the misconduct leading to dismissal is an offence involving moral turpitude. Under Sub-section (6)(b)(ii) of the Act, forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, and convicted accordingly by a court of competent jurisdiction.

R. Because the respondent is not entitled to the gratuity in terms of Regulation 4 (6) of the Payment of Gratuity Act, 1972.

S. Because the respondent did not lead any evidence before the Hon'ble Authority and it is only the petitioner through its witness Sh. Sanjay Gupta DGM of the petitioner that evidence has been led. There was. no evidence in support of the case by the respondent, the claim application filed by the respondent should have been rejected on the Ld. Controlling



Authority and the Ld. Appellate Authority should have looked' into the same. The respondent was fearful of the cross examination and hence did not lead any evidence and did not enter the witness box.

T. Because the allegations against the respondent were grave, serious in nature, it shows the moral character of the respondent. The punishment thus imposed upon him is legal and just. In any event, the same is matter of adjudication before the Hon'ble High Court. The payment/non payment of , gratuity is based on the outcome of the Writ Petition filed by the applicant. The respondent cannot claim two remedies at the same time.

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W. It is submitted that the rate of interest @ 10% granted by the Ld. Authority is unjust and unreasonable. It is submitted that the Act does not provide for interest rate @ 10% on the allount of gratuity. It is submitted that the rate of interest does not exceed the rate 'notified by the Central Government from time to time for repayment of long-term deposits. Sub-section 3-A of Section 7 is reproduced herein below :

"7(3-A) If the amount of gratuity payable under sub-section (3) is' not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground."

In light of above, it is submitted that the rate of interest, notified by the Central Government on long-term deposits, is about 6%. Hence, it is submitted that if at all the employee is entitled to get interest, the same 'should be @ 6% p.a. The submission made in this para is without



admitting that the employee is entitled to gratuity or interest thereon. It is also pertinent to mention here that the interest can only be awarded on the fault or delay caused by the employer in payment of amount where the employee was entitled to receive the amount of gratuity whereas in the present case the amount of gratuity was forfeited on account of financial loss caused to the Bank i.e. the employee was not entitled to receive the amount.

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Z. Because the awarding of interest at 10% upon the gratuity amount is uncalled for in view of the fact that the respondent no. 1 himself slept over his rights, if any for over a period of 3 years and hence the awarding of interest is uncalled for.

AA. Because under Section 4 (6), the Petitioners were justified in forfeiting the Gratuity payable to the respondent no. 1 on account of moral turpitude. The Ld. Authorities have not correctly applied the provisions of Section 4 (6) (b) which provides that the gratuity of an employee, whose services have been terminated for any act involving moral turpitude shall be forfeited. The acts of the respondent no. 1 were offences involving moral turpitude and hence the forfeiture of gratuity was justified. in terms of the Act.

BB. Because the Officers Service Regulation as applicable to the respondent no. 1 do. not provide for payment of gratuity in case the services are terminated by way of punishment, under regulation 46.

*CC. It is respectfully further submitted that even as held by the Division Bench of the Bombay High Court in the case of **Ramchandra S Joshi versus Bank of Baroda, reported 2010 (4) LLJ 119**, gratuity of a bank employee can be forfeited in case if the services are brought to an end due to misconduct of causing loss to the bank.*

*DD. It is respectfully further submitted that the Hon'ble High Court of Gujarat in the case of **Gujarat State Fertilizers & Chemicals Limited versus Surendra T Amin reported in 2005 - 1 - .LLJ page 400**, has discussed various citations of Apex Court and inter alia have mentioned at Para 23 that the acts resulting to moral turpitude and whereby the*



employer suffers loss due to irregularity/dishonesty of the employee gratuity amounts can be forfeited. Considering the said facet also the decision of Ld. Authority revoking the order forfeiting gratuity of the respondent, is erroneous and deserves to be set aside.

*EE. It is respectfully submitted that the Division Bench of Hon'ble Calcutta High court in the case of **United Bank of India Vs. Rana Mazumder & ors. reported in 2017 Lawsuit (Cal)1515**, has discussed various citations of Apex Court and in Para 16 held that*

"We are unable to agree with the Learned Single Judge that the issue in relation to forfeiture of gratuity has been settled, and, is no longer res integra as the same has been referred to a larger Bench of the Supreme Court as indicated above. Further, the issue whether the exception u/s 4(6) would apply and the gratuity may be forfeited has to be examined in the facts of each case. Different facts situations would result in' different conclusions and it could not be stated that in all cases gratuity has to be paid immediately upon superannuation of the delinquent employee. In the present case, as the loss had been quantified by the petitioner bank in the show cause notice and in the final order, Section 4(6) of the Payment of Gratuity Act comes into play. In our view, the respondent had failed to make out a prima facie case for a mandatory injunction at the interim stage."

FF. Because the Authorities below have failed to appreciate the law propounded by the Apex Court in the matter of Sushil Kumar Singhal Vs Regional Manager Punjab National Bank 2010 (127) FLR 16 Supreme Court which reads as follows-

"The expression 'moral turpitude' is not defined anywhere, but it means anything done contrary to the justice honest, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every



false statement made by the person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will contrary to accepted rule and duty between man and man”

GG. That the Controlling Authority has failed to appreciate the law propounded in the matter of Allahabad Bank & other Vs Deepak Kumar Bhola, JT 1997 (3) SC 539 wherein Apex court has given interpretation of term "Moral Turpitude" as under:-"What is an offence involving "Moral Turpitude" must depend upon the facts of each case. But whatever may be the meaning which may be given to the term "moral turpitude" it appears to us that one of the most serious offences involving "moral turpitude" would be. where a person employed in a banking company dealing with money of the general public, commits forgery and wrongfully withdraws money which he is not entitled to withdraw".

HH. Because the admitted fact that the respondent no. 1 had been imposed the punishment for the proved misconduct and the same has been totally ignored by the authorities below.

II. Because the concept of Gratuity was totally ignored by the Authorities. An employee dismissed for misconduct cannot be given premium for his past services. The respondent had misconducted himself and therefore no gratuity could be availed in his favour.

JJ. Because the departmental action against the respondent is already under challenge before this Hon'ble Court in WP (C) No.6726/2017 filed by the respondent. The said matter is still pending adjudication and the respondent has prayed for setting aside the punishments orders and payments of all consequential benefits therefrom. The Ld. Authorities should



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not have proceeded with the matter once the departmental action is under consideration before this Hon'ble Court.....”

22. In response to the present petition, the respondent employee has filed the counter affidavit dated 23rd August, 2022 wherein, the contentions advanced in the present petition are opposed by way of the following arguments:

‘.....1. That the Writ petition has been filed assailing the orders of the Controlling authority and appellate authority, in blatant violation of directives issued by the Ministry of Labour and Employment, the Govt Of India, vide notification no. H/52027/98-99/IR. (Imp.1) dated 19/03/1999 r/w no. Z-13025/08/2019-IR (Imp.1) dated 08/11/2019 aimed at avoiding vexatious litigation there by making it mandatory for the Public Sector Units to seek prior permission from the competent authority before preferring an appeal against awards of Labour courts/Tribunals, High Courts Etc. The Writ petition, therefore, is liable to be dismissed. (Paper book pg no. 219-221)

*2. That in **State Bank of India Vs Presiding officer** (WP No. 6318/2000), the Hon'ble High Court of Delhi has held the Writ as not maintainable for want of permission in terms of notification, however, with liberty to raise the issue again once permission is obtained. Therefore, the present writ petition is not maintainable.*

3. That the averments made in the Writ petition are completely erroneous, misconceived, concocted, misinterpreted, malafide and have been made out of abhorrence, hatred and malice undermining the fact that the respondent is legitimately entitled to gratuity which the petitioner otherwise did not pay despite the conditions laid down in the 'Payment of Gratuity Act'. 1972 (in short the 'Act') entailing forfeiture of gratuity did not apply in the case of the respondent.

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5. That the writ petition in challenge of release of gratuity amount, without quoting the authority staying the operation of the order of the Ld. Controlling authority precluding the respondent no 2 from doing so, is devoid of cannons of justice and established legal provisions.
6. That the Ld. controlling authority passed orders on 15/01/2021 and appellate authority dismissed the appeal of the Bank on 07/04/2022 after hearing both the parties and giving a discreet thought to the evidences and the statutory provisions. The said orders are elaborate and speaking setting at naught all the controversies, fortified by the laws settled by the Hon'ble superior courts.
7. That the amount of gratuity has since been released to the respondent on 17/05/2022 and this Hon'ble court was pleased to dismiss the application for stay of the said order vide orders dated 18/05/2022.
8. That after release of the gratuity amount in due course following a due process of law by the competent authority, and which was legitimately due to the respondent albeit orders of the controlling authority duly upheld by the appellate authority, the present writ does not survive.
9. That the petitioner has not averred or brought out any new facts, circumstances or the evidences in the writ petition apart from what had already been evidenced , discussed , and considered by the controlling authority or the appellate authority. There IS no change in the circumstances leading to any fresh development or discovery of fresh document or evidence subsequent to the passing of impugned orders, therefore, there is nothing left to be re-appreciated by this Hon'ble court or consider the present writ.
10. That the respondent is a senior citizen as of now and ceased to be in service by way of penalty of dismissal way back over 6 years (on 30/03/20 16) and there will be caused a inseparable loss of life and liberty to the respondent in case the present writ based on wrong and illegal premises though, is allowed..... ”



23. The petitioner Bank has filed his written submissions dated 22nd April, 2024 submitting the below extracted arguments:

*“.....(a) The Ld. Appellate Authority, Payment of Gratuity Act has erred in holding that the acts of the respondent no. 1 does not involve moral turpitude. The allegations against the respondent which were duly proved firstly in the findings of the Internal Complaints Committee (ICC) and then before the departmental authorities do **constitute an Act of moral turpitude**. The findings/reasoning of the Ld. Appellate Authority as well as the Ld. Controlling Authority are thus perverse and liable to be set aside by this Hon'ble Court.*

*(b) The expression 'moral turpitude' has not been defined in any statute. However, it **means any conduct which is contrary to justice, honesty or morality. It means any departure from ordinary standards of honest, good morals, justice or ethics as to be shocking to the moral sense of the community**. Reliance in this regard is made to the cases of (i) **Sushil Kumar Singhal Vs Regional Manager, Punjab National Bank (2010) 8 SCC 573 (Para 23,24 and 25)** (ii) **Allahabad Bank Vs. Deepak Kumar Bhola (1997) 4 SCC 1::1997 SCC (L&S) 897 (Paras 8,9 and 10)***

(c) That according to The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 Section 13 (3)(i) :

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed.

That as per the above provisions, the departmental proceeding and the proceedings of the Internal Complaints Committee was legal and therefore the punishment imposed



on the respondent and the forfeiture made is legal and just and in terms of Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972.

*(d) That merely because there is **no Criminal charges or conviction would not mean that the acts of the respondent would not involve ‘moral turpitude’**. The reliance of the case of Union Hank of India Vs CG. Ajay Babu AIR 2018 SC 3792 would not help the cause of the respondent No.1. because*

(i) In para 18 of the judgment it is held that the issue of moral turpitude is to be determined by the Court. That under Section 7(5) of the Payment of Gratuity Act, the Ld. Controlling Authority and the Appellate Authority have same powers as are vested in a Court.

(ii) The case of Ajay Babu itself relies upon the case of Jaswant Singh Gill, which itself stands overruled in the case of Chairman & MD, Mahanadi Coalfields Vs Rabindranath Choubey AIR 2020 SC 2978.

(iii) The case of CG Ajay Babu was decided on the basis of the provisions of the Bipartite Settlement as noted in para 15 of the judgment which is not applicable, as the respondent is from the Officer Cadre

*(d) The **Conduct of the respondents i.e. both the respondent No. 1 and respondent No.2 after the passing of the impugned orders is also in undue haste**. The orders releasing the gratuity dues (impugned orders) dated 26.04.2022 where received by the petitioner Bank on 02.05.2022 as is evident from the receiving stamp (Page 51). The present Writ Petition was titled before this Court on 05.05.2022 after service to the counsel for respondent No.1 and 2 (page 3 of the petition is the proof of service). The matter was listed before the Hon'ble Court on 09.09.2015. That on the said date the Hon'ble Court was not holding the Court. The matter stood adjourned to 18.05.2022. That on **09.05.2022, the petitioner sent an e mail to the Ld. Respondent No.2 not to release the amount of gratuity deposited. The email sent is annexure R-1 to CM NO.24276/2022 filed on 19.05.2022. That when the matter***



*comes up for admission hearing on 18.05.2022, it is informed that the amount deposited before the Ld. Authority has already been **released on 17.05.2022 (a day prior to the hearing)**. That on the application of the petitioners orders are passed on CM No.24276/2022, directing the respondent to furnish an **indemnity**, which has been **filed on 13.07.2022**, That any action taken by the respondents pursuant to the filing of the petition is always subject to the outcome of the petition.....”*

24. The respondent employee has also filed on record its written submissions dated 22nd April, 2024, relevant extracts of which are as under:

“.....Through the present WP the petitioner has sought quashing of the order dated 07/04/2022 passed by the Appellate Authority under Payment of Gratuity Act, 1972 and subsequent notice dated 26/ 04/2022. The WP does not address the attributes as postulated by the Apex court warranting indulgence of this Hon’ble court. (Union of India Vs P Gunasekaran reported in 2015(2) SCC 610).

X X X

5. The Writ Petition is bad in law:

i) A charge of moral turpitude simplicitor does not empower the petitioner Bank to forfeit the gratuity in terms of section 4(6) of gratuity Act since it is not a moral turpitude but the offence involving moral turpitude for which a criminal action to be set in motion by registering an FIR or filing a criminal complaint is a sine qua non. The respondent has not been convicted by any proceedings of law for moral turpitude. The act should be made punishable under law which is absolutely in the realm of criminal law. It is for the criminal Court. It is not for the Bank to decide whether an offence has been committed. (Union of India Vs CG Ajay Babu-WP page 92 -93 para 18).

ii) The writ petition filed in challenge of the penalty order does not bar claim of gratuity under Gratuity Act. Section 13 of the Act protects the gratuity from any attachment.



iii) *The proceedings under PG Act are quasi judicial proceedings and the office of the Ld . CA or the appellate authority is not a court or a criminal court as referred in the above judgement. They are appointed to administer the P G Act.*

iv) *The pleadings in WP are just replica of pleadings made before the Ld. CA or the appellate authority. There is nothing new or different from what the petitioner had placed before the authorities below or which was not considered. The WP is in the form of appeal and this Hon'ble court would not sit in appeal or re-appreciate the evidences. There are not shown legal infirmities in the orders impugned .*

v) *The petitioner did not produce any stay order on operation of the order impugned, before the competent authority from competent court of law and the amount of gratuity was released to the respondent following due process of law without any recourse to the respondent. It is trite law that mere preferring an appeal does not operate as stay on the decree or order appealed against nor on the proceedings of the court below. (Order 41 Rule 5 of CPC- Atma Ram Properties (P) Ltd Vs Federal Motors (P) Ltd- reported in (2005) 1 SCC705 .*

vi) *Since the amount of gratuity has been released by the competent authority in due course before passing of any stay order by this Hon'ble court on operation of the order, it is unlawful to attribute any mistake to the respondent.*

vii) *There is no excess, miscalculation, misrepresentation or the mistake on the part of the respondent in release of the gratuity amount and therefore, it will be a miscarriage of justice in case the Writ Petition is allowed. (MP Medical Officers Assoen. Vs The State of MP), reported in 2022(6) SLR 507 SC. viii) After the order passed by the authority below has been complied with by releasing the gratuity, the question of recovery of amount from the respondent comes to out of question. (Sidhant Gupta Vs Assistant Director Prosecution-SLP no. 42241/2022)..... ”*



SUBMISSIONS

(On behalf of petitioner)

25. Learned Counsel appearing on behalf of the petitioner Bank submitted that the impugned Order is illegal as the same has been passed without taking into consideration the entire evidence, facts and circumstances of the present case, and therefore, the same is liable to be set aside.

26. It is submitted that the learned Authorities below have erred in law by failing to consider the settled position of law with regard to forfeiture of gratuity thus, wrongfully holding that the act alleged against the respondent employee does not amount to 'moral turpitude'.

27. It is submitted that the findings of the learned Controlling as well as Appellate Authority that the act alleged against the respondent employee does not amount to an 'offence' involving moral turpitude are perverse and are liable to set aside as the allegation levelled against him have been duly proved by the ICC as well as the departmental authorities hence, the act squarely falls under the ambit of moral turpitude.

28. It is submitted that although 'moral turpitude' has not been expressly defined under any statute however, the same constitutes an acts/conduct which is contrary to the principles of justice, honesty and morality. To substantiate the same, the learned counsel for the petitioner Bank placed reliance upon the judgments passed in ***Sushil Kumar***



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Singhal Vs Regional Manager, Punjab National Bank¹ and Allahabad Bank Vs. Deepak Kumar Bhola².

29. It is submitted that the impugned Order is bad in law as the act of sexual harassment alleged against the respondent employee has been duly proved during the course of the departmental enquiry before the ICC and since, the same amounts to an act involving moral turpitude therefore, the forfeiture of gratuity cannot be held to be unjustified.

30. It is submitted that the forfeiture of gratuity has been directed by the petitioner Bank after having complied with the provisions contained in the Act and there had been strict compliance of the principles of natural justice.

31. It is further submitted that the order of dismissal of the services of the respondent employee has been upheld by the Appellate Authority as well as Reviewing Authority of the petitioner Bank therefore, the act alleged against him stands duly proved.

32. It is submitted that it is a settled position of law that when it comes to internal matters of an organization, departmental authorities are the best judge to impose penalty against the charged proved against a delinquent officer. To substantiate the same, the learned counsel for the petitioner Bank placed reliance upon the judgments passed in ***Suresh Pathrella Vs Oriental Bank of Commerce³*** and ***State Bank of India Vs Ram Lal Bhaskar⁴***.

¹ (2010) 8 SCC 573

² (1997) 4 SCC 1

³ 134 (2006) DLT 516 (SC)

⁴ 2011 (10) SCC 249



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33. It is submitted that the learned Controlling as well as Appellate Authority erred in law by passing the order for releasing of the gratuity in favour of the respondent employee as the respondent employee had preferred a writ petition (Civil) bearing No. 6726/2017, wherein the findings of the Disciplinary Authority recorded *vide* order dated 30th March, 2016 have been challenged before this Court thus, since the matter is *sub-judice* no order could have been passed by the learned Authorities.

34. It is submitted that the learned Appellate Authority erred in law by taking a view that for an offence to fall within the ambit of 'moral turpitude' there must be a criminal case filed before a court of competent jurisdiction.

35. It is further submitted that the reason afforded is incorrect as any conduct/act of a person which is against the morals of the society at large, amounts to moral turpitude and filing of a criminal case or conviction may not be a necessary factor.

36. It is submitted that in order to ensure substantial justice a liberal interpretation may be given as to what entails an offence involving moral turpitude. The learned counsel for the petitioner Bank placed reliance upon the judgment passed by the High Court of Guwahati in ***Union Of India & Ors vs Sujit Suklabaidya***⁵ wherein, it was observed that after the findings of the Hon'ble Supreme Court in the judgment of ***Vishaka & Ors vs State of Rajasthan & Ors***⁶ the guilt of moral turpitude is not confined to substantive sexual harassment and it extends to any unnatural

⁵ (2207)1 GLR 766

⁶ AIR 1997 SC 3011



behaviour by a male staff with women at the work place related to any sexual activity would bring the offence within the parameters of moral turpitude.

37. It is submitted that the judgment i.e., *Union Bank of India Vs CG Ajay Babu*⁷, relied upon by the Appellate Authority in the impugned Order states that moral turpitude is not to be adjudicated upon by the employer and it is for a Court of competent jurisdiction to try. It is further submitted that the Controlling Authority as well as Appellate Authority are Courts of competent jurisdiction for the purpose of the Code of Civil Procedure, 1908 therefore, they could have adjudicated upon whether or not the act alleged against the respondent employee constitutes an offence involving moral turpitude.

38. It is submitted that the reliance placed upon by the Appellate Authority upon *Union Bank of India (Supra)* is misplaced as the judgment passed by the Hon'ble Supreme Court in *Jaswant Singh Gill v. Bharat Coking Coal Ltd., (2007) 1 SCC 663* which has been relied upon in *Union Bank of India (Supra)* has been overruled by a three Judges Bench of the Hon'ble Supreme Court in *Chairman & MD, Mahanadi Coalfields Vs Rabindranath Choubey*⁸.

39. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner Bank prays that the instant petition may be allowed, and the relief as prayed, may be granted.

(On behalf of respondents)

⁷ AIR 2018 SC 3792

⁸ AIR 2020 SC 2978



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40. *Per Contra*, the learned counsel appearing on behalf of the respondent employee vehemently opposed the instant petition submitting to the effect that the instant petition is misconceived, and the impugned Order has been passed after taking into consideration the settled position of law and the entire evidence on record hence, the same is liable to be dismissed.

41. It is submitted that the instant petition is nothing but an appeal under the garb of the extraordinary writ jurisdiction thus, since the scope of jurisdiction is limited and cannot extend to re-appreciation of evidence, the same must be dismissed.

42. It is submitted that the instant petition is a gross misuse of the process of law as the case of the respondent employee does not fall within the ambit of actions that may lead to the forfeiture of gratuity under the Act and the same has been rightly observed by the learned Controlling as well as Appellate Authorities.

43. It is submitted that the petitioner Bank has wrongfully submitted that the forfeiture of gratuity was as per the provisions contained under Section 4(6)(b) of the Act rather the order dated 15th February, 2017 categorically states forfeiture on account of violation of Section 4(6)(a) of the Act.

44. It is submitted that the petitioner Bank is precluded from forfeiting the gratuity payable to the respondent employee on the ground that the act alleged against him squarely falls within the ambit of moral turpitude as provided under Section 4(6)(b) of the Act, since it is the offence involving moral turpitude and not the moral turpitude simplicitor that



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may empower the employer to forfeiture the gratuity payable to an employee as per the Act.

45. It is submitted that it has been wrongfully contended by the petitioner Bank that the act alleged against the respondent employee amounts to moral turpitude as neither was the respondent employee charged with the act involving moral turpitude, nor has any criminal proceeding been initiated against him either by the petitioner Bank or the complainant in such regard therefore, the contention of the petitioner Bank does not hold any ground. To substantiate the same, the learned counsel for the respondent employee placed reliance upon the judgment passed in the case of *Union Bank of India (Supra)*.

46. It is submitted that the learned Appellate Authority has rightfully held that for an offence to fall within the ambit of 'moral turpitude' there must be a criminal case filed before a court of competent jurisdiction. It is submitted that it is not mere initiation of a criminal complaint is necessary rather it is conviction of an offence by a Court of competent jurisdiction that would deem an act to fall within the ambit of moral turpitude as prescribed under Section 4(6)(b) of the Act.

47. It is submitted that the averment made by the petitioner Bank that the Controlling as well as Appellate Authority are Courts of competent jurisdiction for the purpose of Code of Civil Procedure, 1908 and could have adjudicated upon the aspect of moral turpitude does not hold ground since the proceedings under the Act are *quasi-judicial* in nature and cannot be permitted to assume the role entrusted upon the Criminal Courts as both have their requisite jurisdictional framework.



48. It is further submitted that mere termination or dismissal of the concerned employee by the departmental enquiry would not *ipso facto* constitute an offence involving moral turpitude rather for an employer to forfeit gratuity under Section 4(6)(b)(ii) of the Act the dismissed employee shall be convicted for a misconduct involving moral turpitude, punishable by law for the time being in force.

49. Therefore, in light of the foregoing submissions the learned counsel appearing on behalf of the respondent employee prayed that the instant petition, being devoid of any merit is liable to be dismissed.

ANALYSIS AND FINDINGS

50. Heard the learned counsel for the parties and perused the documents placed on record.

51. It is the case of the petitioner Bank that the impugned Order passed by the learned Appellate Authority is illegal as the same has been passed without taking into consideration the entire evidence, facts and circumstances. It has been contended that the findings of the learned Controlling as well as Appellate Authority holding the respondent employee entitled to gratuity are perverse as the allegation levelled against him have been duly proved by the ICC as well as the departmental authorities thus, the act alleged against the respondent employee squarely constitutes an act/misconduct amounting to an 'offence' involving moral turpitude.

52. It has been contended that the order of dismissal from services passed by the petitioner Bank has been upheld by the higher authorities of the petitioner Bank therefore, the act alleged against him stands duly



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proved and the forfeiture of gratuity should be upheld by this Court as for matters such as the present matter, the departmental authorities are the best judge.

53. It is contended that the Controlling as well as Appellate Authority are Courts of competent jurisdiction therefore, the constitution of offence of moral turpitude could have been adjudicated upon by them rather than a Criminal Court. It has been further asserted that the Appellate Authority erred in placing reliance upon *Union Bank of India (Supra)* as *Jaswant Singh Gill (Supra)* relied upon in *Union Bank of India (Supra)* has been overruled by a subsequent judgment by a three Judge Bench of the Hon'ble Supreme Court, in light of which the instant petition may be allowed.

54. The learned counsel for the respondent employee in rival submissions has contended the order impugned by the petitioner Bank have been rightfully passed and the same is in accordance with the settled position of law. It is contended that the petitioner Bank has wrongfully submitted that the act alleged against him falls under Section 4(6)(b) of the Act, since it is not the not the moral turpitude *simplicitor* rather the offence involving moral turpitude that empower the employer to forfeit the gratuity of employee as observed by the Hon'ble Supreme Court in *Union Bank of India (Supra)*.

55. It is contended that the gratuity of the respondent employee has been forfeited in clear violation of the settled position of law as neither the petitioner Bank and nor the complainant have initiated any criminal proceeding, let alone conviction by a Court of competent jurisdiction in the act alleged to have constituting an offence involving moral turpitude.



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56. It is further contended that mere termination/dismissal by the departmental enquiry would not *ipso facto* constitute an offence involving moral turpitude rather it is conviction under the requisite law for the time being in force that would empower the petitioner Bank to forfeit the gratuity of the respondent employee hence, the instant petition being misconceived shall be dismissed.

57. The petitioner Bank has approached this Court seeking quashing of the Order dated 7th April, 2022 passed by the learned Appellate Authority under the Payment of Gratuity Act, 1972 in Appeal No. 36(09)/2021 P.A.DYC and subsequent Notice dated 26th April, 2022 issued by the respondent no.2 bearing no. ALC-I/36(88)2018, therefore, before delving into the averments advanced by the learned counsel for the parties, this Court deems it imperative to analyse the findings of the impugned Order and ascertain the reasoning afforded by the learned Appellate Authority. The relevant paragraphs of the impugned Order are reproduced herein below:

“....MAJOR ISSUE FRAMED

After going through the submission made by both the parties, the following issues have been settled to examine the correctness of the action of the Appellant Bank management.

1. "Whether the action of the Appellant Bank to forfeit the gratuity of the Respondent employee who was dismissed from service as per provisions of Regulation 4(j) of Punjab National Bank Officer Employees' (Discipline & Appeal) Regulations, 1977, and also on the grounds of the offence of Moral Turpitude in compliance to the provisions of Sec. 4(6)(b)(ii) of the Payment of Gratuity Act after completion of the Disciplinary Proceeding was correct.



The above issue has two aspects:-

1) The dismissal of the service of the Respondent employee in accordance with the provisions of Regulation 4U) of Punjab National Bank Officers' (Discipline & Appeal) Regulations, 1977,

2) Consequent upon the dismissal from service the gratuity of the Respondent was forfeited as per provisions of section 4(6) (b) (i) of the Payment of Gratuity Act after completion of the disciplinary proceeding

Regulation 4(j) -- The action of the Appellant bank to forfeit the gratuity has been examined in the light of the provisions under which the Appellant took this action;

Regulation 4(j) of the PNB Officers Employees (Disciplinary & Appeal) Regulation 1977 states that in case of major penalty like, Dismissal which shall ordinarily be a disqualification for future employment.

The action of the Appellant management has been examined in the light of the above provision and it has been found that the facts which are not disputed are-

The Respondent employee was an officer (DGM) of Appellant Bank and completed 31 years of service. While working as Branch Manager he was found guilty of the alleged misconduct of Sexual harassment. The Appellant bank constituted an enquiry against him. Before the issuance of the charge sheet, the appellant constituted an Internal Complaint Committee as per law in terms of the provisions of the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 on the basis of complaint allegations made against the Respondent which proved him guilty of the moral turpitude. Thereafter, the respondent was punished with the order of Dismissal which shall be a disqualification for future employment with immediate effect in terms of Regulation 4(j) of the Punjab National Bank Officers (Discipline & Appeal) Regulation, 1977 by the disciplinary authority. The punishment of



dismissal was upheld, by the Appellate Authority and Reviewing Authority. The Appellant Bank dismissed the Respondent employee from service with effect from 30.3.2016 and decided to forfeit his gratuity for the offence of moral turpitude under section 4(6)(b) of the Payment of Gratuity Act 1972. This action of Appellate bank was also communicated to the Respondent employee through the Enquiry Report.

The action of the management has been found in the conformity with the provisions of Regulation 4(j) that the termination was followed by disciplinary proceeding. But the Regulation 4(j) has never stated that in case of termination the Gratuity of the accused employee is to be forfeited.

The Appellant management for his action of forfeiture of gratuity took the support of Section 4(6)(b) of the Payment of Gratuity Act 1972 which reads as follows –

The gratuity payable to an employee (may be wholly or partially forfeited)-

(i) If the service 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, provided that such offence is committed by him in the course of his employment.*

The action of the Appellant management examined under the Provisions of Sec. 4(6)(b)(ii) it is found that a show cause notice dated 23.12.2016 was issued to the Respondent asking why his gratuity be not forfeited on account of moral turpitude and the same was forfeited vide order dated 15.2.2017.

The appellant Bank treated the present case as 'Moral Turpitude' and thus they decided to forfeit the gratuity. The Disciplinary Authority in his order dated 30.3.2016 under



Para 53 held that misconduct is proved under Regulation 3(1) & 3(2) read with Regulation 24 of PNB Officer Employees (Conduct) Regulations, 1977.

The action of Appellant bank to treat the present misconduct of the Respondent as Moral Turpitude has been examined as follows.

The Hon'ble Supreme Court in the case of Pawan Kumar v. State of Haryana and Anr. (1996) II LLJ703SC held that the question as to what is the meaning of expression "moral turpitude" and it was observed as follows:

Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity.

This expression has been more elaborately explained in Balesbwar Singh v. District Magistrate and Collector, Banaras AIR1959 All 71 where it was " observed as follow: The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or goods morals. It implies depravity and weakness of character of disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owns to his fellowmen or to the society in general. If therefore the individual charged with a certain conduct owes duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to the accepted customary rule and duty between man and man.

From the aforesaid paragraph, it is clear that the moral turpitude has not been defined anywhere but Sec. 4(6)(b)(ii)



of the Payment of Gratuity Act has made it clear that if the services of the employee have been **terminated** for any act which constitute an **offence** involving Moral Turpitude, provided that such offence is committed by him in the course of employment.

Here it is the fact that the services of the Respondent was terminated after a departmental enquiry for a misconduct under PNB Officer Employees (Discipline and Appeal) Regulation 1977 but not for any offence as meant by the P.G. Act. The "offence" has been defined under the General Clause Rule of Indian Constitution as there is also no dispute that the Appellant bank has neither filed any FIR against the Respondent nor there was any offence proved against Respondent by any court of law, however, the fact remains that his conduct and behaviour is certainly deplorable but that is not sufficient ground to forfeit gratuity of an employee.

The CA has correctly relied on the Judgment of Supreme court in the matter of **Jaswant Singh Gill Vs Bharat Coking Coal Limited and others (2007)**. The Hon'ble Supreme Court have clearly held that under Clause (b) of Sub Section 6 of Section 4 of the Payment of Gratuity act forfeiture of gratuity can be made only if he has been convicted for an offence involving moral turpitude. Clause (b) of Sub-section (6) of Section 4 of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been **convicted for an offence involving moral turpitude**. Conditions laid down therein are also not satisfied.

The another case of **Union Bank of India and Others Vs CG Ajay Babu and Other (2018)** Supreme Court of India has observed that 'offence' is defined under The General Clause Act, 1897, to mean "any act or omission made punishable by any law for the time being in 'force'".



Though the learned Counsel for the Appellant Bank has contended that the respondent employee, which leads to the framing of charges in the departmental proceedings, involves moral turpitude, we are afraid the contention cannot be appreciated. It is not the conduct of a person involving moral turpitude that is required for forfeiture of gratuity but the conduct or the act should constitute an offence involving moral turpitude. To be an offence, the act should be made punishable under law. That is absolutely in the realm of criminal law. It is not for the Appellate Bank to decide whether an offence has been committed. It is for the court. Apart from the disciplinary proceedings initiated by the Appellant Bank, the Bank has not set the criminal law in motion either by registering an FIR or by filing a criminal complaint so as to establish that the misconduct leading to dismissal is an offence involving moral turpitude. Under Sub-section (6) (b)(ii) of the Act, forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitute as offence involving moral turpitude and convicted accordingly by a court of competent jurisdiction.

Thus, on the basis of above-stated analysis, it can be safely deduced that in order to invoke Section 4(6)(b)(ii) of the Payment of Gratuity Act to forfeit an amount of gratuity payable to an employee, the condition precedent is that terminated employee must be convicted for an offence for the time being in force and that offence must be an offence involving 'moral turpitude'. Unless the aforesaid two conditions are fully established by an employer mere termination or dismissal of an employee concerned would not ipso facto constitute an offence that too an offence involving moral turpitude to attract Section 4(6)(b)(ii) of the Payment of Gratuity Act and an employer would have no jurisdiction in invoke the provision contained in Section 4(6)(b)(ii) of the Payment of Gratuity Act to forfeit gratuity payable to an employee under the Payment of Gratuity, Act.



Therefore, it is proved in the instant matter that the above condition as observed by the Court has not been satisfied and therefore, the action of the Appellant bank to forfeit the gratuity cannot be said to be lawful.....”

58. Upon perusal of the aforementioned Order, it can be summarily stated that the core issues for adjudication before the learned Appellate Authority was whether the action of the petitioner Bank to forfeit the gratuity of the respondent employee is in conformity with the provisions of Section 4(6)(b) of the Act taking into account that the respondent employee was dismissed from services as per the provisions contained under Regulation 4(j) of Punjab National Bank Officer Employees' (Discipline & Appeal) Regulations, 1977.

59. Whilst adjudicating the above issue the learned Appellate Authority clarified that although the action of dismissal by the petitioner management has been found to be in conformity with the provisions of Regulation 4(j) as the termination was followed by the disciplinary proceeding, however the provision under Regulation 4(j) does not mandate that termination of an employee would amount to forfeiture of the gratuity of the accused employee.

60. The learned Appellate Authority further undertook to examine the provisions invoked by the petitioner Bank for forfeiture of gratuity i.e., Section 4(6)(b) of the Act in light of the fact that the act alleged against the respondent employee was treated as misconduct amounting to ‘moral turpitude’ by the petitioner Bank.

61. Upon examination of the definition of ‘moral turpitude’, the learned Appellate Authority made reference to the judgements of **Pawan**



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Kumar v. State of Haryana and Anr.⁹ and **Balesbwar Singh v. District Magistrate and Collector, Banaras**¹⁰ and opined that moral turpitude has not been defined anywhere and is only provided under Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972.

62. The learned Appellate Authority bearing reference to the judgments passed in **Union Bank of India (Supra)** and **Jaswant Singh Gill (Supra)**, observed that mere termination or dismissal of the concerned employee would not *ipso facto* constitute an offence involving moral turpitude rather in order for an employer to invoke the provisions contained under Section 4(6)(b)(ii) of the Act for forfeiture of gratuity of an employee, the conditions that must be satisfied are (i) the terminated employee must be convicted for an offence punishable by law for the time being in force and (ii) the said offence must be an offence involving ‘moral turpitude’.

63. Furthermore, it observed that since neither the petitioner Bank nor the complainant have filed any F.I.R against the respondent employee and no offence has been proved against him by any court of law thus, the forfeiture of gratuity cannot be held to be lawful as the service of the respondent employee was terminated for a misconduct under PNB Officer Employees (Discipline and Appeal) Regulation 1977 and not for committing an ‘offence’ as defined by the Act, which as per the settled position of law must be adjudicated upon by a criminal Court having the competent jurisdiction.

⁹ (1996) II LLJ 703 SC

¹⁰ AIR 1959 All 71



64. At this juncture, bearing in mind the averments made by the parties and the observations made by the learned Appellate Authority, the core issue in the instant matter that warrants adjudication by this Court pertains to the forfeiture of gratuity as per the provisions prescribed under Section 4(6)(b)(ii) of the Act i.e., instances wherein the employee has been terminated for an act constituting moral turpitude, committed during the course of employment.

65. In the above backdrop, the issue that falls for consideration before this Court in the instant matter is:

“Whether the act of the petitioner Bank to forfeit the gratuity payable to the respondent employee is in accordance with the provisions contained under the Payment of Gratuity Act and the settled position of law pertaining to the same?”

66. Before delving into the issue in hand, this Court deems it pertinent to set out the statutory extract invoked by the petitioner Bank which as prescribed under Section 4(6) of the Act pertaining to the principle of forfeiture of gratuity. The relevant portion of the said provision reads as follows:

“....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 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....”*

67. Upon perusal of the above stated statutory provision it is made out that the statute provides for three grounds under which upon terminating the services, the gratuity payable to an employee may be forfeited by the employer. *Firstly*, Section 4(6)(a) of the Act provides for forfeiture in instances wherein, the dismissal is on account of an act, wilful omission or negligence committed by the employee and the same causes any damage or any loss, destruction of property belonging to the employer.

68. It is further provided that forfeiture under the said sub-clause can only be to the extent of the damage or loss caused by the employee. Tersely said, unless there is a quantification of the damage or loss caused to the employer, the said provision cannot be invoked for forfeiture of the gratuity.

69. Section 4(6)(b) of the Act provides for two instances wherein the employer is entitled to forfeit the gratuity payable to a terminated employee. *Secondly*, Section (4)(6)(b)(i) of the Act provides for instances of forfeiture of gratuity in whole or in part wherein, the termination is on account of riotous or disorderly conduct or any other act of violence committed on part of the employee.

70. *Thirdly*, Section (4)(6)(b)(ii) of the Act provides for forfeiture of gratuity in whole or part in instances wherein, the termination of the



employee is on account of any act/misconduct committed by him during the course of employment and the same constitutes an offence involving moral turpitude.

71. Furthermore, a careful reading of the above said provision it can be inferred that there exists a clear distinction between the nature of acts enumerated in Section (4)(6)(b)(i) and Section (4)(6)(b)(ii) of the Act.

72. The expression provided under (4)(6)(b)(ii) of the Act i.e., “constitutes an offence involving moral turpitude” provided under Section (4)(6)(b)(ii) suggests that the legislature has deliberately infused an undertone of certainty in the provision that the act/misconduct in question requires to satisfy. Tersely said, mere possibility of the employee having committed an act constituting an offence involving moral turpitude is not sufficient to attract the aforementioned provision.

73. In light of the above analysis, this Court now deems it apposite to state the settled position of law with regards to forfeiture of gratuity in terms of Section (4)(6)(b)(ii).

74. The Hon’ble Supreme Court in *Union Bank of India (Supra)*, observed that it is not the conduct of a person involving moral turpitude that is required for forfeiture of gratuity but the said conduct/act should constitute an offence involving moral turpitude resulting in a conviction under law at the time in force. The act/conduct is not for the employer to decide rather it must be strictly decided as per the realm of criminal law and by a court of competent jurisdiction. The relevant extract of the said judgment is reproduced herein below:

“.....15. Under sub-section (6)(a), also the gratuity can be forfeited only to the extent of damage or loss caused to



the Bank. In case, the termination of the employee is for any act or wilful omission or negligence causing any damage or loss to the employer or destruction of property belonging to the employer, the loss can be recovered from the gratuity by way of forfeiture. Whereas under clause (b) of sub-section (6), the forfeiture of gratuity, either wholly or partially, is permissible under two situations: (i) in case the termination of an employee is on account of riotous or disorderly conduct or any other act of violence on his part, (ii) if the termination is for any act which constitutes an offence involving moral turpitude and the offence is committed by the employee in the course of his employment. Thus, clause (a) and clause (b) of sub-section (6) of Section 4 of the Act operate in different fields and in different circumstances. Under clause (a), the forfeiture is to the extent of damage or loss caused on account of the misconduct of the employee whereas under clause (b), forfeiture is permissible either wholly or partially in totally different circumstances. Clause (b) operates either when the termination is on account of: (i) riotous, or (ii) disorderly, or (iii) any other act of violence on the part of the employee, and under clause (ii) of sub-section (6)(b) when the termination is on account of any act which constitutes an offence involving moral turpitude committed during the course of employment.

16. “Offence” is defined, under the General Clauses Act, 1897, to mean “any act or omission made punishable by any law for the time being in force” [Section 3(38)].

17. Though the learned counsel for the appellant Bank has contended that the conduct of the respondent employee, which leads to the framing of charges in the departmental proceedings involves moral turpitude, we are afraid the contention cannot be appreciated. It is not the conduct of a person involving moral turpitude that is required for forfeiture of gratuity but the conduct or the act should constitute an offence involving moral turpitude. To be an offence, the act should be made punishable under law. That is absolutely in the realm of criminal law. It is not for the Bank to decide whether an offence has been committed. It is



for the court. Apart from the disciplinary proceedings initiated by the appellant Bank, the Bank has not set the criminal law in motion either by registering an FIR or by filing a criminal complaint so as to establish that the misconduct leading to dismissal is an offence involving moral turpitude. Under sub-section (6)(b)(ii) of the Act, forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, and convicted accordingly by a court of competent jurisdiction.

18. In *Jaswant Singh Gill v. Bharat Coking Coal Ltd.* [*Jaswant Singh Gill v. Bharat Coking Coal Ltd.*, (2007) 1 SCC 663 : (2007) 1 SCC (L&S) 584] , it has been held by this Court that forfeiture of gratuity either wholly or partially is permissible under sub-section (6)(b)(ii) only in the event that the termination is on account of riotous or disorderly conduct or any other act of violence or on account of an act constituting an offence involving moral turpitude when he is convicted. To quote para 13: (SCC p. 670)

“13. The Act provides for a close-knit scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. As noticed hereinbefore, sub-section (6) of Section 4 of the Act contains a non obstante clause vis-à-vis sub-section (1) thereof. As by reason thereof, an accrued or vested right is sought to be taken away, the conditions laid down thereunder must be fulfilled. The provisions contained therein must, therefore, be scrupulously observed. Clause (a) of sub-section (6) of Section 4 of the Act speaks of termination of service of an employee for any act, wilful omission or negligence causing any damage. However, the amount liable to be forfeited would be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or damage.



It was not found that the damage or loss caused to Respondent 1 was more than the amount of gratuity payable to the appellant. Clause (b) of sub-section (6) of Section 4 of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude. Conditions laid down therein are also not satisfied.”

19. In the present case, there is no conviction of the respondent for the misconduct which according to the Bank is an offence involving moral turpitude. Hence, there is no justification for the forfeiture of gratuity on the ground stated in the order dated 20-4-2004 that the “misconduct proved against you amounts to acts involving moral turpitude”. At the risk of redundancy, we may state that the requirement of the statute is not the proof of misconduct of acts involving moral turpitude but the acts should constitute an offence involving moral turpitude and such offence should be duly established in a court of law.....”

75. Furthermore, the ratio of **Union Bank of India (Supra)** has been reiterated in and applied by the Division Bench of this Court in **Rajiv Saxena v. Chief General Manager**,¹¹ wherein the Division Bench, bearing in mind that the case therein had progressed merely till the stage of filing of charge-sheet, observed that the action of the employer to forfeit the gratuity payable to the employee cannot be taken at the stage, wherein a final determination pertaining to the constitution of the alleged offence involving moral turpitude has not been reached. The relevant extract of the said judgement is reproduced herein below:

“.....19. In the facts of the present case, while it is not in issue that consequent upon the order of the Disciplinary

¹¹ 2018 SCC OnLine Del 12390



Authority, the CBI registered a case on 28th September 2016 against the Appellant and certain others for the aforementioned offences under the IPC and the PC Act, that case has as of now progressed only to the stage of filing of the charge sheet. The criminal court concerned will hereafter apply its mind to the contents of said charge sheet and pass an order on charge. The progress of the criminal case will depend on whether charges are framed against the Appellant; whether he is sent up for trial on those charges; whether he is convicted for the offences with which he is charged and whether such conviction attains finality. A further question would then arise as to whether the offences for which the Appellant is ultimately convicted would involve moral turpitude, as is mentioned in sub-clause (ii) of Section 4(6)(b) PG Act as discussed hereinbefore. Therefore, at this stage, it would be premature for the respondent-Bank to conclude that the acts for which the Appellant's services were terminated constitute offences involving moral turpitude.

* * *

*21. The above decision, therefore, clearly explained that the 'offence' referred to in sub-clause (ii) of Section 4(6)(b) PG Act is that which is punishable in law which, in this case, would be the penal laws invoked by the CBI, viz. the IPC and the PC Act. Again, as pointed out by the Supreme Court, "it is not for the bank to decide whether an offence has been committed. It is for the Court". It is for this reason that the Supreme Court has observed that "forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, **and convicted accordingly by a court of competent jurisdiction**".*

(emphasis supplied)

22. The decision in C.G. Ajay Babu (supra), therefore, clearly explains that the action of forfeiting the gratuity payable to an employee cannot be taken at the stage when there is no final determination that such acts of the employee in fact constitute an offence involving moral turpitude. That



determination can only be made by a criminal court and, thereafter, that determination must attain finality.

23. The net result, as far as the present case is concerned, is that the impugned decision of the respondent-Bank in forfeiting the entire gratuity of the Appellant was premature and could not have been taken at the stage at which it was, i.e. even before the determination by a criminal court that the act committed by the Appellant constituted an offence involving moral turpitude.....”

76. The ratio enunciated in ***Union Bank of India (Supra)*** has further been reiterated by various High Courts and a view that emerges consistently is that forfeiture of the gratuity of an employee by the employer would require initiation of criminal proceedings which have been culminated in conviction of an offence involving moral turpitude. The Coordinate Bench of High Court of Bombay has in ***Western Coal Fields Ltd. v. The Presiding Officer Appellate Authority under the Payment of Gratuity Act***¹², has taken the following view on the aspect of forfeiture of gratuity as per Section 4(6)(b)(ii) of the Act:

“15. The crucial question that arises for consideration is, as to whether such misconduct proved in a departmental enquiry, which had attained finality could be equated with “an offence involving moral turpitude”. In this context, the appellate authority is justified in examining as to what could be defined as an offence. The standing orders obviously cannot be referred to find the definition of the expression “offence”. In the Code of Criminal Procedure, 1973, “offence” means any act or omission punishable by any law for the time being in force. The question is whether the findings rendered in departmental enquiry conducted by the petitioner (employer) would be enough to conclude that the act of the respondent No. 2, which stood proved and led to

¹² 1972, 2020 SCC OnLine Bom 168



the termination of his service, constitutes an “offence” involving moral turpitude. The answer has to be in the negative, because whether an act constitutes an offence can be decided only by a Competent Court. This is because, whether the material on record and acts attributed to a person indicate the ingredients of an offence would have to be judged on the basis of proceedings under criminal jurisprudence. The further question as to whether such an offence involves moral turpitude could perhaps be in the domain of a proceeding other than that under criminal jurisprudence, but what would constitute an offence, could certainly not be within the purview of departmental enquiry or any such enquiry by an employer.

16. Therefore, for an employer to deprive an employee of gratuity under Section 4(6)(b)(ii) of the said Act, would necessarily require initiation of criminal proceedings that would culminate in conviction for an “offence”. The employer could then come to a conclusion that such an offence does involve moral turpitude and then forfeit the gratuity of an employee. This is because the said provision has to be interpreted strictly as it has the consequence of depriving an employee of gratuity for which he would otherwise be eligible, based on long years of continuous service.....”

77. Upon perusal of the judicial dictum cited above it is made out that forfeiture of gratuity under Section 4(6) of the Act by the employer cannot be merely by terming the act to constitute an offence involving ‘moral turpitude’, upon which the termination of the concerned employee is based.

78. The question that fell for consideration before the Hon’ble Supreme Court in ***Union Bank of India (Supra)*** was whether dismissal from service automatically calls for forfeiture of gratuity under the Act. The Hon’ble Court in the process of deciding this specific question



examined the scope of Section 4(6)(b)(ii) of the said Act and tested the same to check its applicability to a case wherein the forfeiture was deemed automatic upon termination/dismissal.

79. The Hon'ble Court further highlighted the definition of 'offence' as contained in the General Clauses Act, 1897 whereby, to constitute an offence, the act should be made punishable under law which comes under the ambit of criminal law.

80. The Hon'ble Court categorically held that it is not the conduct of a person involving moral turpitude that is required for forfeiture of gratuity rather the said conduct/act should constitute an offence involving moral turpitude. Furthermore, building upon the scope and preview of the phrase 'offence' and intertwining the same with the provisions contained under section 4(6)(b)(ii) of the Act, the Hon'ble Court observed that it is not for the employer i.e., the Bank to decide whether an offence amounting to moral turpitude has been committed and rather the same shall be adjudicated by a Court of competent jurisdiction.

81. The Division Bench of this Court in *Rajiv Saxena (Supra)* placing reliance upon the ratio of *Union Bank of India (Supra)* further clarified that forfeiting the gratuity payable to an employee cannot be taken away by the employer at a premature stage i.e., the employer must wait until the act of the employee in question is proved to constitute an offence involving moral turpitude in a final determination from a Court of competent jurisdiction. Tersely said, the power of an employer are taken away until an order passed by a Court of competent jurisdiction convicting the concerned employee of an act involving moral turpitude has attained finality.



82. The Coordinate Bench in *Western Coal Fields (Supra)* while answering a specific query as to whether the findings rendered in a departmental enquiry wherein the act alleged against the employee stands proved thereby leading to his termination, be sufficient to constitute an “offence” involving moral turpitude, answered the same in negative as the act would have to be judged on the basis of proceedings initiated under the criminal jurisprudence and cannot not fall within the purview of the departmental enquiry.

83. At this juncture, this Court after having enumerated the settled principle of law and the inference of Section 4(6)(b) of the Act, deems it apposite to delve into the merits of the instant petition therefore, it calls upon this Court to briefly chart out the factual matrix that led to the filing of the instant petition and adjudicate upon the same with the judicial dictum cited in the preceding paragraphs.

84. It is not disputed by either of the parties that in the year 2015, a complaint for sexual harassment was filed before the petitioner Bank by Ms. Neeta Teggi a customer care executive of the petitioner bank assigned as a secretary to the respondent employee while he was deputed as the MD and CEO of the Punjab National Bank International Ltd. Thereafter, as per the statutory mandate prescribed under the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 the petitioner Bank constituted an Internal Complaint Committee, the findings of which found the respondent employee guilty of the allegations of sexual harassment alleged against him.

85. The petitioner Bank issued a chargesheet against the respondent employee wherein it was alleged that being an officer of the petitioner



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Bank his actions are inappropriate and constitutes a misconduct as per the Conduct Regulations of the Bank. Subsequently, the Disciplinary Authority of the petitioner Bank, *vide* its order dated 30th March, 2016, imposed a punishment of “Dismissal which shall ordinarily be a disqualification for future employment” in terms of Regulation 4(j) of the Punjab National Bank Employees (Discipline and Appeals) Act, 1977.

86. The punishment of dismissal imposed upon the respondent employee was upheld by both the Appellate as well as the Reviewing Authority. In the *interregnum*, a show cause notice was issued to him by the petitioner Bank for forfeiture of gratuity stating therein that his acts amounted to an offence involving moral turpitude in terms of Section 4(6)(b)(ii) of the Act.

87. Subsequent to the above, the respondent employee moved an application before the learned Controlling Authority under the Act, the order of which directed the petitioner Bank to pay the respondent employee gratuity amounting to Rs.10 Lakhs along with interest @ 10% w.e.f. 30th March, 2016.

88. Aggrieved by the order of the learned Controlling Authority, an Appeal under Section 7(7) of the Act was preferred by the petitioner Bank before the learned Appellate Authority which resulted in the passing of the impugned Orders.

89. In the above backdrop, this Court is of the view that although a complaint for sexual harassment was filed against the respondent employee and the findings of the departmental enquiry found him guilty of the act, which led to his dismissal resulting in disqualification for future employment. Furthermore, the gratuity payable to the respondent



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employee was forfeited by the petitioner Bank stating thereby, that the act of sexual harassment proved against him constitutes an offence involving “moral turpitude” as per Section 4(6)(b)(ii) of the Act however, the same is found to be against the legislative intent behind the said statutory provision in particular along with the settled position of law reiterated and discussed above.

90. This Court is further of the view that the most essential element which is with regards to the act resulting in dismissal constituting an ‘offence’ amounting to moral turpitude has not been proved against the respondent employee by a Court of competent jurisdiction and the same can be deduced from the fact that no criminal proceedings either by the complainant or by the petitioner Bank has been initiated against the respondent employee let alone conviction.

91. Before concluding, this Court before, deems it necessary to shed some light on a specific averment advanced by the learned Counsel for the petitioner Bank i.e., the judgment passed in ***Jaswant Singh Gill (Supra)***, relied upon in ***Ajay Babu (Supra)*** has been overruled by a three Judges Bench of the Hon’ble Supreme Court in ***Mahanadi Coalfields (Supra)***.

92. Before clarifying the disputed position of law as averted by the learned counsel for the petitioner Bank this Court, deems it necessary to cull out the findings of the Hon’ble Supreme Court in ***Jaswant Singh Gill (Supra)*** wherein the discussion *inter alia* was majorly based on two aspects:

- *Firstly* it was held that the provisions contained under Section 4(6) of the Payment of Gratuity Act, 1972 would prevail over the non-



statutory rules (Rules 34.2 and 34.30 framed by Bharat Coking Coal Ltd. (a subsidiary of Coal India Ltd.)).

- *Secondly*, the Court analysed the provision contained under the Act especially Section 4(6) of the Payment of Gratuity Act, 1972 and observed that the Act provides for a close-knit scheme for payment of gratuity and contains detailed provisions which not only creates a right to payment of gratuity for the employees but also lay down the conditions in which the same may be forfeited.
- Furthermore, it was held that Section 4(6)(b) of the Act also provides for forfeiture of gratuity payable to an employee wholly or partly in the event his services have been terminated by the employer on account of his riotous or disorderly conduct or for any other act of violence on his part or if he has been convicted for an offence involving moral turpitude.

93. The Hon'ble Supreme Court in the judgment of ***Mahanadi Coalfields (Supra)*** took an opposite view to the decision in ***Jaswant Singh Gill (Supra)*** wherein it was *inter alia* held that the Payment of Gratuity Act, 1972 would prevail over the non-statutory rules framed by the employer. The Hon'ble Court in ***Mahanadi Coalfields (Supra)*** found it difficult to agree with the decision in ***Jaswant Singh Gill (Supra)*** and observed that the Rules framed by the employer are applicable and are not repugnant to provisions of the Payment of Gratuity Act, 1972.

94. After having stated the ratio of ***Jaswant Singh Gill (Supra)***, it is appropriate to deal with the abovesaid contention. With regard to the averment made by the counsel for the petitioner Bank, this Court is of the view that although the judgment passed in ***Jaswant Singh Gill (Supra)***



has been overruled by a three-Judge Bench of the Hon'ble Supreme Court in *Mahanadi Coalfields (Supra)* however, a perusal and close understanding of the same depicts that nowhere has the aspect pertaining to 'conviction' being an essential element for forfeiture of gratuity under Section 4(6)(b) of the Act been overruled.

95. In fact, the said aspect has not been discussed or analysed at all by the Hon'ble Court thus, it is clarified that *Jaswant Singh Gill (Supra)* in its entirety has not been overruled and the reliance placed upon it by the Hon'ble Court in *Ajay Babu (Supra)* cannot be deemed redundant.

CONCLUSION

96. Resultantly, as far as the instant case is concerned, is that the order for forfeiture of gratuity payable to the respondent employee was premature and could not have been taken until the respondent employee was convicted by a Court of competent jurisdiction for the act constituting an offence involving moral turpitude as per Section 4(6)(b)(ii) of the Act.

97. Considering the principles laid down by the Hon'ble Supreme Court, as well as the consistent view taken by various High Courts including this Court, the submission advanced by the petitioner Bank cannot be accepted.

98. For all the aforesaid reasons, this Court does not any merit in the instant petition and the same is, hereby, held to be misconceived and unnecessary. The petitioner Bank has not been able to make out a case which warrants the interference of this Court under the extraordinary writ jurisdiction.



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99. In view of the foregoing discussions, this Court finds no infirmity in the impugned Order dated 7th April, 2022 passed by the learned Appellate Authority under the Payment of Gratuity Act, 1972 in Appeal No. 36(09)/2021 P.A.DYC and subsequent Notice dated 26th April, 2022 issued by the respondent no.2 bearing no. ALC-I/36(88)2018, accordingly, the same are upheld.

100. In light of the aforementioned observations, the instant writ petition is accordingly dismissed along with pending applications, if any.

101. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

JULY 9, 2024
gs/da/db