



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

936 WRIT PETITION NO. 3596 OF 2024

MAHARASHTRA STATE ROAD TRANSPORT CORPORATION
THROUGH ITS DIVISIONAL CONTROLLER

VERSUS

RATNAKAR VISHWANATH VISPUTE DIED THROUGH LRS SHOBHA
RATNAKAR VISPUTE AND OTHERS

...

Mr. Dnyaneshwar Suresh Bagul, Advocate for the Petitioner.
,AGP for Respondents

Mr. Sandesh R. Patil, Advocate for Respondent Nos.1 to 5.

...

CORAM : R. M. JOSHI, J.

DATE : 19th SEPTEMBER, 2025

PC.:-

1. By consent of both sides, heard finally at the stage of admission.
2. For sake of convenience, parties are referred as “employee” and “MSRTC” for brevity.
3. Admittedly, the employee has been in service for about 30 years, and his otherwise entitlement to receive gratuity is not in dispute. The termination of his services was on account of misappropriation and, therefore, MSRTC claims that gratuity is not payable to him. An application for seeking amount of gratuity has been filed nearly 18 years after such termination.

4. Section 4(6)(a) and (b) of the Payment of Gratuity Act, Clause No.I deals with situation wherein the services of an employee has been terminated for his riotous or dis-ordinarily conduct or any other act of violence on his part and in such circumstances, it would be open for the employer to forfeit the gratuity wholly or in part.

5. However, for the purpose of application of Clause (ii) under Section 4(6)(b), the services of an employee must have been terminated for an act constituting an offence involving moral turpitude. Therefore, the act leading to termination must not only amount to misconduct but should also constitute an offence under the Penal Code or any other law, and such offence must involve moral turpitude.

6. According to learned Counsel for MSRTC, the position of law with regard to the actual proof of such offence before the criminal Court is changed, in view of the judgment of the Hon'ble Supreme Court in the case of ***Western Cold Fields Limited Vs. Manohar Govinda Fulzele & Anr.*** in Civil Application No.2608 of 2025, wherein it is held that statutory provision does not makes it a requirement that the misconduct alleged and proved in a departmental inquiry should not only constitute an offence involving moral turpitude, but also should be established in a Court of law. He also made reference to para 10 of the said judgment. Apart from this reliance is placed on judgment of Co-

ordinate Bench of this Court in case of ***Maharashtra Gramin Bank through its Chairman & Ors. Vs. Bharatibai Ramesh Kambale & Ors.***, reported in 2020 (5) Bom. C.R. 62.

7. Learned Advocate for employee has placed reliance on the judgment of coordinate bench of this Court in case of ***Sharad Baburao Pote Vs. MSRTC*** in Writ Petition No.889 of 2022, wherein relying upon the judgment in the case of ***Union Bank of India & Ors. Vs. C. G. Ajay Babu & Anr.***, reported in AIR 2018 SC 3792, it is held that to qualify as an offence, the act must be made punishable under law, which falls strictly within the realm of criminal law. It is also argued that there is no order passed by MSRTC forfeiting the gratuity.

8. At this stage it would be appropriate to take note of observations of Hon'ble Supreme Court in case of ***Western Cold Fields Limited*** (supra) wherein it is held that;

“10. As has been argued by the learned Solicitor General and the learned Counsel appearing for MSRTC, sub-clause (ii) of Section 4(6)(b) enables forfeiture of gratuity, wholly or partially, if the delinquent employee is terminated for any act which constitutes an offence involving moral turpitude, if the offence is committed in the course of his employment. An ‘Offence’ as defined in the General Clauses Act, means ‘any act or omission made punishable by any law for the time being’ and does not call for a conviction; which definitely can only be on the basis of evidence led in a criminal proceeding. The standard of proof required in a criminal proceeding is quite different from that required in a disciplinary proceeding; the former being regulated

by a higher standard of 'proof beyond reasonable doubt' while the latter governed by 'preponderance of probabilities'. The provision of forfeiture of gratuity under the Act does not speak of a conviction in a criminal proceeding, for an offence involving moral turpitude. On the contrary, the Act provides for such forfeiture; in cases where the delinquent employee is terminated for a misconduct, which constitutes an offence involving moral turpitude. Hence, the only requirement is for the Disciplinary Authority or the Appointing Authority to decide as to whether the misconduct could, in normal circumstances, constitute an offence involving moral turpitude, with a further discretion conferred on the authority forfeiting gratuity, to decide whether the forfeiture should be of the whole or only a part of the gratuity payable, which would depend on the gravity of the misconduct. Necessarily, there should be a notice issued to the terminated employee, who should be allowed to represent both on the question of the nature of the misconduct; whether it constitutes an offence involving moral turpitude, and the extent to which such forfeiture can be made. There is a notice issued and consideration made in the instant appeals; the efficacy of which, has to be considered by us separately."

9. From above observations, it is clear that only requirement, therefore, is that the disciplinary authority or the appointing authority must arrive at a finding that such misconduct would, in the ordinary course, amount to an offence involving moral turpitude and that conviction of the employee for offence involving moral turpitude is not a pre-condition for forfeiture.

10. A reference Can be made to the judgment of Hon'ble Supreme Court in case of **C.G. Ajay Babu** (Supra), wherein it is held that it is not merely the conduct of person involving moral turpitude that is required for forfeiter of gratuity, but the conduct or act must

constitute an offence involving moral turpitude. It is further held that to qualify an offence, the act must be punishable under the law which falls strictly within realm of criminal law. It is therefore necessary for employer in addition to disciplinary proceedings to set criminal law in motion by registration of F.I.R. or filing of criminal complaint.

11. As per the judgment of *Western Cold Fields Limited* (supra) the contention of an employee for offence involving moral turpitude may not become a condition precedent for forfeiture of gratuity but the same does not dispense with the condition of registration of offence or filing of criminal case. Herein this case not only that there is no offence registered against the employee nor any criminal complaint is filed but there is no order of forfeiture of the gratuity passed by MSRTC. There is nothing on record to indicate any application of mind by MSRTC and consequent order of forfeiture of gratuity. Needless to say that there cannot be automatic forfeiture of gratuity and unless employer applies mind to the facts and comes to the conclusion that the amount of gratuity in full or part payable to employee needs forfeiture, the non payment of the gratuity could not be justified.

12. The factum of non payment of gratuity for consideration of controlling authority which dealing proceeding under Section 7 of the Act. In the facts of the case, the order passed by controlling authority in

Appeal (PGA) No. 41/2018 and confirmed by appellate authority in Appeal (PGA) No. 2/2023 cannot be faulted with.

13. The judgment in the case of *Maharashtra Gramin Bank v. Bharatibai Ramesh Kambale*, which pertained to an employee working in a banking institution, cannot be equated with the case of an employee serving in the MSRTC, as the nature of duties, responsibilities, and the degree of trust reposed in the two categories of employment stand on a different footing.

14. In view of this, there is no merit in the petition, petition is dismissed.

(R. M. JOSHI, J.)