



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.5432 OF 2019

Petitioner

(Ori. Non-Applicant/ Appellant)

: Chairman-cum-Managing Director,
 Western Coalfields Ltd.,
 Coal Estate, Civil Lines, Nagpur – 440 001.

– Versus –

Respondents

- : 1. Appellate Authority under the
 Payment of Gratuity Act, 1972 &
 Deputy Chief Labour Commissioner (Central),
 having Office at CGO Complex, Block ‘C’, 1st Floor,
 Seminary Hills, Nagpur-6 (MS)
2. Controlling Authority under the
 Payment of Gratuity Act, 1972 &
 Assistant Labour Commissioner (Central),
 having Office at CGO Complex, Block ‘C’, 1st Floor,
 Seminary Hills, Nagpur-6 (MS)
3. Shri Manik Lal Madanlal Paul,
 Aged about 61 years, Occ: Retired,
 R/o c/o Mr. R.N. Sen, Advocate,
 Near Sadar Police Chowki, Teen Mundi Chowk,
 Sadar, Nagpur.

(Ori. Applicant/ Respondent)

Alternatively r/o 15, B Badan Roy Lane,
 (Beliaghatam), Kolkata, West Bengal – 700 010.

 Mr. P.V. Ghare, Advocate for the Petitioner.
 Mr. S.A. Choudhari, Advocate for Respondent Nos.1 & 2.
 Mr. R.N. Sen, Advocate for Respondent No.3.

CORAM : **ANIL L. PANSARE, J.**

DATE : **2nd APRIL, 2025.**

ORAL JUDGMENT :

Issue Rule returnable forthwith. Learned Counsel Mr. S.A. Choudhari waives service of Rule on behalf of respondent Nos.1 and 2 and learned Counsel Mr. R.N. Sen waives on behalf of respondent No.3. With consent of learned Counsel for the parties, the petition is taken up for final hearing.

02. The petitioner is aggrieved by order dated 28th March, 2019 passed by respondent No.1-Appellate Authority under the Payment of Gratuity Act, 1972 (*hereinafter referred to as the "Act of 1972" for short*), which has dismissed the appeal preferred by the petitioner and upheld the order dated 16th/18th May, 2018 passed by respondent No.2-Controlling Authority.

03. Having heard both sides and having gone through the material placed before me, it appears that the Controlling Authority under the Act of 1972 vide order dated 16/05/2018 directed the petitioner-employer to pay to respondent No.3 gratuity amount of Rs.10.00 lakhs along with simple interest at the rate of 10% per annum. The said order was challenged by the petitioner before respondent No.1. The Appellate Authority has referred to the provisions of the Act of 1972 as also the judgment of the Honble Supreme Court in the case of *Union Bank of India and others vs. C.G. Ajay Babu and another¹*, wherein the Court held that in absence of conviction of the

1 (2018) 9 SCC 529

respondent therein for misconduct, which according to the petitioner-bank therein was an offence involved in moral turpitude, there was no justification to forfeit gratuity. The Supreme Court further held 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.

04. Respondent No.1 took note of dismissal order dated 06/04/2016 by which the services of respondent No.3 were dismissed by the petitioner for grave misconduct viz. accepting illegal gratification of Rs.2,000/-. Respondent No.1 took a view that the services of respondent No.3 were terminated for grave misconduct and not for an offence involving the moral turpitude and, therefore, forfeiture of gratuity will be not reasonable and acceptable. Respondent No.1 thereafter took a note of judgment of the Supreme Court in Ajay Babu's case and some more judgments and dismissed the appeal.

05. The Counsel for the petitioner has invited my attention to the judgment of the Supreme Court in the case of Western Coalfields Ltd. vs. Manohar Govinda Fulzele², wherein the Court considered the judgment in Ajay Babu's case and held thus :

*“9. With all the respect at our command, the interpretation
in C.G. Ajay Babu³ does not come out of the statutory provision;*

Section 4(6)(b)(ii) of the Act. Normally we would have referred the matter for consideration by a Larger Bench, but, as we noticed, the statutory provision does not make it a requirement that the misconduct alleged & proved in a departmental enquiry should not only constitute an offence involving moral turpitude, but also should be duly established in a Court of Law. The words "duly established in a Court of Law" cannot be supplied to the provision. Moreover, as we observed; the interpretation of sub-clause (b)(ii) of sub-section (6) of Section 4 was uncalled for in C.G. Ajay Babu since the provisions of the Section 4, including sub-section (6) was found to be inapplicable to the employer Bank and its employee, by virtue of sub-section (5) of Section 4. The interpretation, hence, with due respect was an obiter making a reference unnecessary.

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.”

06. Thus, the Supreme Court held that Section 4(6)(b)(ii) of the Act of 1972 does not make it a requirement that the misconduct alleged and proved in a departmental enquiry should, not only constitute an offence involving moral turpitude, but also should be duly established in a Court of Law. The Court held that the words “duly established in a Court of Law” cannot be supplied to the provision. The Court also found that the interpretation of the aforesaid provision in Ajay Babu’s case was an obiter. The Supreme Court has then clarified that the provision of forfeiture of gratuity under the Act of 1972 does not speak of a conviction in a criminal proceeding, for an offence involving moral turpitude, rather the Act provides for such forfeiture; in cases where the delinquent employee is terminated for a misconduct, which constitutes an offence involving moral turpitude. The Court further held that 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 to decide whether the forfeiture of gratuity should be of the whole or only a part thereof, which would depend on the gravity of the misconduct.

07. In the present case, respondent No.3 was terminated on the charge of accepting illegal gratification of Rs.2,000/-. The charge was duly established in the departmental proceeding. In fact, subsequently vide judgment dated 26/08/2024, he has been convicted for the said offence by the Special Judge, Kelapur, District Yavatmal. He was found guilty for the offence punishable under Sections 7, 15, 13(2) read with Section 13(1)(d)(i) of the Prevention of Corruption Act, 1988.

08. The Counsel for respondent No.3 submits that the appeal has been filed and sentence has been suspended. According to him, the order of conviction has not attained finality. He submits that unless order of conviction attains finality, the amount of gratuity cannot be forfeited. He further submits that the petitioner has dismissed respondent No.3 for grave misconduct and not for any act which constitutes an offence involving moral turpitude and, therefore, the amount of gratuity cannot be forfeited. He then made a request to keep the petition pending until appeal against conviction is decided.

09. I do not find substance in the submission made by the Counsel for respondent No.3. In fact, the submission runs contrary to the judgment of

the Supreme Court in Manohar Fulzale's case (*supra*), wherein the Supreme Court held that the provision of forfeiture of gratuity under the Act of 1972 does not speak of a conviction in a criminal proceedings for an offence involving moral turpitude, rather the Act provides for such forfeiture in cases where the delinquent employee is terminated for a misconduct, which constitutes an offence involving moral turpitude.

10. Thus, the only question that now requires answer is, whether the offence under question will amount to an offence involving moral turpitude.

11. Moral turpitude essentially means a lack of morality or decency, referring to actions that are inherently evil or wrong. The Supreme Court in the case of The State Bank Of India And Ors. vs P. Soupramaniane³, while dealing with the scope of departmental enquiry on a question, whether an offence involves moral turpitude or not, observed that it depends upon the facts and the circumstances of each case and ordinarily the tests that can be applied for judging an offence involving moral turpitude are:-

- a) Whether the act leading to a conviction was such as could shock the moral conscience or society in general;
- b) Whether the motive which led to the act was a base one, and
- c) Whether on account of the act having been committed the perpetrators could be considered to be of a depraved character or a person who was to be looked down upon by the society.

12. If the conduct of respondent No.3 is to be examined on the touchstone of the ingredients of moral turpitude as noted above, there should not be any doubt that accepting illegal gratification by the government servant is something that would not only shock the moral conscience of society in general, but the Act is such that respondent No.3 will be looked down by the society. The ingredients of moral turpitude are fully attracted in the cases of corruption.

13. That being so and taking into consideration the law laid down by the Supreme Court in Manohar Fulzele's case (supra), the orders passed by respondent Nos.1 and 2 are unsustainable.

14. The petition is accordingly allowed. The impugned orders dated 28/03/2019 passed by respondent No.1-Appellate Authority and dated 16th/18th May, 2018 passed by respondent No.2-Controlling Authority are hereby quashed and set aside.

15. Rule is made absolute in the aforesaid terms with no order as to costs.

(Anil L. Pansare, J.)