



W.P.No.8168 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2025

CORAM

**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

**W.P.No.8168 of 2018 and**  
**W.M.P.No.10154 of 2018**

R.S.Babu Rajendra Prasad

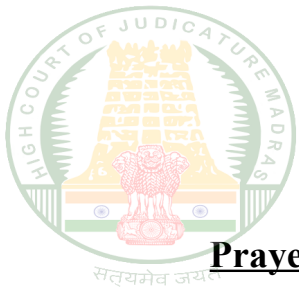
... Petitioner

Vs.

Bank of India, rep by

- 1.The General - Manager (HRD) & Review Authority,  
Bank of India - Head - Office,  
Star - House, Bandra-Kurla Complex,  
Mumbai - 400 051.
- 2.The Zonal - Manager & Appellate Authority,  
Bank of India - Coimbatore Zonal Office,  
Star - House, 324 - Oppanakara Street,  
Coimbatore - 641 001.
- 3.The Assistant -General-Manager & Disciplinary Authority,  
Bank of India - Coimbatore Zonal Office,  
Star - House, 324 - Oppanakara Street,  
Coimbatore - 641 001.
- 4.The Branch Manager,  
Bank of India - Nagercoil Branch,  
Nagercoil - 629 001.

... Respondents



W.P.No.8168 of 2018

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the third respondent herein relating to its impugned order in Letter No:ZO:CBE:IR:542 dated 16.10.2012 pursuant to its show cause notice dated 06.12.2010 as rife with infirmities, error in law apparent on the face of record and illegal and quash the same and direct the respondents 1 to 3 to pay the petitioner pension, commutation of pension, earned leave salary and gratuity and remit the same with interest at 10% per annum thereon as per law for the delay caused.

For Petitioner : Mr.Narayanan  
For Respondents : Mr.T.Ravichandran,  
Standing Counsel for R2  
No appearance for R1, R3 & R4

**ORDER**

This Writ Petition has been filed to call for the records on the file of the third respondent herein relating to its impugned order in Letter No:ZO:CBE:IR:542 dated 16.10.2012 pursuant to its show cause notice dated 06.12.2010 as rife with infirmities, error in law apparent on the face of record and illegal and quash the same and direct the respondents 1 to 3 to pay the petitioner pension, commutation of pension, earned leave salary and gratuity and remit the same with interest at 10% per annum thereon as per law for the delay caused.



W.P.No.8168 of 2018

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2. Heard Mr.Narayanan, learned counsel for the petitioner, Mr.T.Ravichandran, learned Standing Counsel for R2 and perused the materials available on record.

3. The petitioner who was working in the Bank of India has been imposed with the punishment of dismissal in view of certain charges proved against him. However, it is claimed by the petitioner that the dismissal order will not disentitle him from getting pension, gratuity and all other benefits. The petitioner claims that subsequent to the order of dismissal, show cause notice has been given on 06.12.2010 calling upon the petitioner as to the recovery a sum of Rs.2.60 crores as the loss caused by him from the petitioner's contribution to provident fund and the gratuity payable to him. Without considering the submission of the petitioner in a positive manner, the impugned order has been passed for recovering the terminal benefits of the petitioner to tune of Rs.37,93,192/-.



W.P.No.8168 of 2018

4. The learned counsel for the petitioner submitted that after having dismissed the petitioner from service, the jural relationship of employer and employee between the petitioner and the respondents was ceased to exist and hence, the show cause notice and the consequent orders are illegal.

5. The learned Standing Counsel for the second respondent submitted that as per the Bank of India Officer Employees (Discipline and Appeal) Regulations, 1976, the dismissal from service is the major penalty under Rule 4 (i&j). According to Rule 4(i), if the punishment of removal from service is not a disqualification for future employment, the person removed from service will be eligible to seek future employment. Rule 4(j) would state that the dismissal was ordinarily be a disqualification for future employment.

6. On perusal of the order of punishment, the punishment of dismissal has been imposed in accordance with Rule 4(j). The dismissal order is a disqualification for future employment and the same has been



W.P.No.8168 of 2018

confirmed by the appellate authority and the review filed by the petitioner was also dismissed by confirming the above punishment.

7. It is the contention of the learned Standing Counsel for the second respondent that due to various misconduct committed by the petitioner, the Bank is exposed to financial loss to the tune of Rs.2.60 crores. As per Rule 8 of the Bank of India Gratuity Fund Rules, the gratuity specified in the rule 9 shall be payable to an employee as his terminal benefits. However, that can be done only when there was no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct caused financial loss to the Bank. It means that if a punishment of dismissal has been imposed on account of misconduct involved in financial loss, the eligibility to get gratuity is not an automatic entitlement. For the sake of clarity, Rule 8 of the Bank of India Gratuity Fund Rules has been extracted as below:

*"8. Gratuity when payable and when may be forfeited:*

*Subject to the provisions of Payment of Gratuity Act, 1972, or any other law relating to the payment of*



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W.P.No.8168 of 2018

*gratuity to any class of employees or any part thereof,*

*Gratuity as specified in Rule 9 shall be payable to an employee after he has rendered continuous service to the Bank,*

*(a) for not less than five years in case of employees who are governed by the Payment of Gratuity Act, 1972 and*

*(b) for not less than ten years in case of officers and other employees not governed by the said fact,*

*(i) on his retirement or resignation, or*

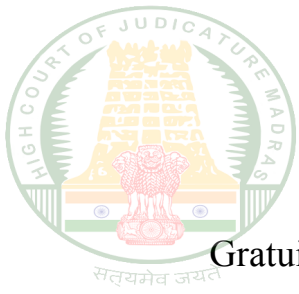
*(ii) on his death whilst in the service of the Bank,*

*or*

*(iii) on his incapacitation, to be certified by a medical practitioner acceptable to the Bank, to serve the Bank due to accident or continued ill-health or disease, or*

*(iv) on termination of his service by the Bank."*

8. Even under Section 4 of the Payment of Gratuity Act, the gratuity of an employee whose services have been terminated for any act which caused damage or loss to the employer, the same shall be forfeited to the extent of the damage so caused. Section 4(6) of the Payment of



W.P.No.8168 of 2018

Gratuity Act is also given as under:

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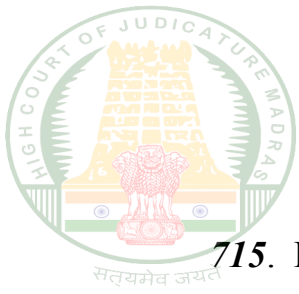
*"4.(6)(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;*

*(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 of 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."*

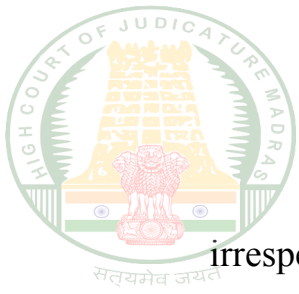
9. The learned counsel for the petitioner cited various decisions in support of his contention that the terminal benefits like payment of gratuity cannot be denied for removal from service. The attention was drawn to the judgment of the Hon'ble Supreme Court held in the case of ***Bank of Baroda Vs. S.K.Kool and Another reported in (2014) 2 SCC***



W.P.No.8168 of 2018

**715.** In the said case, it has been held that when the employees are otherwise entitled to superannuation benefits under the regulations if visited with the penalty of removal from service with superannuation benefits, shall be entitled for those benefits and such of the employees though visited with the same penalty, but are not eligible for superannuation benefits under the regulation shall not be entitled to that. So, it is claimed by the petitioner that the order of dismissal does not state that the petitioner is not entitled to superannuation benefits and just because he was removed from service, the benefits arose out of bipartite settlement cannot be denied.

**10.** In the instant case, there is no question of any bi-partite settlement. As per Rule 22 of the Bank of India Pension Regulations, the resignation, dismissal, removal or termination of the employee from the service of the Bank shall entail forfeiture of his entire past service and consequently, he shall not qualify for the pensionary benefits. The petitioner has been given with the punishment of removal from service under Section 4(j) and hence, he is not entitled to the pensionary benefits,



W.P.No.8168 of 2018

irrespective of whether his dismissal has arisen out of misconduct causing financial loss or not. So long as the punishment of dismissal from service imposed against the petitioner is not set aside, there is no question of entitling the petitioner for the benefit of pension. So the relief of pension as claimed by the petitioner has got no base.

**11.** So far as the payment of gratuity is concerned, it is the claim of the petitioner that the denial of gratuity or recovery of gratuity was not a part of the punishment order and the respondents cannot open it afresh. The order of punishment has been passed on 22.12.2007. The show cause notice has been issued for forfeiting the gratuity towards loss caused by the petitioner was issued on 06.12.2010. The order for recovery has been passed on 16.10.2012. So, the show cause notice has been issued after three years from the punishment of removal from service and the order of recovery has been made after five years from the date of imposing the penalty.



W.P.No.8168 of 2018

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**12.** No reason has been stated as to why the respondents have not initiated any action immediately after the punishment of removal was imposed against the petitioner or make the recovery itself a part of the order. Even for extraneous reasons, the proceedings for forfeiture has to be made separately and the punishment order could have reserved such a proceedings to be passed separately and mentioned it in the order of punishment itself. The petitioner who has been served with the order of punishment in the year 2007 could not have imagined that this will disentitle him to claim gratuity also. The punishment of removal from service has attained finality on 05.08.2008. The petitioner has made an application for claiming gratuity as early as on 19.09.2008 and that was kept pending till 2010 and only on 06.12.2010, the show cause notice has been given for recovery of gratuity.

**13.** The learned Standing Counsel for the second respondent submitted that even the petitioner had also accepted the recovery order which has been passed in the year 2012 and he kept quiet and only in the year 2018, he has filed this Writ Petition challenging the order. So it is



W.P.No.8168 of 2018

claimed that the delay and laches will affect the relief claimed by the petitioner.

14. While making such a submission, it is also obligatory on the part of the respondents to explain why there was a delay on the part of the respondents in initiating the proceedings and passing order for forfeiture of gratuity. Because the petitioner could have believed that his application seeking gratuity is under consideration of the respondents. In fact, the show cause notice has been issued even before passing any order to reject the application seeking gratuity submitted by the petitioner in the year 2008. Had it been rejected then the petitioner would have got the opportunity to make an application under Rule 10 of the Payment of Gratuity (Central Rules 1972) to make an application to the controlling authority. Even without giving any rejection order, the petitioner was made to face the show cause calling upon explanation to show why the gratuity amount shall not be recovered towards the alleged loss caused by the petitioner by committing certain misconduct.



W.P.No.8168 of 2018

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**15.** No doubt, the respondents' regulations as to the payment of gratuity r/w the Payment of Gratuity Act, empowers the employer to recover the gratuity in case of misconduct coupled with causing loss to the employer. But, such an exercise ought to have been done in the manner known to law by making the petitioner to understand that he will be denied gratuity as his punishment of removal from service will also deny him all other terminal benefits other than pension. The petitioner comes to know about the refusal of his gratuity only from the show cause notice. As the petitioner was bound to make his submission, he has given his explanation as called for in the show cause notice dated 06.12.2010. So, the petitioner cannot be expected to invoke the provisions of Payment of Gratuity Act and once again wait to get an order after his explanation was submitted to the show cause notice dated 06.12.2010.

**16.** No doubt, the petitioner was keeping quiet from the year 2012 to 2018 for the best reasons known to him. But, the delay and laches cannot be also the reason to deny gratuity to the employee which affects his valuable rights and which puts the employer in a better status than the



W.P.No.8168 of 2018

petitioner. As stated already, the respondents also does not stand in an equitable position in view of the delay and failure to pass order denying gratuity on the application made by the petitioner in the year 2008. The petitioner came to know about the denial of gratuity only from the show cause notice dated 06.12.2010 and not any time before. In the absence of any rights reserved in the order of punishment for initiating separate provisions with regard to the recovery of gratuity towards loss if any caused by the employee to the employer, the continuation of such proceedings after three or four years is not fair and proper. As stated already, the employee - employer relationship between the petitioner and the respondents has been ceased to exist once the petitioner was dismissed from service and his service came to an end. In view of the same, I feel the show cause notice and the consequential order passed for recovery of gratuity is illegal.

**17.** In view of the above stated reasons, this Writ Petition is disposed and the impugned show cause notice dated 06.12.2010 and the order of recovery dated 16.10.2012 are set aside and the respondents are



W.P.No.8168 of 2018

directed to pass an order on the application submitted by the petitioner in the year 2008 for claiming gratuity separately within a period of four weeks from the date of receipt of a copy of this order. On receipt of the said order, if the petitioner is still aggrieved, it is open to him to approach the statutory authorities as contemplated under the Payment of Gratuity Act. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes /No  
Speaking / Non-speaking  
Neutral Citation : Yes / No  
gsk

**22.04.2025**



W.P.No.8168 of 2018

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W.P.No.8168 of 2018

**R.N.MANJULA, J.**

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