



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(102)

RSA-1821-1999 (O&M)

Date of decision: - 19.05.2025

State Bank of Paitala and others

....Appellants

Versus

F.C. Kharod

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Anil K. Ahuja, Advocate,
for the appellants.

None for the respondent.

VIKAS BAHL, J. (ORAL)

1. Challenge in the present appeal is to the judgment dated 02.02.1993, vide which the suit filed by the respondent/plaintiff for declaration had been decreed and the plaintiff had been held entitled to the terminal benefits, such as proportionate gratuity (i.e. after deducting the loss occurred to the Bank due to the plaintiff, if any) under the State Bank of Patiala (Officers) Service Regulations, 1979 (hereinafter referred to as "the 1979 Regulations), alongwith 12% interest per annum from the date of the suit till payment. Challenge is also to the judgment dated 27.02.1999, vide which the appeal filed by the present

appellant/defendant had been dismissed.

2. Learned counsel for the appellants has submitted that in the present case, as per proviso (e) of the Regulation 12(2) of the State Bank of Patiala (Payment of Gratuity to Employees) Regulations, 1970 (hereinafter to be referred as “the 1970 Regulations”), the gratuity was to be paid only in the case the termination of service was in any other way except by way of punishment. It is submitted that since in the present case, the respondent-plaintiff was dismissed from service by way of punishment after holding a disciplinary inquiry, thus, the gratuity was not payable to the respondent-plaintiff. It is submitted that the judgment of the trial Court as well as of the 1st Appellate Court had wrongly construed the regulation 12 of the 1970 Regulations and had come to an erroneous conclusion that the proportionate gratuity was payable to the respondent-plaintiff. It is further submitted that in the present case, there is no specific order with respect to there being any financial loss but the same would not entitle the respondent-plaintiff to gratuity as there was no requirement to pass any such order and even in case where there was no financial loss, then also, the gratuity was not payable as per the above said provisions. It is prayed that the judgment of the trial Court as well as of the 1st Appellate Court be set aside and the present appeal, being meritorious, be allowed.

3. This Court has heard learned counsel for the appellants and has perused the paper-book and finds that the judgments of the trial Court as well as of the 1st Appellate Court are in accordance with law and thus, deserve to be upheld for the reasons stated hereinafter.

4. The primary question of law which arises for consideration in the present case is “whether under Regulation 12 of the 1970 Regulations, the gratuity payable to an employee could be withheld in the case of termination of the services of the employee by way of punishment in spite of the fact that there is nothing on record to show any financial loss to the Bank nor is there any specific order specifying the financial loss caused”.

5. The facts in the present case are not in dispute. The respondent-plaintiff had filed a suit for declaration to the effect that the plaintiff was entitled to his terminal benefits such as gratuity etc. alongwith 12% interest on the averment that the respondent-plaintiff had served with the defendant/present appellant for the last more than 15 years and while dismissing the plaintiff from the services of the Bank, the authority had not passed a valid order and had not debarred the plaintiff from claiming his gratuity. It is not in dispute that the disciplinary authority vide order dated 09.09.1987 had dismissed the plaintiff from service but no specific order with respect to withholding of payment of gratuity was passed nor was there any assessment of any financial loss having been allegedly caused by the respondent/plaintiff mentioned in the same. Similarly, in the order dated 26.11.1988 passed by the appellate authority, while dismissing the appeal filed by the plaintiff, neither it was stated that the gratuity was not to be paid nor any financial loss allegedly caused by the respondent/plaintiff was either assessed or crystalized. It is also not in dispute that no separate order regarding the non-payment of gratuity was passed.

6. The trial Court vide order dated 02.02.1993, after taking into

consideration Regulation 12 of the 1970 Regulations and the judgment on the point observed that the payment of gratuity is no longer a bounty but is a matter of right of the employee and even the said regulations did not debar the plaintiff from claiming gratuity even if the services of the plaintiff are terminated by way of dismissal. The suit was accordingly decreed and the plaintiff was held entitled to terminal benefits. The 1st Appellate Court vide judgment dated 27.02.1999 dismissed the appeal filed by the present appellants. While dismissing the appeal, it was observed by the 1st Appellate Court that there was nothing in the order dated 09.09.1987 (Ex.P1) which debarred the plaintiff from recovering the gratuity and that entitlement of an employee is governed by the 1970 Regulations (Regulation 12), which had been placed on record by the present appellants as Ex.D1.

7. The adjudication of the present case primarily revolves around the interpretation of Regulation 12(2) of the 1970 Regulations. The said regulation is reproduced herein below: -

“12. (1) When admissible

Gratuity will be granted to or in the case of an employee if:

- (i) He dies while in service of the Bank; or*
 - (ii) He becomes physically or mentally incapable of further service; or*
 - (iii) He retires from the service after attaining the age of superannuation; or*
 - (iv) He retires from the service with the permission of the Bank before attaining the age of superannuation; or*
 - (v) He voluntarily resigns from the service of the Bank after 10 years of completed service; or*
 - (vi) His service in the Bank is terminated by the Bank.***
- (2) Notwithstanding anything contained herein above***

- (a) *No gratuity will be granted or in the case of an employee if he is or has been dismissed from service in the Bank for any misconduct committed by him prior to 1st January 1966;*
- (b) ***In case of termination of the service of an employee by dismissal for any misconduct committed by him after 1st January, 1966 involving financial loss to the Bank, there shall be forfeiture to the extent of such loss from the gratuity admissible to him otherwise under these Regulations.***

Provided, however, that notwithstanding anything contained here-in- above, gratuity will be granted to or in respect of an employee governed by the State Bank of Patiala (Officers') Service Regulations, on

- a) *retirement*
- b) *death,*
- c) *disablement rendering him unfit for further service as certified by a medical officer approved by the Bank.*
- d) *resignation after completion of ten years' of continuous service*
- e) ***termination of service in any other way except by way of punishment after completion of ten years' of service."***

8. Regulation 12(1)(vi) of the 1970 Regulations provides that the gratuity is to be granted to an employee even in case his services in the Bank is terminated by the Bank. Regulation 12(2)(b) of the 1970 Regulations specifically provides that in case of termination of the service of the employee by dismissal for any misconduct committed by him, involving financial loss to the Bank, there would be forfeiture to the extent of such loss from the gratuity admissible to him. The plain interpretation of the said provision would be that in case an employee is dismissed from service but there is no financial loss to the Bank, the

gratuity cannot be withheld. Further, in a situation when there is financial loss, forfeiture of the gratuity is permissible only to the extent of such loss. Thus, in case of financial loss, the amount of financial loss has to be calculated by the authorities and it is only after the same is crystalized that the forfeiture to the said extent can be made from the gratuity.

9. On behalf of the appellants, proviso (e) to Regulation 12(2) of the 1970 Regulations has been read in isolation. When the said proviso is read in conjunction with the main provision, it would be apparent that even the proviso deals with various circumstances in which the gratuity is to be granted and the proviso does not deal with a situation where the gratuity is not to be granted. Reading the entire Regulation 12 alongwith Clause (e) of the proviso of the 1970 Regulations harmoniously, would lead to an irresistible conclusion that Clause (e) would apply in a situation where a person has completed 10 years of service and his services are sought to be terminated in any way except by way of punishment. Thus, the said proviso clarifies that in case after 10 years of service, the Bank chooses to terminate the services of an employee but the same is not by way of punishment, then in that situation also, the gratuity would be payable. The Regulation which deals with the scope and the extent to which the gratuity can be forfeited is Regulation 12(2)(b) of the 1970 Regulations and the same provides that the forfeiture can only be to the extent of the financial loss caused to the employer in case an employee is dismissed from service on account of misconduct. In case the arguments of the learned counsel for the appellants, to the effect that under clause (e) of the proviso, in case of any punishment, the gratuity is not to be granted,

is accepted, then in that situation, the Regulation 12(2)(b) of the 1970 Regulations would be rendered redundant.

10. A Co-ordinate Bench of this Court in the case of “**Brahmjit Rahanoo Vs. State Bank of India and others**”, reported as 2021(1) S.C.T. 459 had observed that the Bank cannot withhold the gratuity amount in case no financial loss has been caused to the Bank. In the said case, the Co-ordinate Bench of this Court had also taken into consideration the 1970 regulations, more so, Regulation 12 of the 1970 Regulations. The order of compulsory retirement in the said case was reproduced in para 7 and a perusal of the said order of compulsory retirement would show that several allegations were made against the petitioner therein, which included the said employee having misused his official position for demanding and accepting financial advantages and gratifications from the Bank's constituents and others, for his personal use which casted a shadow on his honesty and integrity, but since there was no mention of any financial loss having been caused to the Bank in the said order, the Co-ordinate Bench of this Court had observed that the gratuity could not be withheld in the said circumstances. The impugned order in the said case was struck down and a direction was given to the respondent therein to pay the gratuity due to the petitioner therein alongwith interest. Thus, the question of law which arises in the present case is answered against the appellants and in favour of the respondent/plaintiff.

11. In the present case, it is not in dispute that there is no crystallization of any alleged financial loss caused to the appellants on

account of the act of the respondent/plaintiff either in the order of dismissal dated 09.09.1987 or in the order of dismissal of appeal dated 26.11.1988. It is also not in dispute that no specific order had been passed by the appellants-Bank or any of its official with respect to any such financial loss having been caused to the Bank. Once there is no assessment of any financial loss to the Bank, thus, the question of forfeiture, to the extent of said loss, would not arise. Accordingly, the suit filed by the respondent/plaintiff is meritorious and has been rightly decreed by both the Courts.

11. Keeping in view the above-said facts and circumstances, the present appeal being meritless is dismissed and the judgment and decree dated 02.02.1993 of the trial Court, decreeing the suit of the plaintiff, as well as the judgment and decree dated 27.02.1999 of the 1st Appellate Court, dismissing the appeal filed by the present appellants are upheld.

May 19, 2025
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No