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

+ **W.P.(C) 7179/2020**

JAGDISH CHANDRA BHARDWAJPetitioner

Through: Mr. Siddhant Saroha,
Mr. Abhimanyu Tewari and Mr.
Himanshu Sehrawat, Advocates.

versus

CANARA BANK AND ORS & ORS.Respondents

Through: Mr. Rajesh Kumar Gautam,
Ms. Likivi K. Jakhalu, Mr. Dinesh
Sharma and Mr. Deepanjali
Choudhary, Advocates.

+ **W.P.(C) 1400/2022**

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Through: Mr. Siddhant Saroha,
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Himanshu Sehrawat, Advocates.

versus

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Choudhary, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **14.07.2025**

1. These two writ petitions have been filed by the same petitioner in respect of his service with the respondent – Canara Bank [“the Bank”].



2. The petitioner was initially appointed in Syndicate Bank on 06.05.1985. Syndicate Bank subsequently merged with Canara Bank. The petitioner was subjected to disciplinary proceedings initiated by a Chargesheet dated 29.11.2018. The disciplinary proceedings culminated in an order of termination dated 11.05.2020, which was affirmed by the Appellate Authority by an order dated 30.03.2021.

3. The orders passed by the disciplinary authority and the Appellate Authority have been assailed in W.P.(C) No. 1400/2022. By the time the termination order was passed, the petitioner had also filed W.P.(C) No. 7179/2020, seeking payment of leave encashment, gratuity and amounts contributed towards Group Insurance Scheme.

4. By order dated 22.04.2024, it was recorded that the reliefs sought by the petitioner were confined to his claims for gratuity, leave encashment and, contribution towards of Group Insurance Scheme.

5. I am informed that the amount contributed towards the Group Insurance Scheme has already been paid to the petitioner.

6. As regards the gratuity, the contention of the respondent – Bank is that the petitioner’s gratuity has been forfeited under Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972 [“the Act”]. Section 4(6) of the Act provides for forfeiture of gratuity in the following circumstances:

“Section: 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 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.”

7. Mr. Siddhant Saroha, learned counsel for the petitioner, however, relies upon the judgment of the Supreme Court in *Union Bank of India v. C.G. Ajay Babu* [(2018) 9 SCC 529] [hereinafter, “C.G. Ajay Babu”], which held that gratuity payable to an employee under the Act, can be withheld under Section 4(6)(b)(ii) of the said Act, only upon the employee’s conviction for an offence involving moral turpitude. It is an admitted position that no criminal proceedings were instituted against the petitioner herein.

8. However, Mr. Rajesh Kumar Gautam, learned counsel for the respondent – Bank, draws my attention to a recent judgment of the Supreme Court in *Western Coal Fields Ltd. v. Manohar Govinda Fulzele* [2025 SCC OnLine SC 345] [hereinafter, “Western Coal Fields”], in which the Court has explained the decision in *C.G. Ajay Babu* in the following terms:

“9. With all the respect at our command, the interpretation in C.G. Ajay Babu 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."

[Emphasis supplied.]

9. In these circumstances, even having regard to the law laid down in *Western Coal Fields*, the respondents were required to take an informed decision on whether the petitioner's gratuity was liable to be forfeited, on



the ground that the misconduct constituted an offence involving moral turpitude. Such a decision must be preceded by a notice to the terminated employee, affording him an opportunity to represent his case, both as to the nature of the misconduct and the quantum of forfeiture. Mr. Gautam candidly accepts that no such notice was issued to the petitioner in the present case.

10. The writ petitions are, therefore, disposed of, with the direction that the respondent – Bank will issue a notice to the petitioner within four weeks from today, raising the above issues, to which the petitioner will be entitled to submit a reply within four weeks of receiving the said notice. A final decision be taken by the respondent – Bank, within a period of four weeks thereafter and communicate it to the petitioner. The petitioner shall also be afforded an opportunity of personal hearing before any adverse decision is taken.

11. It is also agreed that the same directions will apply to the issue of forfeiture of leave encashment.

12. All rights and contentions of the parties, as well as the petitioner's remedies in the event of an adverse decision, remain reserved.

PRATEEK JALAN, J

JULY 14, 2025/UK/sd/