

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice ShampaDutt (Paul)

WPA 19728 of 2024

Union Bank of India

Vs

**The Appellate Authority Under the Payment of Gratuity Act, 1972 &
Ors.**

For the Petitioner : **Mr. Ranjay De, Sr. Adv.**
 Mr. Basabjit Banerjee,
 Mr. Adityajit Abel Bose.

For the Respondent no.3: **Mr. Pratik Majumder,**
 Mr. Srehasish Dey,
 Mr. Shantanu Chakraborty.

Judgment reserved on : **16.04.2026**

Judgment delivered on : **14.05.2026**

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred praying for direction upon the respondent no.1 and 2 to set aside and cancel the impugned orders dated 13.06.2023, passed by the Controlling Authority order dated 27.03.2024 passed by the Appellate Authority under the Payment of Gratuity Act.
2. The petitioners case in short is that on 17.08.1987, Sri Narendra Singh, the Private Respondent joined the petitioner bank and was lastly promoted to the post of Chief Manager. He was served with Articles of Charges dated

01.03.2018 for causing irregularities while granting loans when he was posted as Branch Manager, Agra Development Authority Branch, Agra Region. On 20.03.2018, the Private Respondent submitted his reply to the Articles of Charges. During 23.04.2018 to 13.07.2018, an enquiry was held in connection with the charges levelled against the Private Respondent. He participated in the said enquiry. Thereafter, the Report was submitted by the Enquiry Officer.

3. After observing due process of law, the Disciplinary Authority by an order dated 22.01.2019 imposed the punishment of dismissal from services of the bank. The Private Respondent preferred an Appeal against the said order of punishment before the Appellate Authority of the bank but the Appellate Authority by an order dated 06.09.2019 did not interfere with the punishment imposed. On 20.04.2022, the petitioner bank was served with FORM-O issued by the Controlling Authority under the Payment of Gratuity Act, 1972 along with the FORM-N dated 24.12.2021 filed by the Private Respondent.

4. **The Private Respondent was served with a notice dated 21.11.2022 for forfeiture of gratuity issued by the competent authority of the petitioner bank.** Since the Private Respondent never responded to the said notice of forfeiture dated 13.02.2023, the petitioner bank intimated him about the decision regarding forfeiture of gratuity. The Controlling Authority being the Respondent No. 2 by an order dated 13.06.2023 directed the petitioner bank to pay a sum of Rs. 18,48,435/- along with 10% simple interest from 25.01.2019 till the date of payment. On 09.08.2023, the petitioner bank deposited a sum of Rs. 26,87,320.64 with

the Controlling Authority being the Respondent No. 2 to prefer an Appeal against the said order dated 13.06.2023. Thereafter, the Appeal was filed within the statutory time limit.

5. A notice dated 19.09.2023 was served upon the parties by the Appellate Authority under the Payment of Gratuity Act, 1972, being Respondent No. 1. On 12.10.2023, the Private Respondent submitted his reply against the said Appeal. By an Order dated 27.03.2024 the Appellate Authority being Respondent No. 1 confirmed the Order passed by the Controlling Authority rejecting the Appeal filed by the Petitioner Bank.
6. Hence, the writ application.
7. It is the further case of the petitioner that when the respondent no.3 employee, was posted at Development Authority Branch, Agra, the following grave irregularities of the respondent no.3 came to light during the special audit of the said Branch. In the special audit, the following irregularities were noticed:-

(a) Approved various housing loans for purchase of houses without ensuring that approval for construction of those houses have been obtained from the Development Authorities.

(b) He also allowed huge Overdrafts beyond his delegation and without obtaining prior approval from the Regional Office, Agra.

(c) He did not accord any importance to the quality of the asset.

(d) A list of accounts was sent to the Regional Office of the Petitioner Bank for re-phasing without ascribing any reason/rationale for such request.

(e) He did not ensure timely submission of the COR for the irregularities pointed out during the course of Regular Audit.

(f) He never responded in connection with the query raised by the Regional Office.)

8. Accordingly, by a Memorandum No. CO: RD: 1706: 2017 dated 06.05.2017, he was served with a Show-Cause Notice detailing the irregularity committed by him by grossly violating the rules and procedure laid down by the Petitioner Bank for processing/sanction/disbursing loans to the borrowers.
9. Chargesheet was served upon the petitioner on being not satisfied with the reply to the showcause and subsequently a domestic enquiry was conducted by the Enquiry Officer on diverse dates between 23.04.2018 to 13.07.2018. During the course of Enquiry, the Respondent No. 3 duly participated. Admittedly, **the said Enquiry was conducted in strict adherence to the Rules of Principles of Natural Justice by affording him an opportunity to be represented through a representative of his choice. Secondly, he was provided with all the documents relied on by the Petitioner Bank. Thirdly, he not only participated in the Domestic Enquiry along with his representative along with his Assisting Officer (in short 'A.O.) but also availed of the fullest opportunity to cross-examine the**

management's witness. Fourthly, in spite of affording an opportunity to cross-examine the management witnesses', neither the Private Respondent nor the A.O. availed of the opportunity and lastly, he only placed his document in support of his defense but did not produce any witness in conducting his defense. Accordingly, the Enquiry Officer closed the Enquiry on 13.07.2018.

10. The petitioner further states that after completion of the enquiry, the Enquiry Officer submitted his Report along with other connected papers vide letter dated 15.10.2018, holding the Respondent No. 3 guilty of the charges leveled against him in the said Articles of Charges. The Report of the Enquiry Officer is of about 400 pages. The same is based on materials on records both, oral and documentary and he has also assigned reasons for the conclusions drawn in support thereof.
11. The copy of the Enquiry was duly served upon the Private Respondent and thereafter by a Memorandum No. CO: ERD: DA:412:2019 dated 22.01.2019 he **was awarded with the punishment of dismissal from service for sanctioning approximately 280 Loans aggregating to Rs. 61.51. crores under various categories without following the guidelines/instructions issued by the Petitioner Bank from time to time.**
12. An appeal by the private respondent was dismissed by the Appellate Authority on 06.09.2019. A prayer for review was also rejected.
13. It is the case of the petitioner that Regulation 3 of the Schedule- 'A' of the Union Bank of India (Employees) Gratuity Fund Rules clearly

provides the Authority of the Petitioner Bank to forfeit the gratuity of an employee whose service has been dismissed on the ground of misconduct causing financial loss to the Bank. The amount of forfeiture is restricted to the financial loss caused to the Bank.

- 14.** It is further stated that after disposal of the Review Petition filed by the Respondent No. 3, he was served with a Notice for forfeiture of gratuity dated 21.11.2022, but in spite of receiving the same, he did not submit his reply. Ultimately, by an order dated 13.02.2023, the management of the Petitioner Bank intimated the Respondent No. 3 about their decision regarding forfeiture of gratuity.
- 15.** The petitioners states that surprisingly enough the Respondent No. 3 before disposal of the review application, in terms of the order dated 01.08.2022 filed 'FORM-N' under the Payment of Gratuity Act, 1972, before the Respondent No. 2 and the case was registered as PG/30/2022/ALCR. The said Application was forwarded to the Petitioner Bank vide 'FORM-O' dated 20.04.2022.
- 16.** The petitioner filed his written statement before the said Controlling Authority and the Controlling Authority by an order dated 13.06.2023 directed payment of gratuity along with a simple interest in favour of the private respondent.
- 17.** The petitioner then preferred an appeal before the Appellate Authority who upheld the order of the Controlling Authority. The petitioners case is that the prayer for gratuity before the respondent no.2 was made after a delay of about 2 years 11 months from the date of dismissal.

- 18.** The petitioners states that the Controlling Authority has passed the order without considering Regulation 3 of Schedule-‘A’ of the Union Bank of India (Employees’) Gratuity Fund Rules. It is further stated that the Authority permitting such claim after such a long delay is also against the principle of natural justice.
- 19.** It is the specific case of the petitioner that the Controlling Authority has misdirected itself in law to the effect that the Payment of Gratuity Act of 1972 can govern the conditions concerning Payment of Gratuity and not otherwise. It cannot control and provide with respect to the petitioner Bank’s right to forfeit the gratuity to the extent of the pecuniary loss suffered in terms of the Regulations having statutory force. It is further stated that the impugned order is a perverse one, since the Respondent No.2 did not consider the materials on record in as much as, the order of forfeiture dated 21.11.2022, clearly states (specifics) the financial loss suffered by the petitioner Bank to the tune of Rs.1453.01 lakhs which is in any way much more than Rs.18,48,435 (Rupees Eighteen Lakhs Forty Eight Thousand Four Hundred Thirty Five) only, the amount of gratuity to which the Respondent No.3 was entitled to in an ideal situation.
- 20.** It is further stated that the Controlling Authority has wrongly observed that in the NPA account, the outstanding amount either can be recovered if sincere efforts are made or sometime the defaulting parties may repay themselves if their financial conditions changed.
- 21.** It is also stated that the conclusion drawn by the Respondent No.2 regarding non-suffering of financial loss by the petitioner Bank is not

only beyond its jurisdiction but also suffers from utter perversity in as much as non-application of mind.

- 22.** The petitioner further states that the decision of the Respondent No.2 regarding absence of correct quantification of financial loss is of no consequence since whatever may be the amount or loss suffered by the Bank, less or more, is always greater than Rs.18,48,435/- (Rupees Eighteen Lakhs Forty Eight Thousand Four Hundred Thirty Five) only the amount of gratuity receivable by the private respondent.
- 23.** The petitioner submits that during of the course of hearing of the appeal, the Petitioner Bank submitted "ACCOUNT WISE DETAILS FROM WHICH BANK HAS INCURRED FINANCIAL LOSS" in connection with the loan sanctioned by the Respondent No. 3 and the same is much higher than that of Rs. 18,48,435/- (Rupees eighteen lakhs forty eight thousand four hundred thirty five) only, the amount of gratuity which the said Respondent was entitled to.
- 24.** Parties have filed their written notes and argued relying upon the judgments in their favour. The petitioners submits that on 01.03.2018, the Petitioner Bank served him Articles of Charges) based on the said show cause notice dated 06.05.2017 in terms of Regulation 3 of Union Bank of India Officer Employees (Conduct) Regulations, 1976 which are to the following effect:-

“Failure to take all possible steps to ensure & protect the interest of the Bank.

Failure to discharge his duties with utmost devotion and diligence.

Failure to discharge his duties with utmost honesty and integrity.

Acting otherwise than in his best judgement in the performance of his official duties."

- 25.** The Private Respondent submitted his reply on 20.03.2018.
- 26.** The petitioner bank being dissatisfied with the reply submitted by the Private Respondent decided to hold an enquiry. Accordingly, from 23.04.2018 to 13.07.2018, an enquiry was held in connection with the charges leveled against the Private Respondent. He participated in the said enquiry. Thereafter, the Report was submitted by the Enquiry Officer.
- 27.** The Disciplinary Authority concurred with the finding of the Enquiry Officer and as such after observing due process of law, the Disciplinary Authority by an order dated 22.01.2019 imposed the punishment of **"dismissal from services"** of the petitioner bank.
- 28.** The Private Respondent never challenged the said order of dismissal dated 22.01.2019 and filed an application (FORM-N) claiming gratuity before the Respondent No. 2.
- 29.** The Controlling Authority then directed for payment of gratuity in favour of the respondent/workman. The said order was upheld by the Appellate Authority.
- 30.** Mr. De for the petitioner submits that **Clause 3 of Annexure A of Union Bank of India employees Gratuity Fund Rules** empowers the bank to forfeit the gratuity to the extent of financial loss suffered by it. The material portion is reproduced herein:-

"3. In case of termination of service of the Member on account of misconduct, Gratuity payable either under Clause 1 or Clause 2 above shall not be forfeited, except where such misconduct causes financial loss to the Bank (of which and of the amount of which the Bank shall be the sole judge and its decision final) and in that case the forfeiture of the Gratuity shall be to the extent of the financial loss only....."

31. In support of his said argument, Mr. De has relied upon the judgment of the Supreme Court **Canara Bank & Another Vs. Lalit Popli (Dead) Through Legal Representatives reported in (2018) 11 SCC 87 AT PARAGRAPHS 13 AND 14.**
32. Learned Counsel further submits that the judgment in **Laxman Popatbhai Solanki Vs. State of Gujarat and Anr, reported in (1976) 2 LLN 539**, relied upon by the Appellate Authority is not applicable to the present case, as in the said case no opportunity of hearing was given to the employee concerned.
33. The petitioner relies upon Para 12, 13 and 14 in **Canara Bank & Another Vs. LalitPopli (Dead) (Supra).**

"12. Rule 3(4) of Chapter VIII of the General Conduct Rules states that "an employee who is dismissed for misconduct shall not be entitled to gratuity". Rule 12 of the Gratuity Rules reads thus:

"12. Notwithstanding anything contained in the preceding clauses where an employee has been dismissed for misconduct and such misconduct has caused financial loss to the Bank, he shall not be eligible to receive the gratuity to the extent of the financial loss caused to the Bank."

Likewise, Clause 19 of the Provident Fund Regulations reads thus:

"19. If a member causes financial loss to the Bank by misconduct, fraud, gross negligence or other conduct of like nature and is dismissed from the service of the Bank or is permitted to leave the service of the Bank in consequence of such misconduct, fraud, gross negligence or other like conduct, the amount of such financial loss sustained by the Bank shall be deducted by the Trustees from the Bank's contribution out of the amount due to the member and be paid to the Bank."

13. *Special Rules relating to gratuity, mentioned supra, makes it amply clear that the employee who has been dismissed for his misconduct and if such misconduct has caused financial loss to the Bank, he shall not be eligible to receive the gratuity to the extent of financial loss caused to the Bank. So also, Clause 19 of the Provident Fund Regulations permits the Bank to deduct the payment of provident fund to the extent of financial loss caused to the Bank from the Bank's contribution. Both the aforementioned clauses are plain and simple. They are unambiguous, Since Rule 12 of the Gratuity Rules and Clause 19 of the Provident Fund Regulations permit the Bank to withhold gratuity and deduct the Bank's contribution towards provident fund and in such matters, the Bank was justified in recovering the amount of financial loss sustained by it, which was caused by the respondent, from out of the gratuity and also the employer's contribution towards provident fund payable to the respondent/employee.*

14. *Thus, in our considered opinion, the High Court was not justified in setting aside the decision of the Bank to recover the amount of loss sustained by it from the respondent, particularly when the Bank is empowered to do so, as discussed supra".*

34. The petitioner has further relied upon the judgments in:-

- i. (2020) 18 SCC 71 in Chairman-Cum-Managing Director, Mahanadi Coalfields Limited Versus. Rabindranath Choubey,**
- ii. (2004) 12 SCC 579 in Principal Secretary, Govt.Of A.P. Vs. M. Adinarayana,**

“26. In our opinion, judicial review cannot extend to the examination of the correctness of the charges as it is not an appeal but only a review of the manner in which the decision was made. We have, therefore, no hesitation in Setting aside the order of the Andhra Pradesh Administrative Tribunal and the judgment of the Division Bench of the High Court for reasons stated (supra). The order passed by the Government removing the respondent from service is in order and, therefore, the appeal filed by the appellant State stands allowed. Further, there will be no order as to costs.”

iii. (2025) LLR 1317 in Sri Rajan Bandyopadhyay @ Ranjan Banerjee Vs. The Bank of Baroda & Ors. And

iv. (2025) SCC Online 9649 in MSTC Limited Vs. Malay Sengupta and Others by a Division Bench of the Calcutta High Court.

35. The Respondent no.3 has argued and in the written notes has stated that show cause, charge-sheet was duly issued and served upon him but the charge-sheet did not quantify the loss which the bank had to suffer for his action.

36. The Respondent no.3, further submits that even though no amount was quantified, and punishment of dismissal from service was issued against him, no gratuity was paid. The respondent then made an application before the Controlling Authority on 24.12.2021.

37. The Respondent no.3 states that it is only on 21.11.2022 that the petitioner/company issued a notice for forfeiture for gratuity **after almost 4 years of passing the order of dismissal from service.**

38. The petitioner/company forfeited the respondent no.3's gratuity by an order dated 13.02.2023. The Respondent no.3 argues that Section 14 contemplates an overriding clause and leaves no room for any doubt that a superior status has been vested in the provisions of the Gratuity Act vis-à-vis any other enactment (including any other instrument or contract) inconsistent therewith.
39. The judgment in **2023 SCC Online SC 1452 (Jyotirmay Ray -v/s- The Field 2023 Manager, Punjab National bank & Ors)** – Paragraphs 18-20, has been relied upon.
40. The Respondent no.3 next relies upon the Sec 4(6) of the Payment of Gratuity Act. It is stated that in the present case the loss caused to the bank was never quantified neither at the time of issuance of show cause nor at the time of issuing the charge sheet and the respondent no. 3 was never given any opportunity to respond to the allegation of causing loss.
41. Moreover the notice forfeiting gratuity quantifying the loss dated 21st November, 2022 was issued after a period of almost 5 years from the date of issuance of charge sheet and after a period of almost 4 years from the date of awarding the penalty of dismissal from service.
42. It was only when the respondent no.3 filed the application before the Controlling Authority for release of gratuity on 24th December, 2021 and after the bank participated in such proceeding and filed their Written Statement, that they chose to issue the notice of forfeiture of gratuity on 21st November, 2022 which is nothing but an afterthought and to cover up/justify their stand before the Controlling Authority.

43. The respondent no. 3 submits that in the case of **Y.K. Singla v. Punjab National Bank, (2013) 3 SCC 472**, while considering the issue of interest on the late payment of gratuity to a retired employee of Punjab National Bank held that the payment of Gratuity Act will override the Punjab National Bank (Employees') Pension Regulations, 1995 (for short "1995 Pension Regulations"). While dealing with the issue of recovery from gratuity under Regulation 46 or withholding of pension under Regulation 46(2) of the said Regulations, the Court in paragraph 22, after referring to Section 14 of the Gratuity Act, held:-

"22. In order to determine which of the two provisions (the Gratuity Act, or the 1995 Regulations) would be applicable for determining the claim of the appellant, it is also essential to refer to Section 14 of the Gratuity Act, which is being extracted hereunder:-

14. Act to override other enactments, etc. The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

A perusal of Section 14 leaves no room for any doubt that a Superior status has been vested in the provisions of the Gratuity Act vis-à-vis any other enactment (including any other instrument or contract) inconsistent therewith. Therefore, insofar as the entitlement of an employee to gratuity is concerned, it is apparent

that in cases where gratuity of an employee is not regulated under the provisions of the Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law), the provisions of the Gratuity Act cannot be ignored. The term "instrument" and the phrase "instrument or contract having the force of law" shall most definitely be deemed to include the 1995 Regulations, which regulate the payment of gratuity to the appellant."

44. Thus, it appears in the present case, it is the case of the petitioner herein that as per the regulation of the Bank, it is within their rights to forfeiture the gratuity of the respondent no.3 herein to the extent of the loss suffered by the petitioner/company. On the other hand, it is the case of the respondent no.3 that there is no quantification of loss stated in the judgment and mentioning the quantum of loss only in the show-cause notice for forfeiture after the enquiry proceedings shows that the **amount quantified is clearly an after thought.**

45. Secondly, the respondent no.3 submits that there has been a delay of almost 5 years in forfeiting the gratuity proceedings after the conclusion of the enquiry proceedings.

46. It appears that even the forfeiture was an after thought and it was done only after the petitioner made the application before the Controlling Authority for as gratuity.

47. The petitioner's contention is that it is only in August, 2022 that a review application of the Respondent no.3 was disposed of and subsequently considering the process involved the forfeiture was made at the earliest.
48. In the present case, the petitioner/company has held an enquiry proceeding and permitted the respondent no. 3 to participate in the disciplinary proceedings and said order of dismissal has not been challenged by the Respondent no.3 before any Court of Law.
49. ***In WPA 10679 of 2025, the Insitution of Engineers (India) Vs. Union of India***, this Court has held:-

"39. In *The State of Rajasthan & Ors. Vs Heem Singh, in Civil Appeal No. 3340 of 2020 (arising out of SLP (C) No. 30763 of 2019)*, decided on October 29, 2020, wherein the Supreme Court in Para 13,33 held:-

*"13. The standard of standard of proof in disciplinary proceedings is different from that in a criminal trial. In **Suresh Pathrella v. Oriental Bank of Commerce**⁴, a two judge Bench of this Court differentiated between the standard of proof in disciplinary proceedings and criminal trials in the following terms:*

"...the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities."

*This standard is reiterated by another two-Judge Bench of this Court in **Samar Bahadur Singh v. State of U.P.**:*

"Acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings as the standard of proof in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt whereas in a departmental proceedings, the department has to prove only preponderance of probabilities."

33. *In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. **The first end of the spectrum is founded on deference and autonomy deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity.** A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. **Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum.** Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. **That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or***

to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

50. In the present case, admittedly, no appeal has been preferred by the private respondent against the finding of the disciplinary authority nor has he approached any other forum against the said order finding him guilty and imposing penalty.

51. The disciplinary proceeding conducted and penalty of dismissal by the petitioner, has not been challenged till date by the respondent no. 3. But both the controlling authority and more so the appellate authority have taken into consideration the proceeding against the respondent no. 6, while passing the impugned orders.

52. The controlling authority in its order:-

" 2. Whether the Opponent Bank has quantified financial loss correctly?

The Opponent alleged that the applicant was posted as Branch Head at Agra Development Authority Branch and during a small period of 18 months certain lapses were noticed in various accounts. Disciplinary proceeding was initiated against the applicant. On the basis of inquiry proceedings. Disciplinary Authority imposed the penalty of "Dismissal from the services of the Bank as specified in Regulation 4(j) of Union Bank of India officer Employees' (Discipline & Appeal) Regulation, 1976' be and is hereby imposed of Shri Narendra Singh."

The applicant preferred an appeal before Appellate Authority against the order of dismissal but his appeal was rejected.

The Opponent submitted that the applicant has cause financial loss of Rs.1453.01 lakh, but full details of the such loss were

not disclosed. However the opponent furnished the details of few loan account, amount sanctioned and net loss. While going through the details of such account it is observed that 280 loans were sanctioned of 61.51 crore by the applicant during the tenure of 18 months. Therefore the amount of alleged loss is less than the amount sanction as a loan. The accounts were turned in NPA account. The amount which is outstanding could not be recovered from such parties to whom the loan were given have been declared as LOSS. If the collateral security is available the due amount can still be recovered from the defaulting parties. Moreover how much and how many efforts were made by the opponent bank was not disclosed before the amount of NPA was declared as financial loss. If the outstanding amount is still recoverable, how it can be considered as a financial loss to the Opponent bank. The opponent mentioned 'doubtful' against many accounts while relating to the financial loss to the bank.

When it is doubtful loss how the amount of such account can be considered to have been caused as financial loss by the applicant.

In the NPA account, the outstanding amount either can be recovered if sincere efforts are made or sometime the defaulting parties may repay themselves if their financial conditions changed.

In such situation the amount which is outstanding in the loan account cannot be said financial loss to the opponent bank.

The 'financial loss' should be actual and permanent before it attracts forfeiture of the part or whole amount of gratuity.

In view of the above, I am of the view that the opponent has not quantified financial loss correctly.”

53. The authority further held:-

“.....In the matter of financial loss as discussed above it should be caused at the time of termination of service i.e. on 24.01.2019. But the notice for proposed forfeiture was given on 21.11.2022 after more than two and half years creates doubt and confusion about the actual financial loss caused by the applicant.

Moreover, a show cause for such proposed forfeiture must be given to the applicant within reasonable period from the date of his termination. The Opponent failed to show any reasons for such inordinate delay and that too deposit the amount before the Controlling Authority in case they felt any dispute in the matter of payment of gratuity.

In this case the opponent issued notice for proposed forfeiture of the gratuity followed by order forfeiting the entire amount of gratuity after the termination of service of the applicant. Thus such action is contrary to provisions contained in the Payment of Gratuity Act, 1972.....”

54. The appellate authority held:-

“..... In the present case, the Controlling Authority has gone through in detail and has very categorically held as under:

(i) The claim has been made within in time. The matter of delay has already been decided by the Controlling Authority. The Appellate Authority normally should not interfere with his decision in this regard. The relevant citation is as under:

"The appellate authority should not interfere with the discretionary powers exercised by the controlling authority in condoning the delay in presenting the application. [Ramjilal Chimanlal Sharma V. Elphinstone Spg. & Wvg. Mill Co. Ltd. 1984 Lab. I.C. 1703(Bom.)]."

(ii) The Controlling Authority has also held that the financial loss has not been correctly quantified. He has further stated that service of the respondent was dismissed on

24/01/2019 and show cause for forfeiture was issued on 21/11/2022 and no reasons have been given for such delay. It is also observed that the notice was sent after employee filed the claim in Form N before the Controlling Authority.

The Bank has also cited its regulation called Union Bank of India Officer Employees (Discipline & Appeal) Regulation 1976 having statutorily force.

In this regard, it is observed that as far the Payment of Gratuity Act, 1972 is concerned, the provisions of this Act shall have an overriding effect and the regulations of the Bank will not supersede the provisions of this Act. The relevant Section 14 of this Act makes it very clear legally which reads as under:

"The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act".

The management has not answered the legal situation as stated by the respondent in Gujarat High Court case (Laxman Papatbhai Solanki-vrs-State of Gujarat).

FINDINGS

In these circumstances, I do not find any legal infirmity in the order dated 13.06.2023 of the Controlling Authority & Asstt. Labour Commissioner (Central), Raniganj at Durgapur in case No. 48/2(30)/2022-ALCR and uphold his order. However, the orders to pay interest shall be restricted from the date of filing Form "N" till the amount is deposited with the Appropriate Authority."

55. Section 4(6) of the payment of gratuity act lays down:-

"4(6)Notwithstanding anything contained in sub-section (1),-

*(a)the gratuity of an employee, whose services have been terminated for any act, willful 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.”

- 56.** The said provision provides for forfeiture of gratuity on certain grounds, one of which being “negligence causing any damage or loss to property belonging to the employer”. The amount of gratuity to be forfeited is to be to the extent of damage or loss so caused. In the present case admittedly neither in the show cause nor in the charge sheet nor anywhere in the enquiry report or the order of dismissal, the amount of loss has been quantified though it is mandatory that such loss is quantified in the enquiry proceeding itself.
- 57.** In the present case, admittedly the loss was quantified in the show cause letter issued for forfeiting the gratuity of the workman/respondent no. 3 after almost 4 years, when the workman on filing form ‘N’ approached the controlling authority. Such conduct on the part of the petitioner prima facie proves that same is an afterthought.
- 58.** Quantifying the loss at the stage of forfeiture of gratuity is not in accordance with law as the said amount quantifying the loss was not part of the enquiry proceeding including the chargesheet and the show cause. As the said loss as quantified was not put to the workman during the

enquiry proceeding nor the disciplinary proceedings, he was not in a position to counter the same.

59. Even though the enquiry report as submitted by the petitioner runs into 400 pages, the same appears to be more of quantity than quality evidence against the workman.
60. Admittedly, no loss was quantified either in the show cause or charge sheet or during the enquiry proceeding till the notice for forfeiture of gratuity after more than four years.
61. The said conduct of the petitioner is clearly an abuse of process of law and against the principle of natural justice and clearly shows that the entire enquiry proceedings has thus not been conducted in accordance with law.
62. This Court further finds that in the charge framed against the workman the petitioner has also claimed that huge cash deposits not commensurate with the employees known source of income has been observed.
63. From the details provided in the article of charge, the amount as noted is “meagre” amount and this observation of the petitioner in the article of charge again prima facie proves that the proceeding on such basis, is entirely malafide.

64. Section 5 of the payment of gratuity act lays down:-

“5. Power to exempt.- [(1)] The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment, factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

(2)[The appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act, if, in the opinion of the appropriate Government, such employee or class of employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.]

(3)[A notification issued under sub-section (1) or sub-section (2) may be issued retrospectively a date not earlier than the date of commencement of this Act, but no such notification shall be issued so as to prejudicially affect the interests of any person.]”

65. Admittedly the petitioner herein does not enjoy any exemption as required under Section 5 of the Payment of Gratuity Act and as such the petitioner cannot claim that the bank regulations shall prevail over the payment of gratuity act.

66. In *UCO Bank & Ors. vs Nityananda Paul, in MAT 1298 of 2012 with CAN 7976 of 2012, decided on 29 September, 2016*, the Calcutta High Court held:-

“13. When there is no exemption accorded, any provision of law which is inconsistent with the Payment of Gratuity Act cannot be acted upon in forfeiting the gratuity as that is clearly prohibited under Section 14 of the Act. The provisions of the Act have an overriding effect over other enactments which are inconsistent with the Act. In Anju Mathur's case (supra), the Full Bench of the Punjab and Haryana High Court was not required to consider whether the Payment of Gratuity Act would take precedence over the UCO Bank (Officers') Service Regulations, 1979. It proceeded on the basis that the Service Regulations would govern the payment of gratuity as the applicability of the Service Regulations was not in dispute. In the present case a specific contention has been raised about the non-applicability of the Service Regulations in so far as the payment of gratuity is

concerned. Therefore this judgement does not assist the Bank.

16. The Payment of Gratuity Act does not have any provision for establishing a trust for disbursement of gratuity or for empowering the trustees of such a trust to decide whether gratuity should be paid to an employee. Sub-section (6) of Section 4 starts with a non-obstante clause and provides that gratuity must be paid to an employee whose services have been terminated. However, if the termination was for any act, wilful omission or negligence which caused any damage or loss or destruction of the property belonging to the employer, the gratuity may be forfeited. The forfeiture of gratuity is permissible only to the extent of the damage or loss so caused. **Thus the employer is not bound to forfeit the gratuity in every case of loss or damage. In the present case, the charge sheet issued to the employee does not indicate or quantify the loss allegedly caused to the Bank. The disciplinary enquiry was conducted on the basis of certain acts and omissions on the part of the employee which the Bank found were deliberate. The acts complained of were firstly, that he permitted customers to draw excess beyond the sanctioned limit and the power vested in the employee. Thus, he had failed to protect the interest of the Bank which was violative of Regulation 3 of the UCO Bank Officer Employees' (Conduct) Regulations, 1976. Secondly, the employee had continued to permit over-drawing of amounts in various accounts despite receiving instructions to the contrary. It was again found to be violative of Section 3 of the aforesaid Regulations of 1976. The third charge was that the employee had deliberately not reported irregularities to his superiors with an ulterior motive which again constituted failure to discharge his duties with utmost integrity or devotion which was in breach of Clause 3 of the aforesaid Regulations of 1976. All these charges have been proved against the employee. However, not one of the charges mentions the actual loss caused to the Bank.** In fact, the charge is that the employee's acts indicate that he was guilty of having violated the provisions of Regulation 3 of the UCO Bank Officer Employees' (Conduct) Regulations, 1976 and not for having caused any loss to the Bank. **The disciplinary authority issued a show cause notice to the employee concerned before imposing the punishment. The loss caused to the Bank was not mentioned even in this notice. The**

submission of Mr. Mantha, that in view of the observations of the Supreme Court in *Nikunja Bihari* (supra), there is no need for a bank to mention the actual loss caused, is **unsustainable**. In the aforesaid case the Supreme Court was only concerned whether the acts of the employee constituted misconduct. It was not concerned with the deprivation of gratuity in that case. Therefore the judgement has no application to the facts before us. Furthermore the submission that the employee's conduct amounted to moral turpitude is also without merit. **It is an afterthought**. The employee was not charged for having committed acts which were perceived to be of moral turpitude on his part. The judgements cited by Mr. Mantha regarding what constitutes moral turpitude therefore have no application to the facts and circumstances in this case. The Bank cannot, in our opinion, forfeit the gratuity without following the provisions of Section 4(6) of the Gratuity Act.

17. The contention of Mr. Mantha that this denial of gratuity can be regularized by providing a fresh show cause to the employee at this stage, detailing the loss caused to the Bank and asking for his explanation before denying the gratuity, is, in our opinion, untenable. An employee cannot be subjected to two enquiries for the same acts of misconduct. **The second enquiry is not envisaged in law.** An employer cannot be permitted to keep holding enquiries in order to fix a liability on the employee. All allegations against the employee ought to have been mentioned in the charge-sheet which was issued to him before holding the disciplinary enquiry. **Had the Bank been able to assess the loss caused to it, it should have been mentioned in the charge sheet.** Having omitted to do so, the Bank cannot be afforded another chance to nail the employee and plug the lapses. If the Bank was of the opinion that the loss could not be ascertained at that stage, as submitted by Mr. Mantha, it could have mentioned so in the charge sheet. **Even at the time of issuing the show cause notice to the employee on submission of the enquiry report, the Bank did not mention the loss.** The Bank's communication dated 15th February, 2010 only requires the employee to show cause why his gratuity should not be forfeited. It does not say anything about the actual loss caused to the Bank. **There was no bar on the Bank when it issued the charge sheet or indeed the show cause notice before imposition of the punishment, on mentioning the loss caused to it. The Bank cannot be permitted to**

improve upon its case only in order to ensure that the gratuity is fortified. Moreover, the submission of Mr. Mantha that the show cause notice will be issued granting an opportunity to the employee to defend himself is also of no avail. The trustees of the gratuity fund who have issued the earlier show cause notice are not the employer of the respondent employee. They have no authority to issue any such show cause notice. Once the employer has held the employee guilty of conduct unbecoming of an Officer, no further action can be taken by the employer. ***A second enquiry to ensure the denial of gratuity is unacceptable.***”

67. The petitioner though in this case, admits that payment of gratuity act is applicable to the petitioner bank.
68. On perusal of the impugned order of the controlling authority and the appellate authority this Court finds that certain observations and findings have been given by the said authorities in respect of the enquiry proceeding, which on perusal, appears to be beyond the powers of the said authorities in interfering with the disciplinary/enquiry proceeding and it's findings..
69. Accordingly the relevant portion where the said authorities have given their findings as to the validity of the enquiry proceeding are hereby set aside.
70. The portion which allows the gratuity in favour of the employee is hereby upheld.
71. The controlling authority shall release the amount of gratuity deposited with it along with interest to the respondent no. 3 within 30 days from the date of this order/judgment.
72. **Writ application is thus dismissed.**
73. Connected application, if any, stands disposed of.
74. Interim order, if any, stands vacated.

- 75.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

[Shampa Dutt (Paul). J]