IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 23753 of 2019
West Bengal Gramin Bank & Anr.
Vs.
The Learned Deputy Chief Labour Commissioner (Central) & Ors.

For the Petitioners	**: Ms. Senjuti Sengupta,** **Ms. Chitra Bhanu Gupta.**
For the UOI	**: Ms. Aparna Banerjee.**
For the Respondent no.3	**: Mr. Debabrata Saha Ray, Sr. Adv** **Mr. Indranath Mitra,** **Mr. Pingal Bhattacharyya,** **Mr. Subhankar Das.**
Judgment reserved on	**: 17.04.2026**
Judgment delivered on	**: 15.05.2026**

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred challenging orders dated 15th November, 2018 passed by the controlling authority in Application No. 48(7)/2017/ALC-S and 18th October, 2019 vide 48/(10)/2019.E.Dy.CLC(C) passed by the appellate authority.

2. It is the case of the petitioners that as per Clause 72 (2) (e) of the Banks Service Regulation being the Uttarbanga Kshetriya Gramin

Banks Service Regulation that every officer shall be eligible for the gratuity except for reasons of being terminated by way of punishment. In this case, The Respondent No. 3 (Sri. Tapan Kumar Dey) has been admittedly terminated by way of punishment and as such as per the said regulation he is debarred to receive any Gratuity from the said Bank. The Petitioner Bank through its General Manager, issued the administrative order vide no. A&V / 39 / 2014-2015 / 629 /F-T.Dey on 04/08/2014 wherein the Respondent No. 3 (Sri. Tapan Kumar Dey) since dismissed was awarded with the punishment that is "Dismissal" which shall ordinarily be a disqualification for future employment as per Clause 39.1 (B) (V) of the Uttarbanga Kshetriya Gramin Bank Service (Officers and Employees) regulations, 2010: and "Forfeiture of the Gratuity" of the Applicant Sri. Tapan Kumar Dey as per clause 72 (e) of the Uttarbanga Kshetriya Gramin Bank Service (Officers and Employees) regulations, 2010.

3. During the tenure of the service of the Respondent No. 3 (Sri. Tapan Kumar Dey), in pursuance to a grave offence, a Charge Sheet was issued against him being Charge Sheet No. A&V / 37 / 2012-2013 / 327 / F-T.Dey dated 19/09/2012. A disciplinary proceeding was also pending against him at that time. Under that circumstances the Petitioner Bank represented by its Competent Authority being the Chairman, invoked Regulation 45 of the

Uttarbanga Kshetriya Gramin Bank Service (Officers and Employees) Regulations, 2010 which led to a rejection of the receipt of the allowances as laid down therein under in the said regulation. As such this allegation being proved and the punishment been drawn against him, he has been given his retiral benefits within the purview of the said Act. Admittedly the Respondent No.3 (Sri Tapan Kumar De) never ever challenged his dismissal / award of punishment. He has not approached any higher forum against the said punishment. As such till date the said Termination is standing unchallenged Admittedly again he never ever disputed the Petitioner / Bank's payment of the retiral benefits.

4. It is stated that after a lapse of 3 years, the Respondent No. 3 is barred from challenging the actions taken by the Petitioner Bank particularly when he has already accepted the actions of the bank without challenging the same before the higher forum. Admittedly again, he had approached the Respondent No. 2 after a lapse of 3 years.

5. The petitioners further state that the Respondent No. 3 (Sri. Tapan Kumar Dey) has been awarded a punishment by following a proper departmental procedure. This departmental procedure has not been challenged till date. So that deems to be correct. The order passed in that procedure has not been challenged and therefore it is deemed to be accepted by him. In that case he has been rightly denied the gratuity as because in the regulation as per clause 72 (2) (e) it has been specifically mentioned that every officer shall be eligible for the gratuity except for reasons of being terminated by way of punishment. As such Sri. Tapan Kumar Dey is not entitled to the reliefs sought for by him.

6. **It is stated that the Bank has awarded punishment and denied Gratuity strictly based on its service regulation The Petitioner Bank is governed by a service regulation which is framed by the Central Government in consultation with the National Bank and is circulated by Gazette Notification which the bank can not go against unless the regulation as a whole is altered.**

7. In the present case admittedly no such exemption is enjoyed by the petitioner and as such the payment of gratuity act is applicable to the petitioner bank.

8. The petitioners in support of their case has relied upon the following judgements: ***(i) (2020) 18 SCC 71 (Mahanadi Coalfields Limited Vs. Rabindranath Choubey) (ii) FMA 959 of 2025 (MSTC Limited Vs. Malay Sengupta & Ors. (Unreported).***

9. The private respondent being the respondent no.3 on filing his written notes has argued that the petitioner while in service was charge-sheeted and on completion of a disciplinary proceedings, he was dismissed from service on 04.08.2014. The date of superannuation of the respondent no.3 was 31.03.2018.

10. The respondent no.3 further submits that General Manager, Uttarbanga Kshetriya Gramin Bank issued administrative order on 04.08.2014, forfeited entire amount gratuity of respondent no. 3, invoking clause 72 (e) of the Uttarbanga Kshetriya Gramin Bank (Officers & Employees) Service Regulation, 2010.

11. Respondent no. 3 preferred a statutory appeal against the said order dated 04.08.2014, with the appellate authority on 05.09.2014.

12. The Appellate authority dismissed the appeal on 28.03.2015, by affirming the order of the Disciplinary Authority.

13. Respondent no. 3 filed a representation with the Chairman of the Uttarbanga Kshetriya Gramin Bank, objecting such forfeiture of gratuity on 07.10.2015 and 11.10.2017.

14. Respondent no. 3 filed application in form "N" under the provisions of Payment of Gratuity Act, 1972, before the Controlling authority on 11.11.2017 along with application for condonation of delay.

15. The Authority concerned being the Assistant Labour Commissioner/Controlling Authority under P.G Act, 1972 vide order dated 15.11.2018, allowed both the applications for condonation of delay and payment of gratuity by directing the bank to make payment of Rs. 15,58,333/ within 30 days with the observation that the interest amount determined is upto October, 2018 and if further delayed by bank, necessary calculation should be made accordingly. The said order was appealed by the petitioner/bank which was dismissed.

16. Hence this writ application.

17. The respondent no.3 submits that the total disciplinary proceedings in the present case was carried out **without computing the amount of damage or loss, allegedly suffered by the employer. Entire gratuity amount of the employee can not be forfeited.**

18. It is further argued on behalf of the respondent no.3 that on perusal of the order of punishment, it is crystal clear that **no financial losses was computed** by the management and initiated by the respondent no.3 before forfeiture of gratuity and **there is nothing mentioned about the extent of loss suffered by bank warranting forfeiture of gratuity to that extent as provided under the Act.**

19. It is further stated by the respondent no. 3 that the General Manager has arbitrarily issued an administrative order to forfeit the gratuity, which is contrary to the provisions of the Act of 1972, specifically Sub-Section 6(a) & (b) of Section 4 of the Payment of Gratuity Act, 1972.

20. **No order of forfeiture of gratuity** under Sub-Section 4(a) & (b) of Section 4 of the Payment of Gratuity Act, 1972 read with rule 7 of P. G. (Central) Rules of 1972 has been passed by the bank before dismissal of respondent no.3 or before issuance of order forfeiting the gratuity and **the order of forfeiture of gratuity has been passed by the General Manager invoking provisions of Uttarbanga Kshetriya Gramin Bank (Officers & Employees) Service Regulation, 2010 along with the order of dismissal.**

21. Curtailment of such important right has civil consequences, as the Section 4(6) imposes an obligation on the employer under the principle of natural justice to hear the employee before the order of forfeiture is passed.

22. In the present case before passing the order of forfeiture of gratuity, respondent no.3 was never provided an opportunity of hearing, **quantifying the loss allegedly suffered by the bank.**

23. The respondent no 3 relies upon the following judgements ***(i) 2000(9) SCC page 94 (Para 11) in the case of State of Bihar & Ors. Vs. Kameshwar Prasad Singh & Ors. (ii) 2018 (9) SCC page 529 (Para 19 and 20) in the case of Union Bank of India & Ors. Vs. C. G. Ajay Babu & Anr.***

24. From the charge sheet and enquiry report it appears that the respondent/employee was charged with several articles of charge but no where has any quantification of loss suffered by the bank has been noted thus the employee was not put on notice as to that.

25. But clearly the **loss herein has not been quantified** in the show cause, articles of charge, enquiry proceeding or the order of dismissal issued by the disciplinary authority and also not in the order of forfeiture of gratuity.

26. 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."*

27. Admittedly the forfeiture of gratuity in this case has not been made under the payment of gratuity, though the same applies to the bank as they don't enjoy any exemption under Section 5 of the payment of gratuity act.

28. The forfeiture has been made in the order of dismissal and reads as follows:-

> ***"Dismissal*** *which shall ordinarily be a disqualification for future employment as per Clause 39.1 (B) (V) of the Uttarbanga Kshetriya Gramin Bank Service (Officers and Employees) regulations, 2010: and*
> *"**Forfieture of the Gratuity** of the Applicant Sri. Tapan Kumar Dey as per clause 72 (e) of the Uttarbanga Kshetriya Gramin Bank Service (Officers and Employees) regulations, 2010".*

29. The respondent no. 3 has accepted his order of dismissal and with his dismissal, he has suffered serious financial loss and other benefits for such dismissal.

30. The payment of gratuity act protects the entitlement of the employee under the act against such victimization.

31. **Thus, it appears in the present case,** that the petitioner's case herein is 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, **quantification of loss has never been stated, not even in the order of forfeiture.**

32. 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 the appellate authority have taken into consideration the proceeding against the respondent no. 3, while passing the impugned orders.

33. In the present case, admittedly the loss was never quantified even while forfeiting the gratuity of the workman/respondent no. 3, issuing order of dismissal.

34. Quantifying the loss, was also 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.**

35. Admittedly, no loss was quantified either in the show cause or charge sheet or during the enquiry proceeding and **also not at the time of forfeiture of gratuity.**

36. 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.]"

37. *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."***

38. 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.

39. The petitioner though in this case, admits that payment of gratuity act is applicable to the petitioner bank.

40. 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..

41. Accordingly the relevant portion where the said authorities have given their findings as to the validity of the enquiry proceeding are hereby set aside.

42. The portion which allows the gratuity in favour of the employee is hereby upheld.

43. 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.

44. Writ application is thus dismissed.

45. Connected application, if any, stands disposed of.

46. Interim order, if any, stands vacated.

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

[Shampa Dutt (Paul), J.]