

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 699 of 2019

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CHAIRMAN AND MANAGING DIRECTOR UNION BANK OF INDIA & 1
other(s)
Versus
JAYKANT R GOHIL

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Appearance:

MR NAGESH C SOOD(1928) for the Petitioner(s) No. 1,2
MR.MANAN BHATT(6535) for the Respondent(s) No. 1
MS ANKITA G CHAUHAN(5379) for the Respondent(s) No. 1
NOTICE SERVED for the Respondent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 06/06/2022

ORAL ORDER

1. Heard Mr. Nagesh Sood, learned advocate appearing for the petitioner and Mr. Manan Bhatt, learned advocate for the respondent.
2. In this petition, under Article 226 of the Constitution of India, the petitioner bank has challenged the orders of the Controlling Authority as well as the Appellate Authority under the Payment of Gratuity Act, 1972 ('the Act' for short) by which directions have been issued by the competent authority to pay an amount of Rs.9,77,440/- as gratuity with effect from 16.02.2012 along with simple interest at the rate of 10% with effect from 16.02.2012. The order of the competent authority is dated 30.08.2017 which on a challenge by the Bank to the Appellate Authority was confirmed by the Appellate Authority vide order dated 19.06.2018.
3. Facts in brief would indicate that the respondent was working as a Branch Manager with the petitioner bank at Keshod Branch. He joined

service on 30.09.1984. During his course of employment, the bank on 26.04.2011 issued a charge-sheet leveling certain imputations in context of disbursement of term loans etc. After a departmental inquiry the bank imposed a penalty of dismissal from service on 09.02.2012. The respondent challenged the order of the disciplinary authority by filing an appeal and on such appeal being filed vide order dated 13.01.2014, the appellate authority reduced the punishment to that of compulsory retirement.

3.1 But for his dismissal from service on 09.02.2012, the respondent would have superannuated on 30.04.2012. On the penalty being modified to that of compulsory retirement, the petitioner preferred an application before the competent authority under the Act in Form-N complaining of non-payment of gratuity within the statutory period of 30 days as required under Section 7 of the Act. The Bank on 15.09.2015 issued a show-cause notice under Section 4(6)(a) of the Act asking the respondent to show cause as to why the order of forfeiture of gratuity be not passed. After inviting response from the respondent, vide order dated 15.09.2015, the bank held that since the respondent by his act of misconduct had caused monetary loss to the bank, the amount of gratuity be withheld. The Controlling Authority under the Act by the order impugned held that under Section 7 of the Act, it was incumbent on the bank to pay gratuity within the stipulated time limit and therefore passed an order of paying gratuity.

3.2 On an appeal being filed, the Appellate Authority based on the facts and on appreciation of Section 4(6) of the Act and holding that the notice under Section 4(6)(a) of the Act was an afterthought confirmed the order of the Controlling Authority.

4. Mr. Nagesh Sood, learned advocate for the petitioner bank would submit that the order of the Controlling Authority as well as the Appellate Authority directing the petitioner to pay the amount of gratuity was misconceived and not in accordance with law. Relying on the show-cause notice issued to the respondent under Section 4(6)(a) of the Act, he would submit that once the bank having found that the respondent was responsible for causing monetary loss of Rs.4.36 crores which was quantified by the competent authority, it was just and proper for the bank to withhold such gratuity.

4.1 Mr. Sood would extensively read the order of the Appellate Authority and submit that it was wrong for the Appellate Authority to pass an order relying on the decision of the Apex Court in the case of **Jaswant Singh Gill vs Bharat Coking Coal Ltd. and Others [2007-I-CLR-427 (SC)]**. He would submit that that judgement has been subsequently overruled by a decision of the Apex Court in the case of **Chairman-cum-Managing Director, Mahanadi Coalfields Limited vs. Rabindranath Choubey reported in (2020) 18 SCC 71**. He would submit that reading the order of the Appellate Authority would indicate that the Appellate Authority under the Act went into the merits of the order of the disciplinary authority which it could not have in light of the decision in the case of **Mahanadi Coalfields (supra)**. Relevant paragraphs of the decision in the case of **Mahanadi Coalfields (supra)** were read out extensively in support of the submission of Mr. Sood that once having found that financial loss was caused to the bank and an order under Section 4(6)(a) of the Act was passed quantifying the loss caused to the bank and based on a departmental proceedings when the charge-sheet was issued for such proceedings, having found the respondent guilty of

the misconduct as held by the decision in **Mahanadi Coalfields** (supra), the action of the bank withholding gratuity could not be faulted.

4.2 Qua the second submission of the aspect of the authority awarding interest at the rate of 10%, Mr. Sood would rely on the decision of this court in the case of **Ramanbhai Balchand Parmar vs State of Gujarat and Others [2016 LawSuit(Guj) 1837]** and submit that at best the rate of interest could be reduced to 6% as awarded in the case of **Ramanbhai Parmar** (supra).

5. Mr. Manan Bhatt, learned advocate for the respondent inviting the court's attention to the timeline would indicate that after the order of dismissal was passed on 09.02.2012 based on the charge-sheet issued, on an appeal being filed before the Appellate Authority, the penalty reduced was that of compulsory retirement. He would take the court through the charge-sheet imputing allegations against the petitioner where there was no imputation with regard to financial loss caused to the bank. He would also take the court through the first order of the disciplinary authority by which a penalty of dismissal was imposed wherein at best what was proved against the respondent was failure to take all possible steps to protect the interest of the bank, failure to discharge his duties with utmost devotion etc. He would support the order of the Appellate Authority and submit that as required under Section 4(6)(a) of the Act there was no quantification of the loss caused to the bank except for a figure of Rs.4.36 crores mentioned in the final order. Quantification was something that was a *sine qua non* in context of the procedural aspects as required under Section 4(6)(a) of the Act and according to him the decision of the High Court of Punjab and Haryana in the case of **UCO Bank and Others vs. Anju Mathur rendered in Letters Patent Appeal No. 566 of 2012 (O**

& M) and that of the Karnataka High Court in the case of **J.B. Micheal D'Souza vs. Appellate Authority Under The Payment of Gratuity Act, Bangalore and Others reported in 2002 (92) FLR 1200** also held that if there was failure to quantify loss caused to the bank there was breach of the Section 4(6)(a) of the Act and therefore the orders of the Controlling Authority as well as the Appellate Authority are just and proper.

6. The payment of Gratuity Act provides that under Section 7 of the Act a person who is eligible for payment of gratuity is entitled to payment of such amount within 30 days from the date it becomes payable. It is open for the authorities under the provisions of Section 4(6) of the Act, notwithstanding the provision of sub section (1) of section 4 to withhold gratuity of an employee whose services have been terminated for any act, wilfull omission or negligence causing any damage or loss or (2) destruction of property belonging to the employer. It is open for the employer to forfeit gratuity to the extent of damage or loss so caused.

6.1 Facts on hand would indicate that before the petitioner could superannuate on 30.04.2012, a statement of allegations and imputations was issued to the petitioner on 26.04.2011. Reading the statement would indicate that certain acts and omissions on the part of the respondent were alleged that he committed while he was the Branch Manager. Instances were set out based on which a departmental inquiry was conducted and an order of dismissal dated 30.04.2012 was passed. Reading the order of penalty initially passed on 09.02.2012 would indicate that the disciplinary authority held that the respondent used his power in an arbitrary manner and sanctioned loans haphazardly without following laid down norms. He was grossly negligent in keeping due diligence etc. He therefore was

held to have committed misconduct and was dismissed from service on the ground that he failed to take positive steps to protect the interest of the bank; that he failed to discharge his duties with utmost devotion, diligence, integrity and honesty and acted otherwise in the best performance of his initial duties.

6.2 On an appeal being filed by the respondent, the appellate authority on 13.01.2014 modified the order to that of compulsory retirement on the ground that the inquiry officer had held the charge of lack of honesty and integrity mainly relying on circumstantial evidence. As no direct oral or documentary evidence had been brought on inquiry, a benefit of doubt on the counts as aforesaid was extended to the respondent. After the penalty was modified to that of compulsory retirement on 13.01.2014 till such time the bank did not think it fit to invoke the provisions of Section 4(6) (a) of the Act. It was only on 15.09.2015 that the show cause notice in question was given and the same is on record. Reading the show cause notice would indicate that it reiterates the charges that the respondent was imputed with for the misconduct and the notice simply stated that the respondent had caused monetary loss to the bank of Rs.4.36 crores. An order of forfeiture was passed on 23.11.2015. Reading the timeline would indicate that despite a charge-sheet being issued in the year 2011 and the dismissal order of 2012, it was only after the penalty was modified to that of compulsory retirement in January 2014 and after the respondent approached the bank, did the bank think it fit to invoke the provisions of Section 4(6)(a) of the Act.

7. Perusal of the order of the Appellate Authority under the Act would indicate and in my opinion rightly so that this action of the bank was clearly an afterthought. The appellate Authority having extensively

quoted the provisions of Section 4(6)(a) of the Act confirmed the order of the Controlling Authority holding that the bank had almost after three years of the date of superannuation of the respondent thought it fit to invoke the provisions of Section 4(6)(a) of the Act.

8. As far as the submission of Mr. Sood, learned counsel for the bank relying on the decision in the case of **Mahanadi Coalfields** (supra) is concerned in support of his submission that the reliance of the judgement of **Jaswant Singh Gill** (supra) by the Appellate Authority was misconceived will not help him. The issue before the Apex Court in the case of **Mahanadi Coalfields** (supra) was whether it was permissible for the employer under the Rules concerned to withhold gratuity after superannuation of the employee on the grounds of pendency of disciplinary proceedings against him. The question before the Apex Court was interpretation of the rules of the bank where the bank had continued departmental proceedings against a delinquent employee who had superannuated. It was in this context that the rule was interpreted in favour of the bank and the judgment in the case of **Jaswant Singh Gill** (supra) was interpreted. The facts in the present case would indicate otherwise. A charge-sheet was issued in the year 2011 which culminated into the order of dismissal on 09.02.2012. The superannuation would have been on 30.04.2012 before which the disciplinary proceedings had well concluded. On an appeal being filed on 13.01.2014, the order of penalty was modified to that of compulsory retirement. Approximately three years after the order of dismissal and more than a year after the compulsory retirement did the bank think it fit to invoke the provisions of Section 4(6)(a) of the Act to initiate proceedings for forfeiture of gratuity.

9. The decision of the Division Bench of the Punjab and Haryana High Court in the case of **Anju Mathur** (supra) when applied to the facts of the present case would indicate that it was a case where a punishment of compulsory retirement was inflicted upon the respondent therein. A show cause notice was issued and the court after considering the show-cause notice as is evident on reading the present notice came to the conclusion that there was no quantification of the loss caused by the respondent employee. But for a single line averment in the notice that the respondent herein had caused loss of Rs.4.36 crores to the bank nothing apparently is indicated in the notice as to on what basis did the bank come to such a conclusion. So also is the question of law decided by the Karnataka High Court in the case of **J.B. Micheal D'Souza** (supra).

10. As far as the contention raised by the learned counsel for the petitioner that it was not open for the competent authority under the Act to delve into the order of the disciplinary authority by placing reliance on the case of **Mahanadi Coalfields** (supra) is out of context inasmuch as reference to the decision in the case of **Mahanadi Coalfields** (supra) was, as stated above, in the context of the interpretation of the powers of the authorities to continue disciplinary proceedings post retirement. Aid can always be taken by the authorities under the Act to assess the mindset of the bank especially when the bank had sought to invoke Section 4(6)(a) of the Act more than two and half years after the respondent was penalised. It was in this context that the authority appreciated the order of the Controlling Authority which also did not hold the respondent of having caused financial loss or damage to the bank.

11. As far as the discretion of the Controlling Authority to award interest at the rate of 10% considering the decision in the case of

Ramanbhai (supra), the rate of interest is reduced to that of 8% from that of 10%.

12. In view of the above, petition is partly allowed. The orders passed by the Controlling Authority as well as the Appellate Authority so far as directing payment of amount of Rs.9,77,440/- as gratuity are confirmed. However, the rate of interest of 10% is reduced to that of 8% with effect from 16.02.2012. The orders impugned are modified accordingly. No costs.

DIVYA

(BIREN VAISHNAV, J)

