(2005) 12 GUJ CK 0021

In the Gujarat High Court

Case No : S.C.A. No. 654 of 2001

Baroda Traders Co-operative Bank Ltd. APPELLANT

Vs

Mahendrabhai B. Shah RESPONDENT

Date of Decision : 15-12-2005

Acts Referred:

Citation : (2006) 110 FLR 789 : (2006) 2 LLJ 500

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : K.M. Patel, for the Appellant; B.S. Patel and Ranjan B. Patel, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—By way of this petition, the petitioner-Bank has prayed to quash and set aside the order dated November 6, 2000 passed by the Appellate Authority under the Payment of Gratuity Act, 1972, in Appeal No. 12 of 2000 as also the order dated March 22, 2000 passed by the Controlling Authority in Gratuity Application No. 19 of 1999 by which the petitioner was directed to pay the amount of gratuity to the respondent.

2. The brief facts of the case are that the respondent herein was working as an Officer with the petitioner-Bank. It was alleged against the respondent that by abusing his position as an officer, he had fraudulently withdrew huge amounts by way of loans not admissible to him, thereby causing financial loss to the tune of Rs. 1,76,286/- to the petitioner-Bank. The alleged fraudulent transaction came to the notice of the petitioner Bank when the respondent retired from service on May 1, 1998.

3. In view of the alleged misappropriation, the respondent was not paid with his amount of Gratuity. Therefore, Special Civil Suit No. 226 of 1999 came to be filed for the recovery of the said amount before the Court of the learned Civil Judge (S.D), Baroda.

4. As the gratuity payable to the respondent was forfeited on account of the alleged financial loss, the respondent filed application being Application No. 19 of 1999 before the Controlling Authority, Baroda for a direction to release the said amount of gratuity.

5. The Controlling Authority vide order dated March 22, 2000 allowed the said application by directing the petitioner to pay an amount of Rs. 1,16,768/- towards gratuity along with 10% interest thereon from January 1, 1998.

6. Being aggrieved by the said Order of the Controlling Authority, the petitioner filed appeal before the Appellate Authority under the Payment of Gratuity Act which was numbered as Appeal No. 12 of 2000. The Appellate Authority vide impugned order dated November 6, 2000 dismissed the said appeal preferred by the petitioner. Hence, this petition.

7. Mr. K.M. Patel learned advocate for petitioner has contended that the respondent had committed misappropriation of the funds of the petitioner Bank. He has submitted that the petitioner Bank came to know about the said fraudulent act of the respondent only after the respondent had retired from the service. He has, therefore, submitted that since the petitioner Bank had suffered huge financial loss on account of the fraudulent act of the respondent, it had withheld the amount of gratuity of the respondent.

8. Mr. Patel has relied upon a decision in the case of Secretary, O.N.G.C. Ltd. and Another Vs. V.U. Warrier, wherein it has been held that the employer has a right to withhold gratuity in case of any misconduct of the employee which entails financial loss to the employer.

9. Heard learned Counsel for the parties and perused the documents placed on record. The issue involved in this petition is squarely covered by a decision of this Court in the case of Valsad District Central Co-operative Bank Ltd. Vs. Krushnalal Manilal Vashi, wherein it has been held that the amount of gratuity could not have been forfeited in a case where an employee who is placed under suspension for misappropriation of funds, had retired from service during the pendency of departmental inquiry and criminal case. It has been further held therein that the order of termination passed with retrospective effect, after the employee had reached the age of superannuation, is wholly misconceived. So far as the aspect of forfeiture of the amount for the loss caused was concerned, the Court held that the exact amount of loss has to be ascertained.

10. In the present case, the petitioner Bank has alleged that the respondent employee had misappropriated funds of the petitioner Bank to the tune of Rs. 1,76,286/-. However, the said amount of misappropriation has neither been established by the petitioner- employer nor it has been ascertained by any appropriate decree passed by any competent Court. It is a well-settled principle that one cannot be a judge of his own cause unless the competent Court passes an appropriate decree or the authority establishes the liability of the employee.

11. Merely on its assessment, the petitioner Bank cannot arbitrarily withhold the amount of gratuity. If such rights are given to the employers, then it is quite natural that all the employers will take shelter of law and will try to avoid the payment of gratuity which an employee is entitled to receive for the long and meritorious service rendered by him.

12. In above view of the matter, I am of the opinion that the view taken by both the authorities below is in consonance with the law laid down by the Apex Court. Hence, no interference is required by this Court in this petition.

13. In the result, the petition is dismissed. The impugned orders passed by both the authorities below are confirmed. Rule is discharged with no order as to costs.