
(2014) 02 PAT CK 0081
In the Patna High Court
Case No : CWJC No. 12569 of 2013

Hari Narayan Ram

APPELLANT

Vs

The Bank of India

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Constitution of India, 1950 — Article 300A
Payment of Gratuity Act, 1972 — Section 4

Citation : (2014) 4 PLJR 452

Hon'ble Judges : Hemant Kumar Srivastava, J

Bench : Single Bench

Advocate : Lalan Tiwari, Advocate for the Appellant; Rupak Kumar, Advocate for the Respondent

Judgement

Hemant Kumar Srivastava, J.—Petitioner is aggrieved by show cause notice bearing Reference No. ZO:HRD:MC:2012-13:5989 dated 1.3.2013 issued by Zonal Manager, Patna Zone, Bank of India asking the petitioner as to why amount of his gratuity be not adjusted by the Bank towards financial loss to the tune of Rs. 8,21,690.35. Petitioner joined in the Bank of India as clerk on 1.3.1979 and he continued in service with the above stated Bank and posted at various branches of the said Bank but on 9.7.2009, he was put under suspension and departmental proceeding was initiated against him on the charges that huge amount of Bank was misappropriated by him. In the aforesaid departmental proceeding, major punishment of dismissal from service was awarded against him vide order dated 27.12.2010. After dismissal of the petitioner from service, Bank of India seized two saving bank accounts of the petitioner and being aggrieved by the aforesaid action of the Bank, petitioner filed CWJC No. 8317/2012 which was disposed of by a bench of this court on 10.7.2012 directing the Assistant General Manager, Bank Zonal Office, Chanakya Towers, R" Block, Patna to consider the representation of the petitioner, if necessary, obtain further guidelines from the higher authorities and then pass appropriate order in accordance with law, preferably, within three months from the date of receipt/

production of a copy of the aforesaid order.

2. On 1.3.2013 concerned Bank issued show cause notice to the petitioner as to why defalcated amount be not adjusted from gratuity of the petitioner. Being aggrieved by issuance of the aforesaid show cause notice, petitioner came before this court.

3. Learned counsel for the petitioner submitted that in departmental proceeding, petitioner was awarded with punishment of removal from service and nowhere in the order of the departmental proceeding, it had been mentioned that defalcated amount shall be adjusted from gratuity of the petitioner and therefore, the above stated show cause notice dated 1.3.2013 is not accordance with law and if concerned Bank is permitted to adjust defalcated amount from gratuity of the petitioner, the same shall be amount to double jeopardy. Learned counsel for the petitioner further submitted that in spite of specific direction of this court, concerned Assistant General Manager did not pass any order on the representation of the petitioner and therefore, the aforesaid act of Bank officials is clear violation of order of this court. Learned counsel for the petitioner further, submitted that payment of gratuity cannot be stopped by the employer as held by Apex Court of this country in Civil Appeal No. 6770 of 2013 Ed.--Reported in State of Jharkhand and Others Vs. Jitendra Kumar Srivastava and Another, decided on 14.8.2013.

4. On the other hand, learned counsel appearing for the Bank refuted the above stated submissions arguing that admittedly, petitioner faced departmental proceeding in which his guilt was proved and accordingly, he was awarded major penalty of dismissal from service and Rule 8 of the Bank of India Gratuity Fund Rules says that if misconduct of Bank employees causes financial loss to the Bank, gratuity of the said employee can be forfeited to the extent of loss caused to Bank. It is submitted that in the instant case, admittedly, huge financial loss was caused to the Bank due to misconduct of the petitioner and therefore, under the above stated rule of Bank of India gratuity fund rule, show cause notice dated 1.3.2013 has been issued to the petitioner and the Bank does have ample power to forfeit gratuity of the petitioner to the extent of loss caused to the Bank. It is further contended by him that in course of departmental enquiry, it came to light that petitioner deposited defalcated amount in his above stated two saving bank accounts and that was the reason the Bank decided to seize the aforesaid accounts and the aforesaid information was given to the petitioner through registered post and representation of the petitioner was disposed of vide order dated 5.3.2013.

5. Certain facts are admitted. It is an admitted position that the petitioner faced departmental proceeding and he was found guilty for defalcation of Bank money and accordingly, he was awarded major punishment of dismissal from service vide order dated 27.12.2010 passed in the above stated departmental proceeding. Typed copy of the aforesaid order dated 27.12.2010 has been annexed with the writ petition as Annexure-2 which shows that in the aforesaid

departmental proceeding, Enquiry Officer came to the conclusion that due to misconduct of the petitioner, Bank suffered financial loss to the tune of Rs. 8,21,690.35.

6. No doubt, in order dated 27.12.2010, it has not been mentioned that defalcated amount shall also be recovered from the petitioner but mentioning of the aforesaid fact in dismissal order was not at all required. Moreover, show cause notice dated 1.3.2013 has been issued to the petitioner under gratuity rule of the concerned Bank which has been framed in consonance with Payment of Gratuity Act, 1972. Section 4 sub-clause (6) of Payment of Gratuity Act, 1972 says that 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. Similarly, Bank of India gratuity fund rules have been framed in consonance with Payment of Gratuity Act, 1972 and Rule 8 of the aforesaid Rules says that if misconduct of any employee causes financial loss to the Bank, in that case, Bank can forfeit gratuity amount to the extent of loss caused to the Bank. Therefore, it is apparent from the aforesaid rule that Bank does have ample power to forfeit amount of gratuity to the tune of loss caused to the Bank.

7. In the present case, Bank suffered loss to the tune of Rs. 8,21,690.35 and in the departmental proceeding, it was proved that misconduct of the petitioner caused the aforesaid financial loss to the Bank and, therefore, in my view, Bank has every right to forfeit amount of gratuity of the petitioner to the tune of Rs. 8,21,690.35.

8. So far as seizure of saving bank accounts of the petitioner by the Bank is concerned, the same is not subject matter of this writ petition nor the aforesaid act of the Bank has been challenged by the petitioner in the present writ petition.

9. It has been argued on behalf of the petitioner that gratuity amount of the petitioner is his property and in view of Article 300-A of the Constitution of India, petitioner cannot be deprived of his property without due process of law but I am unable to accept the aforesaid contention because admittedly, Payment of Gratuity Act, 1972 as well as Rules framed by the concerned bank permit the Bank to forfeit gratuity amount of the petitioner to the extent of loss caused to the Bank and, therefore, it cannot be said that forfeiture of gratuity amount of the petitioner is without due process of law. It has also been argued that forfeiture of gratuity is amount to award further punishment to the petitioner and the aforesaid act of the Bank is hit by the principle of double jeopardy but I am again unable to accept the aforesaid contention because for his misconduct, petitioner faced departmental proceeding in which he was awarded punishment for removal of his service and so far as forfeiture of gratuity amount is concerned, the same has been forfeited under the statutory provision and the aforesaid provision came into play on account of proved misconduct of the petitioner by which Bank suffered loss and, therefore, both actions of concerned

Bank are different actions and both actions cannot be clubbed with each others. Therefore, in my view, the principle of double jeopardy is not applicable in this case.

10. So far as decision rendered by Apex Court of this country in the case of State of Jharkhand and Ors. vs. Jitendra Kumar Srivastava and Another (supra) is concerned, the same is not applicable in this case because in the above stated case, question arose as to whether in the absence of any provision of Pension Rules, the State Government can withhold a part of pension and/or gratuity during the pendency of departmental/criminal proceedings? and the Hon''ble Apex Court came to the conclusion that during the pendency of departmental/criminal proceedings, pension as well as gratuity cannot be withheld in absence of any specific provision. In the instant case, admittedly, petitioner was found guilty and awarded major punishment in the departmental proceeding and thereafter, the concerned Bank took steps for forfeiture of gratuity amount of the petitioner under specific provisions of gratuity Rule. Therefore, in my view, the above stated decision is not applicable in this case. On the basis of the aforesaid discussions, I do not find any substance in this writ petition and accordingly, this writ petition stands dismissed.