

(2014) 06 MAD CK 0297

In the Madras High Court

Case No : W.P. Nos. 12098 to 12101 of 2012 and M.P. No. 1 of 2012 in W.P. No. 12098 of 2012

K. Chandrasekar

APPELLANT

Vs

Chairman and Managing, Director Indian Bank

RESPONDENT

Date of Decision : 04-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 4(6)

Citation : (2014) 06 MAD CK 0297

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T. Raja, J.—Mr. K. Chandrasekar, formerly serving as Branch Manager of Chidambaram Indian Bank, having suffered an order of punishment of compulsory retirement from service on 12.10.2009 at the hands of Disciplinary Authority, the Deputy General Manager/ Circle Head, Cuddalore as confirmed by the orders dated 29.06.2009 passed by the third respondent, the General Manager, Indian Bank, Chennai and the order dated 24.05.2011 passed by the second respondent, the Executive Director, the Indian Bank, Chennai, has filed the present Writ Petition No. 12098 of 2012, assailing the impugned punishment on various grounds inter-alia that the order of major penalty of compulsory retirement passed under Regulation 4(h) of Indian Bank Officer Employee's (Discipline & Appeal) Regulations, 1976 is not only arbitrary and unreasonable but also disproportionate to the charge and violation of statutes and principles of natural justice.

2. Adding further, learned counsel for the petitioner submitted that when show cause notice was issued by the third respondent for certain irregularities in home loan accounts sanctioned by the petitioner, the said irregularities being minor, the same were properly explained by the petitioner. But, surprisingly the disciplinary

authority without considering the detailed explanations offered by the petitioner wrongly proceeded with the issuance of charge sheet on 20.10.2008, calling for explanation from the petitioner once again. The petitioner after receipt of the charge memo dated 20.10.2008, finding that the charges are minor and trivial, offered satisfactory explanations on 28.10.2008. But, the disciplinary authority wrongly rejected the explanations and ordered for holding enquiry even without furnishing the documents relied on by the respondents for framing the charges. Since the important documents were not made accessible to the petitioner, he was unable to defend the imputation. Though the same was also brought to the notice of the Inquiring Authority, no opportunity was given to the petitioner, which is against the principles of natural justice.

3. The first charge relates to the allegation of imputing failure on the part of the petitioner in respect of the borrower accounts furnished in Annexure-A to the charge memo, stating that without adhering to the rules and norms the petitioner had sanctioned home loans to various borrowers. In the explanation offered for the first charge the petitioner stated that as per the instructions of the head office in the circular dated 30.05.1998 fixing of staff accountability has to be done by taking into account the circumstances under which the decision is made during the relevant period and while sanctioning the above referred loan the petitioner was at a tremendous pressure to promote the structured loan products and it was a matter of common knowledge that every day the circle administration was asking the branches as to how many structured loans were granted and under such a situation the petitioner was concentrating only to achieve the business results, to achieve the corporate objective, due to which certain unintentional dilutions have happened. But, unfortunately the disciplinary authority without assigning any reason wrongly held the charge as proved. Learned counsel further stated that charge 1(a) relates to allegation that the petitioner had not obtained and verified the salary slips issued by the employer for six months and had not verified the statement of accounts of the savings bank. A suitable reply was given in his explanation stating that it is against truth since he has sanctioned 130 housing loan accounts and only 45 have been classified as NPA as on 31st March 2009 and after sale of 19 properties under SARFAESI, only 26 accounts remain under NPA now. The Inquiring Authority also in his findings confirmed that there are only sale of 23 properties and hence only 22 accounts remain under NPA now. Hence, proper explanation was offered, stating that since all the borrowers were genuine and available, the loan amount could be recovered without any loss to the bank and the total outstanding balance of Rs. 2,76,06,942.45 including MOI, in the 45 accounts classified under NPA as on 31.03.2009, against the available security value of Rs. 4,39,65,000.00 will clearly prove that the petitioner had not compromised the bank's interest in the sanction of these home loans. Moreover, there are valuable assets also available for recovery of the above said loan amounts. Again this was not accepted by both the inquiry authority and the disciplinary authority.

4. However, with regard to charge No. 1(b) that to arrive an eligible quantum of

loan, the petitioner is alleged to have taken into account the future rental income without any proof. A detailed and convincing reply was given, pointing out that the inquiry authority had not properly analysed document Exh.M.131 the Master circular on Indian Bank Home Loan Scheme. In the said circular, under point No. 2.6, it is clearly mentioned that besides salary, other permanent income by way of rent, interest on investment etc. may also be considered. Moreover, point No. 2.2 in the said circular also authorizes the Branch Manager to define the quantum of loan as 36 times monthly gross income or 60 months net monthly income whichever is higher. In view of the above, since the petitioner himself is the sanctioning authority, it was explained, he omitted to obtain such letters in proof of future rental value which is purely unintentional. This explanation also has been wrongly ignored. In respect of charge No. 1(c), it was alleged that the petitioner failed to scrutinize the other bank's liability for arriving at net income of the borrowers. The petitioner in his reply explained that the borrowers being NLC employees drew salary from other banks, therefore, borrowings from other Banks were possible as well. In his reply although the petitioner explained the real fact that the assets and liabilities statements submitted by the borrowers from other banks did not reflect the loan details availed by them, the respondents without even producing any documents to show that the borrowers have availed loan from other banks, based on presumption and assumption, which is erroneous, again held charge No. 1(c) as also proved. It is factually against the truth.

5. With regard to charge No. 1(d) that the petitioner had not ensured 40% take home pay on gross income after deduction of the proposed EMIs in respect of the Housing loan borrowers, explaining minutely the said as a false charge, the petitioner replied that only due to tremendous pressure given by the head office to achieve the target the petitioner had adjusted for the short fall arose by including the future rental value to the net take home pay and the same would fulfill the condition that the amount is more than the take home pay and thereby satisfied in his reply the 40% take home pay as stipulated by the bank ironically but the same was also not properly considered by the bank. Therefore, the approach adopted by the inquiry authority and also the disciplinary authority are unacceptable, he pleaded. Arguing further, he pleaded Charge No. 1(f) alleged that the petitioner had not obtained 36 post-dated cheques from the borrowers to ensure repayment of the loan on due dates, the petitioner has explained that charge No. 1(f) ought not to have been framed since the petitioner had produced all the cheques, that has also been admitted by MW-3 during his evidence that the cheques are available with the documents. Moreover, the Manager had only produced two loan accounts out of 130 accounts. The admitted facts made by MW3 were also ignored for the reasons best known to them.

6. With regard to charge No. 1(g) that the petitioner had sanctioned home loans on the same day of submitting the application and he has again released the amount within a very short time, while giving reply the petitioner made it clear that the charge again is not maintainable on the ground that the date of

application and the date of sanction of loan are one and the same but the date of release of the loan was at a later point of time. There was no any harm if sanction is accorded on the same day if the loan application satisfies all norms. Moreover, since the properties were purchased from a single builder and the limits in such cases were also disbursed in a single lot, the question of alleging sanction on the same day of application and releasing the amount within a short time cannot be put against the petitioner, he pleaded. Even with regard to charge No. 1(h) that there was a failure to make independent inquiry on market value, a proper emphatic reply was given to the charge stating that the valuations were done by the Panel valuer duly authorised by the bank and that apart for the recovery of balance amounts, the bank had already filed suits after adjusting the sale proceeds of the houses. Therefore, the allegation that the petitioner failed to make independent enquiry on the market value stands unreasoned. This explanation of the petitioner is also ignored, he pleaded.

7. Adding further, he pleaded, with regard to charge No. 1(i) that the petitioner had sanctioned Rs. 14 lakhs to one Mr. Arulchelvan for purchasing existing flat on 25.01.2006 thereby he has exceeded his powers and also has failed to report the same to Controlling Office and obtain confirmation, for which reply was given stating that during the relevant period, the petitioner was at a tremendous pressure to promote the structured loan products and it was a matter of common knowledge that every day the circle administration was asking the branches as to how many structured loans were granted. In view of the above pressure, the petitioner explained that he failed to report the same to the Controlling office and obtain confirmation and the action of the petitioner is purely unintentional. Adding further, learned counsel while taking his argument further stated that charge No. 1(j) alleging that the petitioner had sanctioned home loan of Rs. 6 lakhs at the age of 56 years to the borrower, which is against the prescribed norms for the age of the borrower and the borrower is also due to retire on 01.06.2008 and he has also failed to take undertaking letter from the borrower addressed to his employer for getting the terminal benefits and also to reduce the drawing limit by atleast 50% of the outstanding loan as per the norms prescribed by the head office, this is how the petitioner had explained in his reply stating that the said charge is not maintainable on the ground that when the net monthly income minus 40% of gross income was Rs. 7840/- against the EMIs of Rs. 7980/- which worked out to 38.94% of NTHP, which was also supported by MW3 in his deposition that the account is a standard account and the charge had become a non issue now, ironically. The inquiring authority once again held the charge proved and the same was also accepted by the disciplinary authority and also the appellate authority. Therefore, the impugned order imposing the unreasonable punishment is liable to be set aside, he pleaded.

8. Again, while explaining charge No. 1(k), which alleges that home loan account of one Mr. P. Kesava Raj for Rs. 10 lakhs wherein, the salary certificate of the borrower contains no deduction particulars and the income of his spouse is taken into account but he had not obtained the IT Assessment order/returns for three

financial years and that the income of the spouse consists only the commission received from a private firm which income is not eligible to be included, the petitioner replied stating that the salary slip has shown the gross/ net salary of the borrower at Rs. 13,658/- and the income of the spouse as Rs. 6906/-, which totally comes to Rs. 20,564/-, therefore, not obtaining copy of the last 12 months statements of Savings Bank Account is purely unintentional. This explanation was also rejected although MW3 admitted in his deposition that the account is a standard account and as a result the charge had become a non-issue now. With regard to charge No. 1(l) that the petitioner had sanctioned home loans to 12 borrowers for purchasing ready built houses but the sale deed was made for the cost of the undivided share of the land instead of the cost of the entire value of the flat and had failed to scrutinise the sale agreement between the borrower and the vendor, for which reply was given by the petitioner stating that the loans were sanctioned after obtaining the legal opinion and after the documents were scrutinised by the panel Advocate and in case of flats, the sale deed would be registered only for the extent of undivided share of land instead of entire value of the flats and some flats have been sold by the bank under the SARFAESI Act, which establishes that the bank is having a valid and clear title and hence the bank will not have any problem in selling the other properties as well. However, the said explanation was not accepted by the Inquiring authority and held the said charge also proved.

9. Regarding charge 1(m) that the petitioner has sanctioned loan to 23 borrowers beyond the actual eligible limit, namely, instead of Rs. 6,35,000/- he has sanctioned Rs. 7,50,000/- to one V.Sekar and as against Rs. 4,73,000/- he has sanctioned Rs. 7,50,000/- to one G. Pavadai etc., by deliberately taking into account the temporary allowances like leave encashment, festival advance and PH wages so as to arrive at a reasonable salary of the employees, thereby increasing the eligible loan amount which is against the prescribed norms for sanctioning home loans, the petitioner submitted his defence to the inquiring authority stating that during the relevant period he was under tremendous pressure to promote the structured loan products and in view of the aggressive pressure faced by him to achieve the business results to achieve the corporate objective. However, since all the borrowers are genuine and available as deposed by MW3 by enforcing the recovery measures under SARFAESI Act the loan amount could be recovered by the bank and even that explanation was rejected.

10. With regard to charge No. 2 that the petitioner released the full loan amount in one or two instalments to the borrowers, without following the prescribed stage-wise disbursement and without ensuring the stage-wise progress/ completion of the house under construction, the explanation was given stating that all were ready-built houses/ flats and therefore in such cases submission of stage-wise completion certificate did not arise for release of the amount as per the guidelines. But the inquiring authority merely saying that the petitioner has not produced any documents to prove that he has released loan disproportionate to the level of construction, has wrongly held against the petitioner. Again, coming

to charge No. 3 that the petitioner failed to conduct post-sanction follow up and deliberately failed to monitor the accounts properly, with the result, the instalments in most of the home loan accounts are not forthcoming as agreed upon and have become overdue, nearly 50 accounts have become NPA, therefore, the bank is finding it difficult to recover, which causes heavy loss to the public money, the petitioner in his reply stated that only 45 accounts had been classified as NPA as on 31st March 2009 and after sale of properties under SARFAESI Act only 26 accounts remain under NPA now and moreover all the borrowers are genuine and available for recovery and this has been admitted by MW3 stating that the loan amount could be recovered without any loss to the bank. However, the inquiring authority wrongly held the said charge also proved.

11. While going to charge No. 4, that the petitioner had sanctioned a home loan of Rs. 9.85 lakhs on 11.01.2007 to one Ms. Sudha who had already purchased the said house on 26.07.2006 is irregular, the petitioner gave his reply stating that the above loan account has already been closed on 13.09.2008 and thus the charge has become a non-issue but still, the inquiring authority held the charge against the petitioner. With regard to charge No. 5, that in 61 accounts the DPNs were not renewed and they were allowed to become time barred, the petitioner replied that only two of the DPNs were not renewed and the same was also admitted by MW3 in his deposition, yet the finding went against the petitioner, he pleaded. Regarding charge No. 6, that the petitioner has allowed 67 accounts for Rs. 53.32 lakhs to get time barred and in his reply to the inspection report the petitioner had stated that only one account was time barred, that too for Rs. 0.26 lakhs but it has been reported that there are still 61 time barred DPNs that has not been renewed by him, thus, he had furnished false information to the Controlling Office, for which it was explained that, as this charge is inter related to the earlier charge, his submission to the earlier charge holds good to this charge also. On this basis, requested the Inquiring Authority to take cognizance of the submission made to the earlier charge but the Inquiring Authority held this charge also as proved.

12. Finally, out of all charges, except charge No. 1(e), the Inquiring Authority found him guilty of all the charges, the disciplinary authority mechanically, without appreciating the detailed explanations offered to every charge, erroneously, held that the imputations levelled against the petitioner, are proved and accordingly he has imposed the major penalty of Compulsory Retirement, in terms of Regulation 4(h) of Indian Bank Officer Employees" (Discipline & Appeal) Regulations, 1976, learned counsel argued.

13. Continuing his argument, he stated that aggrieved by the same, although the petitioner filed appeal and review, both the Appellate Authority/ the third respondent and the Review Authority/the second respondent herein, dismissed the same, therefore, the impugned orders passed by the respondents are liable to be set aside.

14. Heard the learned counsel appearing for the petitioner and the learned

counsel for the respondents.

15. Opposing the above arguments, learned counsel for the respondents Bank urged this Court to dismiss the writ petition, since no error can be found against the order of compulsory retirement passed against the petitioner, which also subsequently stands approved by both the appellate and review authorities, for the reason that against the various irregularities committed by the petitioner, as a Branch Manager of Chidambaram Branch, the petitioner has failed to satisfy either of the authorities namely the Inquiring Officer, Disciplinary Authority, Appellate Authority and the Reviewing Authority. Moreover, the irregularities are very serious in nature. After narrating each charge and the explanation given by the petitioner, learned counsel for the respondent Bank took me to charge No. 1(I), which charge is that the petitioner has sanctioned home loan, for purchasing ready built houses but the sale deed were made for the cost of the undivided share of the land instead of the cost of the entire value of the flat, to the following borrowers:

Sl. No

Name of the borrower

HL sanctioned (in lacs)

Cost of flat (in lacs)

Sale deed for the value of (in lacs)

Purchased from

1

V. Krishnamoorthy

8.00

11.00

4.55

P. Saraswathy

2

Muruganantham

9.48

11.41

4.55

Karunakaran

3

R. Shaji

7.50

9.00

1.08

Mohanakrishnan

4

S Selvan

9.00

10.85

1.08

Parthylouis

5

V.Shanmugasundaram

9.00

10.85

1.08

Benjamin

6

N. Veerasamy

10.00

12.20

1.08

R.C.Mohanraj

7

K.Gunasekaran

8.55

10.55

1.08

Nanmarapandian

8

V. Kannan

7.65

9.20

1.08

G.Latha

9

D.Muthuramalingam

8.80

10.80

1.08

K.Thanikachalam

10

W.Thiagarajan

7.65

9.20

1.08

Jothy

11

S.Ramalingam

10.00

12.00

4.53

12

S.Arulselvan

14.00

16.50

5.53

M/s.Varadaram Construction

Explaining further, it was contended that the petitioner utterly failed to obtain and scrutinise the sale agreement between the borrower and the vendor.

Moreover, the loan document and the sale agreement between the borrower and the vendor were not available. As per the guidelines followed by the bank, for ready built houses the sale agreement has to be obtained and the proceeds to be paid by DD/BPO for the total consideration and the same should form part of the sale deed. Without obtaining sale agreement between the borrower and the vendor, the petitioner should not have sanctioned the loan. Moreover, the petitioner had not made any attempt to bring in any such papers even during the enquiry and therefore the Inquiry Authority has held the charge as proved, which has been confirmed by the Appellate and the Reviewing Authority. Hence, this Court cannot find fault with the reasoning given in the impugned order.

16. While turning to charge No. 1(m), learned counsel appearing for the bank, again drawing the attention of this Court, to support the impugned punishment submitted that the petitioner had sanctioned loan, again to the following borrowers, deliberately taking into account the temporary allowances like leave encashment, festival advance and PH wages in order to inflate the receivable salary, thereby increasing the eligible loan amount which is against the prescribed norms for sanctioning home loans.

Sl. No

Name of the borrower

Loan Amt sanctioned

Sanctioned on

Temporary allowance taken into account

HL actually eligible

1

V. Sekar

750000

09.06.06

4777

635000

2

G. Pavadai

750000

16.06.06

4525

473000

3

K. Sukumaran

1000000

11.05.05

4000

624000

4

T. Palanivelu

800000

27.04.06

13575

530000

5

G.Ramanathan

765000

11.11.05

4000

517000

6

K.Chandrasekaran

710000

29.11.05

4000

660000

7

S.Gnanabharathy

890000

17.12.05

4000

662000

8

N.Ingersal

750000

02.06.06

4000

463000

9

K.Karunanidhi

800000

29.06.06

4000

608000

10

B.Palanivel

675000

29.06.06

6248

310000

11

M.Krishnamurthy

800000

30.06.06

4533

12

M.Ravendran

800000

29.06.06

4628

586000 515000

13

K.Velusamy

800000

29.06.06

4985

14

K.Gunasekaran

855000

28.09.06

4889

569000 542000

15

K.Govindaraju

750000

03.04.06

4000

16

R.Jerald

800000

27.04.06

4494

489000 555000

17

R. Dowleth Begum

800000

27.04.06

6075

18

S.Muruganantham

948000

03.05.06

8000
455000 404000
19
S.Ramalingam
1000000
13.03.06
7133
20
P.Rangarajan
850000
07.09.06
5562
504000
668000
21
N.Shanmugam
750000
27.07.06
3628
22
R.Thennarasu
750000
27.07.06
4000
543000 455000
23
M.Swaranraj
750000
04.08.06
2000

Moreover, it was submitted before this Court that, as against the eligible limit of Rs. 6,35,000/- the petitioner has sanctioned loan for Rs. 7,50,000/- in favour of the borrower V. Sekar on 09.06.2006. Again, as against the eligible limit of Rs. 4,73,000/- exceeding the said limit a sum of Rs. 7,50,000/- was sanctioned to one G. Pavadai on 16.06.2006. Similarly, exceeding the limit of Rs. 6,24,000/- he has again sanctioned a sum of Rs. 10 lakhs in favour of K. Sukumaran on 11.05.2005. Further, the above table of these 23 borrowers, clearly shows that in respect of these 23 accounts, admittedly, the petitioner has sanctioned the loan over and above the eligible limit. Therefore, holding the said charge as proved by the disciplinary authority and as confirmed by the appellate and review authorities, cannot be interfered with. I also find some merits in his arguments, in as much as, the above table also shows that the petitioner had wrongly sanctioned loans to various persons exceeding the limits.

17. Similarly, while explaining charge No. 2, which alleges that the petitioner had released the full loan amount in one or two instalments to the IBHL borrowers, without following the prescribed stage-wise disbursal and without ensuring the stage-wise progress/completion of the house under construction and again without obtaining formal request letter from the borrower without ensuring the level of construction, for which the explanation given by the petitioner shows that he was the single person handling the loans portfolio as well as the sanctioning authority and therefore no separate register was maintained by the branch in respect of the inspection done. Since, the borrowers themselves would submit the completion certificate, no separate request letters are received from them for disbursal of the amount. Therefore, this explanation clearly shows that the petitioner cannot produce any document to prove that he has released loan proportionately to the level of construction, although the petitioner has taken a stand in his reply letter that in the case of sanctioning loan for purchase of rebuilt houses, the submission of stage-wise completion certificate do not arise, the petitioner has not substantiated his case before the inquiry authority, as to how many borrowers have purchased the ready built houses, therefore, the disciplinary authority accepting the finding given by the inquiry authority against the petitioner found him guilty, which in my opinion also cannot be interfered with.

18. Even in case of charge No. 3, which alleges that the petitioner has failed to conduct post-sanction follow up and failed to monitor the accounts properly, as a result 50 accounts have become NPA, in turn the bank has found it difficult to recover the amount involved in these accounts, causing heavy loss to the bank, the inquiry authority, refusing to accept the explanation offered by the petitioner accepted the charge that the total amount of overdue in the accounts, amounting to Rs. 4.83 crores is also proved against the petitioner. While coming to charge No. 4 that the petitioner had sanctioned home loan of Rs. 9.85 lakhs to Ms. Sudha, whereas the house had already been purchased from one Mr. Mohamed

Ansari Sahib on 26.07.2006 in her favour, it was rightly held by the disciplinary authority that the borrower is not eligible to avail the home loan. The said reasonings also do not call for any interference.

19. With regard to charge No. 5, that the petitioner has not followed the norms prescribed in the matter of renewal of DPNs and due to non-renewal of the DPNs the legal remedy available for recovery has been affected and the bank is put to possible financial loss. In fact, there was no explanation given by the petitioner on this issue, therefore, the disciplinary authority has rightly held this charge also proved against him. Finally, regarding charge No. 6 alleging that he had allowed 67 accounts for Rs. 53.32 lakhs, to get time barred and he had furnished false information to the Controlling Office, the petitioner has not given any satisfactory explanation except merely stating that only one DPN account has to be renewed.

20. Therefore the disciplinary authority accepting the findings of the inquiry authority, that all the charges from 1 to 6 are proved, other than charge No. 1(e), has imposed the major penalty of compulsory retirement in terms of Regulation 4(h) of Indian Bank Officer Employees' (Discipline & Appeal) Regulations, 1976 and the same also have been confirmed by both the appellate and reviewing authorities.

21. Since, the above findings of facts have lead to the imposition of the said punishment, this court sitting under Article 226 of the Constitution of India is unable to re-appreciate the evidence to interfere with the quantum of punishment awarded, for a simple reason that a bank officer should discharge his duties with utmost honesty, integrity, devotion and diligence and should do nothing unbecoming of a bank officer. Since he deals with the money of not only the customers and depositors but also with the most valuable public money, every officer of the bank is required to take all possible steps to protect the interest of the bank and discharge his duties with utmost integrity. Good conduct and discipline are inseparable from the functioning of every officer of the bank. As was observed by the Apex Court in Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, , there is no defence available to say that there was no loss or profit resulted in case, when the officer acted without authority. Moreover, the charges levelled against the petitioners and subsequently found proved were not casual in nature but are very serious. These aspects do not impress this court to interfere.

22. In view of the above, the W.P. No. 12098 of 2012 fails and the same is dismissed.

23. While coming to the prayers in the other writ petitions, namely, whether a bank officer who has been compulsorily retired by way of punishment is entitled to get leave encashment, Bank's contribution of Provident Fund and Gratuity, learned counsel appearing for the petitioner, placing reliance on the judgment of this court in D. Kalaichelvan vs. Union of India rep. By its Executive Director

(Appellate Authority), Industrial Relations Division, Central Office, Vidhan Bhavan, Mumbai & anr., reported in CDJ 2012 MHC 3914, argued that, when a similar and identical issue came up for consideration, this Court by relying upon the judgment of the Hon''ble Division Bench of Punjab and Haryana High Court in UCO Bank & Ors. vs. Ashwani Kumar Sharma, decided on 01.02.2010 in LPA No. 191 of 2006 (O&M), has concluded that the very object of imposing the punishment of compulsory retirement for misconduct, is that an employee should not lose the benefit which accrued to him for the service rendered till the date of compulsory retirement. And further, the compulsory retirement cannot be treated as termination by way of punishment, as the termination is one of the punishments, under the Regulations. On this basis, when this Court has already issued direction to grant encashment of accumulated privilege leave and gratuity to the petitioner therein, the prayer for payment of leave encashment, Bank's Provident Fund Contribution and Gratuity herein, should also be allowed.

24. Mrs. Rita Chandrasekaran, learned counsel appearing for the Bank submitted before this Court that these 3 writ petitions seeking prayer for leave encashment, Bank's Provident Fund Contribution and Gratuity in favour of the petitioner, who suffered compulsory retirement by way of punishment on account of misconduct proved against him, after regular departmental enquiry, is misconceived, as he is not entitled for payment of leave encashment, since it is lapse of leave on his compulsory retirement, as per Regulation 38 of the Indian Bank (Officers'') Service Regulations, 1979. The petitioner not only loses encashment of his leave salary but also the payment of gratuity, as he was imposed with the punishment of compulsory retirement, in terms of Regulation 46(1)(e). That apart, as per Rule 4(6)(a) of the Payment of Gratuity Act, 1972, for committing loss to the bank, for his proved misconduct, the gratuity payable is forfeited. I find some force in her arguments. It is more appropriate to extract Regulation 38 of the Indian Bank (Officers'') Service Regulations, 1979.

38. LAPSE OF LEAVE Save as provided below, all leave to the credit of an Officer shall lapse on resignation, retirement, death, discharge, dismissal or termination;

Provided that where an Officer retires from the Bank's service, he shall be eligible to be paid a sum equivalent to the emoluments of any period, not exceeding 240 days of Privilege Leave he had accumulated.

Provided further that where an Officer dies while in service, there shall be payable to his legal representatives, a sum equivalent to the emoluments for the period not exceeding 240 days of Privilege Leave to his credit as on the date of his death.

Provided also that where an officer leaves or discontinues his services, resignation on or after 1st April 2001 after giving due notice under sub-regulation (2) of Regulation 20, he may be paid a sum equivalent to emoluments in respect of the privilege leave to the extent of half of such leave to his credit on the date of cessation of service, subject to maximum of 120 days.

When the above mentioned Regulation 38 makes it clear that all the leave to the credit of an officer shall lapse on resignation, retirement, death, discharge, dismissal or termination, the question of payment of the benefit of accumulation of privilege leave upto 240 days is out of consideration. Learned counsel further submitted that the judgment in *D. Kalaichelvan vs. Union of India* rep. By its Executive Director (Appellate Authority), Industrial Relations Division, Central Office, Vidhan Bhavan, Mumbai & anr., reported in CDJ 2012 MHC 3914, that has been based on the judgment of the Hon'ble Division Bench of Punjab and Haryana High Court in *UCO Bank & Ors. vs. Ashwani Kumar Sharma*, cannot be applied since the Hon'ble Full Bench of Punjab-Haryana High Court, in the case of *UCO Bank & Ors. vs. Anju Mathur*, decided on 07.03.2013 in LPA No. 566 of 2012 (O&M), has over ruled. Therefore, it is relevant to extract the following paragraphs:

13. Regulation 46 of the Officers' Regulations makes every officer eligible for gratuity in certain circumstances which include retirement, death, disablement, resignation and termination. However, Clause (e) states that if the termination of service is occasioned by way of punishment, then the officer will not be entitled to gratuity. The Division Bench in *Ashwani Kumar Sharma* (supra) held that this clause cannot apply to the case of compulsory retirement. That is the only reason given, but without any elaboration. We are afraid, we cannot accept this to be a justified reason, as it leads to wrong interpretation of Clause (e) of Regulation 46 of the Officers' Regulations.

14. We would like to emphasize that compulsory retirement is of two types. There can be an administrative order retiring an employee compulsorily from service when the employer finds that the employee has become deadwood. However, the compulsory retirement is also provided as one of the modes of punishment in the Disciplinary and Appeal Regulations, 1976 framed by the Bank. Whenever compulsory retirement is effected by way of penalty which is imposed after holding a regular enquiry, then the compulsory retirement leads to termination by way of punishment. Termination of service can result by various modes. It amounts to cessation of employment whereupon the employer-employee relation comes to an end. The purport of Regulation 46(1) (e) is very clear. Whenever it is a case of termination by any other mode than by way of punishment, gratuity is payable, but not when termination is LPA-566-2012-11- occasioned by way of penalty on account of misconduct committed by an employee established in the regular departmental enquiry against such delinquent employee.

15. We are, therefore, of the opinion that Regulation 46(1) of the Officers' Regulations would not apply when termination is occasioned by way of compulsory retirement by way of punishment on account of misconduct proved against such an employee after regular departmental enquiry. To that extent, the judgment of Division Bench in *Ashwani Kumar Sharma* (supra) does not lay down correct law and is hereby overruled.

16. The next question is as to whether in all cases where the penalty of

compulsory retirement is imposed, the gratuity is to be forfeited. Answer to this is to be found in Section 4(6) of the Payment of Gratuity Act, 1972. This sub-section reads as under?-(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] --

(c) 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

(d) if the services of such employee have been terminated for any act which constitutes an offence involved moral turpitude, provided that such offence is committed by him in the course of his employment.

This sub-section gives the instances when the gratuity can be forfeited and the forfeiture can be whole or partial. We are concerned herein with Clauses (a) and (d). The gratuity can be forfeited if there is damage or LPA-566-2012-12- loss suffered by the employer because of willful omission or negligence of the employee which act led to his termination. In that case, the forfeiture has to be to the extent of damage or loss caused. The gratuity can also be forfeited if the misconduct by the delinquent employee constitutes an offence involving moral turpitude and when such an offence is committed by him in the course of his employment.

The judgment of the full bench of Punjab and Haryana High Court has made it clear that if termination is occasioned by way of punishment to an employee, after regular departmental enquiry, the employee is not entitled to leave encashment. Accordingly, the prayer for grant of leave encashment is refused.

25. With regard to the prayer for direction to release the Bank's Provident Fund Contribution, this issue is also answered by the full bench of Punjab-Haryana High Court, in the case of UCO Bank & Ors. vs. Anju Mathur, in paragraph 28, which reads as follows:

28. Rules 17 and 18 of the UCO Bank Employees' Provident Fund Rules are to the following effect:

17. Any contributor who is dismissed for insubordination, misconduct fraud or any other cause of a like nature or retires from the Bank on consequent thereof shall only be entitled to repayment of the amount of his own contributions with the interest accrued thereon at the rate and in manner aforesaid. The Trustees shall be the sole judges of the sufficiency of the cause of the dismissal or retirement of any contributor in any of the foregoing cases.

18. If a contributor is dismissed for fraud or misconduct the Bank shall be entitled to recover from the contributions made by the Bank to the individual

account of the contributor and the interest (simple and compound) credited in respect of such contributions any loss or damage resulting to the Bank from the cause entailing such dismissal. The Board shall be entitled to declare the amount of loss or damage so resulting and their declaration in that behalf shall be final and conclusive and the amount so declared shall be paid to the Bank. As is clear from the reading of Rule 17, it would apply when an employee (contributor) is either dismissed or he is retired from service and such dismissal/ retirement is caused as a result of insubordination, misconduct, fraud or any other cause of a like nature. In such a case, the contributor is entitled to repayment of the amount of his own contribution only along with interest accrued thereon. However, the decision has to be that of Trustees of the Provident Fund Trust who are treated as sole judges of the sufficiency of the cause of dismissal or retirement of any contributor. In the present case, no doubt the respondent is given the punishment of compulsory retirement after holding an enquiry, however, there is no LPA-566-2012-20- decision of the Board of Trustees and the decision is taken by the Bank. It is the Board of Trustees which is supposed to take such a decision is provided in Rule 17 of the Provident Fund Rules.

A reading of the above judgment further clearly shows that if the contributor is dismissed for fraud or misconduct, the bank is at liberty to recover from the contributions made by the bank to the individual account of the said contributor including the interest accrued in respect of his contributions for any loss or damage resulting to the bank. In the present case, the respondent has imposed the punishment of compulsory retirement, after holding detailed enquiry. Subsequently, there is an order passed by the respondent bank holding that the financial loss to be recovered by the bank, due to the proved charges listed in the charge sheet dated 20.10.2008, amounting to Rs. 815.65 lakhs is liable to be recovered as per Rule 11/17 of Indian Bank Staff PF Rules. On this basis his PF (BC) of Rs. 9,26,128.83 has been rightly withheld. Hence, the same is refused.

26. While turning to the other prayer of payment of gratuity, let us consider Section 4(6) of the Payment of Gratuity Act, 1972, which reads as under:

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 involved moral turpitude, provided that such offence is committed by him in the course of his employment.

The above provision came up for consideration before the Hon''ble Full Bench of Punjab-Haryana High Court, in the case of UCO Bank & Ors. vs. Anju Mathur, decided on 07.03.2013 in LPA No. 566 of 2012 (O&M), after considering judgments of various High Courts, the full Bench has held that the above sub section gives the instances when the gratuity can be forfeited and the procedures could be whole or partial. Explaining further, it has been held that the gratuity can be forfeited if there is damage or loss caused by the willful omission of the employee which act lead to his termination. In that case, the forfeiture has to be, to the extent of damage or loss caused. Accordingly, it has been held that the gratuity can be forfeited if the misconduct of the delinquent involves moral turpitude. Therefore, the prayer for payment of gratuity having been denied by the respondents on the ground that the petitioner has caused huge loss to the bank and also suffered the punishment of compulsory retirement, the same is also herein rejected.

27. In view of the above, the orders refusing to grant leave encashment, Bank's contribution of Provident Fund and Gratuity, as he is not eligible after being compulsorily retired, by way of punishment is also in order. Hence, the Writ Petitions fail and the same are dismissed.

28. Accordingly, all the Writ Petitions are dismissed. Consequently, the connected M.P. is closed. No order as to costs.