

(2016) 02 CAL CK 0108
In the Calcutta High Court
Case No : W.P. 1670 (W) of 2016

Rebati Ranjan Ray

APPELLANT

Vs

United Bank of India & Another

RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 14

Citation : (2016) 2 CalHCN 41 : (2016) 5 SLR 417 : (2016) 3 WBLR 522

Hon'ble Judges : Sanjib Banerjee, J.

Bench : Single Bench

Advocate : Mr. Sudeep Sanyal and Mr. Sukanta Das, Advocates, for the Appellant; Mr. R.N. Majumder, Mr. Sourav Chakraborty and Mr. Supratim Bhattacharjee, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Sanjib Banerjee, J.—The petitioner has been dismissed from service under the United Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976. The order of punishment emphasised that the petitioner's dismissal would be a disqualification for future employment.

2. The order of punishment has been upheld in appeal and the petitioner does not question the same in the present proceedings.

3. The grievance of the petitioner is that the gratuity that was mandatorily payable to the petitioner under the Payment of Gratuity Act, 1972 has been disallowed.

4. The petitioner questions the propriety of an order passed by the appellate authority under the said Act of 1972. The petitioner refers to Section 14 of the said Act of 1972 which provides that the provisions of such Act or any rule made thereunder "shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract

having effect by virtue of any enactment other than this Act."

5. The petitioner questions the validity and propriety of Regulation 46 of the Service Regulations in so far as a clause therein mandates that "termination of service by way of punishment after completion of ten years of service" would not entitle the terminated employee to receive gratuity.

6. Section 4(1) of the said Act of 1972 makes it mandatory for gratuity to be paid to an employee on the termination of his employment after he has rendered continuous service for not less than five years. The exception to the rule in sub-section (1) is recognised in sub-section (6) thereof. Section 4(6)(b)(ii) is relevant for the present purpose. Such provision, in its material part, provides as follows:

"4. Payment of Gratuity. ?

(1) ?

(6) Notwithstanding anything contained in sub-section (1), ?

(a) ?

(b) The gratuity payable to an employee may be wholly or partially forfeited

(i) ?

(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 course of his employment."

7. The charges brought against the petitioner pertained to, inter alia, large scale transfer of funds to a particular group of businessmen, without following the norms of the bank and without ensuring that the bank's interest was protected in adequate or appropriate security being obtained for the credit facility granted. In plain language, the charge-sheet made out that for extraneous considerations the petitioner had favoured a particular business house. Such charge, indisputably, amounted to a charge of moral turpitude, whether or not the petitioner was charged with actually accepting any bribe or like extraneous consideration or the same was proved.

8. Neither Section 14 of the Act nor the non-obstante clause therein precludes the existence of any rule in any contract or regulations governing any employees that prohibit the payment of gratuity in certain circumstances. Section 14 of the Act of 1972 implies that to the extent the provisions contained in any other statute or instrument are at variance with, or in derogation of, the provisions of the Act of 1972, the same would be of no effect.

9. If there is a provision in any service regulations which prohibits the payment of gratuity to a person dismissed from service on the ground of moral turpitude, the same cannot be said to be at variance with, or in derogation of, the provisions of the Act of 1972 notwithstanding Section 14 of the Act. Section 4(1) of the Act of 1972 is the very essence of the statute. Sub-section (6) of Section 4

carves out an exception to the general rule in sub-section (1). If there is any law or instrument which adheres to the exception carved out under Section 4(6) of the Act, the operation of such law or instrument is not affected by overriding Section 14 of the Act of 1972.

10. Since there is no merit in the petitioner's claim for receiving gratuity and an omnibus challenge to regulation 4(6)(1)(e) of the bank's regulations is not permissible when the petitioner's case appears to be covered by the law as recognised above, W.P. 1670 (W) of 2016 is dismissed with the observation that the petitioner is not entitled to receive any gratuity upon the petitioner's services being terminated on a charge which can be seen to involve moral turpitude.

11. There will be no order as to costs.