

(2022) 10 CHH CK 0002
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 503 Of 2020

Siyaram Basanti

APPELLANT

Vs

Chhattisgarh Rajya Gramin Bank

RESPONDENT

Date of Decision : 10-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 22, 226
Payment of Gratuity Act, 1972 — Section 4, 4(5), 4(6), 4(6)(a), 4(6)(b), 4(6)(b)(i),
4(6)(b)(ii), 5(6), 7

Citation : (2022) 10 CHH CK 0002

Hon'ble Judges : Narendra Kumar Vyas, J

Bench : Single Bench

Advocate : Sharmila Singhai, Kanwaljeet Singh Saini, N.Naha Roy

Final Decision : Allowed

Judgement

1. The Petitioner who was initially appointed as Branch Manager in the respondent Bank on 07.10.1982, has been promoted on the post of Officer Scale II, subsequently he has been promoted on the post of Officer Scale I and his services were dismissed on 05.05.2015 after departmental enquiry.

2. The punishment order of dismissal from services specially provides that the dismissal from service shall ordinarily be disqualification from future employment. Against that, petitioner has preferred an appeal before the appellate authority who vide order dated 13.10.2015 has dismissed the appeal. Against the dismissal from service the petitioner has preferred writ petition being WP(S) No. 1148/2016 which is pending consideration before this Court. It has been further contended that the petitioner after 33 years of service is entitled to gratuity, provident fund and leave encashment which have been withheld by the respondent Bank without rhyme and reason. Therefore, he has moved an application before the respondent Bank for releasing the gratuity on 01.03.2019, 18.06.2019 and 02.12.2019. But, no decision has been taken on the said applications. It has also been contended that the respondent bank vide memo

dated 10.06.2019 has declined to grant him pension also in view of Regulation 20, 29 of Chhattisgarh Rajya Gramin Bank (Karmchari) Pension Regulation, 2018 which are applicable to the officers / employees of the bank.

3. On above factual foundation the petitioner has filed writ petition and prayed for grant of gratuity, provident fund and leave encashment. The respondent Bank has filed their return in which they have contended that as per Regulation 72 of Chhattisgarh Rajya Gramin Bank (Officers and Employees) Service Regulation, 2013 the eligibility of an employee for payment of gratuity is governed as per the provisions of Payment of Gratuity Act, 1972 and Regulation No. 72(2) provides that eligibility of gratuity on retirement, death, disablement rendering unfit for further service or resignation after 10 years of continuous service or termination of service in any other way except by way of punishment after 10 years of service. Since the petitioner has been dismissed from service by way of misconduct therefore he is not entitled to get gratuity. It is further submitted that these regulations have statutory force and operate against the petitioner which prohibits payment of gratuity to the petitioner in view of dismissal from service. So far as claim of provident fund is concerned the petitioner is entitled to get provident fund subject to submission of form before the appropriate office and since he has been dismissed from service, therefore, he is not entitled to get leave encashment also. It has been further contended that the petitioner has not exhausted the remedy available to him under Payment of Gratuity Act, 1972 by filing an application before the Controlling Authority and thereafter filing an appeal, thus present writ petition is not maintainable in view of efficacious alternative remedy available to the petitioner and would pray for dismissal of the writ petition.

4. The petitioner has filed rejoinder wherein he has stated that from bare perusal of Regulation 72 of Regulation 2013 it is clear that every officer or employee shall be eligible for gratuity provided that there shall be no forfeiture of gratuity on dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only. It has also been stated that though the petitioner was dismissed from service by way of punishment but no financial loss has been caused to the bank as reflected from the punishment order dated 05.05.2015. It has also been contended that the Regulation, 2018 is not applicable as the petitioner was already dismissed from service on 05.05.2015. It has also been contended that as per Rule 45 of Regulation of 2013 it specifically provides for releasing the normal retiral benefits and there is explanation to this clause which provides that normal retiral benefits such as encashment of privileged leave and gratuity may be withheld till the completion of disciplinary proceedings and passing of final order by the competent authority and release of benefit can be as per the final order of the competent authority.

5. The learned Sr. Advocate for the petitioner would submit that since there is no prohibition in releasing the gratuity and leave encashment while passing the

order of dismissal on 05.05.2015 the petitioner is entitled to get gratuity with interest and leave encashment amount.

6. I have heard learned counsel for the parties and perused the record with utmost satisfaction.

7. Before examining the case on merit it is expedient for this Court to consider the objection raised by the learned counsel for the respondent about maintainability of the writ petition. It is not in dispute that Payment of Gratuity Act, 1972 provides complete mechanism which relates to gratuity. Section 4 of the Payment of Gratuity Act provides filing of application before the Controlling Authority under Payment of Gratuity Act for issuance of direction to the employer for releasing the gratuity. Section 7 of Payment of Gratuity Act provides appellate forum of filing appeal by the aggrieved person against the order/direction passed by the Controlling Authority. But the availability of alternative efficacious remedy is no bar for this Court to entertain writ petition as in the present case there is no disputed fact involved only interpretation of regulations and provisions of the Gratuity Act has to be examined. The facts about the dismissal from service of the petitioner and denial gratuity by the respondents are admitted facts therefore, this Court can very well entertain this writ petition. This issue of availability of alternative remedy vice versa maintainability of the writ petition has come up for consideration before the Hon'ble Supreme Court in case of M/S Radha Krishan Industries vs The State of Himachal Pradesh reported in (2021) 6 SCC 771 wherein the Hon'ble Supreme Court has held as under:-

"27. The principles of law which emerge are that ;-

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

27.4 An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

27.5 When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of

the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

8. In view of above stated factual and legal position the objection raised by the learned counsel for the respondent with regard to maintainability of writ petition is turned down and the writ petition is being examined by this Court on merits.

9. Before advertng to the factual and legal matrix of the case it is expedient for this Court to extract relevant provisions of the Chhattisgarh Rajya Gramin Bank (Officers and Employees) Service Regulation, 2013 which has been published in Government Gazette on 25.02.2015. The relevant portion thereof is reproduced as under:-

45. Disciplinary proceedings after retirement. - (1) An officer or employee who is under suspension on a charge of misconduct and who attains the age of superannuation, shall be deemed to be in service even after the age of superannuation for the specific purpose of continuation and conclusion of the disciplinary proceedings and issue of final orders thereon.

(2) The officer or employee who is under suspension shall not be eligible for any subsistence allowance for the period beyond the date of superannuation.

(3) The officer or employee against whom disciplinary proceeding has been initiated shall cease to be in service on the date of superannuation but the disciplinary proceeding shall continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof.

(4) The officer of employee against whom disciplinary proceedings has been initiated shall not receive any pay and/or allowances after the date of superannuation and also not be entitled for the payment of retirement benefits till the proceeding is completed and final order is passed thereon except his own contribution to Contributory Provident Fund (CPF).

Explanation. - For the purposes of this regulation, the normal retirement benefits such as encashment of privi-lege leave and Gratuity may be withheld till the comple-tion of the disciplinary proceedings and passing of final order by the Competent Authority and the release of benefits shall be as per the final order of the Competent Authority.

Regulation 72 provides for gratuity and is reproduced hereinafter:-

72. Gratuity. - (1) An officer or employee shall be eligible for payment of gratuity either as per the provisions of the Payment of Gratuity Act, 1972 (39 of 1972) or as per sub-regulation (2), whichever is higher.

(2) Every officer or employee shall be eligible for gratuity on,-

(a) retirement,

(b) death,

(c) disablement rendering him unfit for further service as certified by a medical officer approved by the Bank, or

(d) resignation after completing 10 years of continuous service, or

(e) termination of service in any other way except by way of punishment after completion of 10 years of service :

Provided that in respect of an employee there shall be no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only.

(3) The amount of gratuity payable to an officer or employee shall be one months pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 month's pay :

Provided that where an officer or employee has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years :

Provided further that in respect of an officer the gratuity is payable based on the last pay drawn :

Provided also that in respect of an employee pay for the purposes of calculation of the gratuity shall be the average of the basic pay (100%), dearness allowance and special allowance and officiating allowance payable during the 12 months preceding death, disability, retirement, resignation or termination of service, as the case may be.

8. Provisions contained in Section 4 of the Act of 1972 are also relevant for the present controversy and the relevant extract thereof is reproduced hereinafter:-

"4. Payment of gratuity .-(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

[Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominee or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.]

Explanation .- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

xxx xxx xxx xxx (5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

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

10. In the light of the above statutory provisions the question that falls for determination in the facts of the present case is as to whether petitioner is entitled to payment of gratuity or not? In the present case there is no order of forfeiture of the gratuity by the respondent but they have not released the same on the pretext that the petitioner was dismissed from service which is nothing but amounting to forfeiture of gratuity, therefore, this Court has to examine whether forfeiture of the gratuity on the facts and circumstances of the case is permissible and whether necessary steps of issuing show cause to the petitioner has been taken by the bank or not before forfeiting gratuity. The impugned inaction of the respondents in releasing the gratuity as reflected in the return filed by them in on the count that petitioner has been dismissed from service, therefore, he is not entitled to get gratuity without examining the provisions of Section 4(6)(b)(ii) of the Act of 1972 and Regulation No. 72 (2) of Regulation 2013.

11. From bare perusal of Section 4(6)(b)(ii) of the Act of 1972 it is quite vivid that it is restricted to commissioning of offence involving moral turpitude only in the course of employment. The proviso to regulation 72 of the Regulations of

2013 also stipulates that in respect of a dismissed employee there shall be no forfeiture of gratuity on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only. The payment of gratuity in the facts of the present case is in accordance with regulation 72 of the Regulations of 2013, and therefore, the forfeiture can only be for the reason and to the extent permissible by the proviso to regulation 72(2). It is not the case of respondent Bank that dismissal of petitioner is on account of misconduct which has not caused only financial loss to the bank. The case of petitioner does not fall within the proviso to regulation 72(2) of the Regulations of 2013, and therefore, the forfeiture/denial of petitioner's gratuity would not be permissible in law. There is no provision in the Regulations of 2013 corresponding to Section 4(6)(b)(i) of the Act of 1972 nor the said provision has been invoked by the Bank to justify forfeiture of petitioner's gratuity.

The Hon'ble Supreme Court in Union Bank of India and others vs. C. G. Ajay Babu and another, (2018) 9 SCC 529 has made following observations in paragraph nos.17 to 22:-

"17. 'Offence' is defined, under The General Clause Act, 1897, to mean "any act or omission made punishable by any law for the time being in force".

18. Though the learned Counsel for the appellant-Bank has contended that the conduct of the respondent-employee, which leads to the framing of charges in the departmental proceedings involves moral turpitude, we are afraid the contention cannot be appreciated. It is not the conduct of a person involving moral turpitude that is required for forfeiture of gratuity but the conduct or the act should constitute an offence involving moral turpitude. To be an offence, the act should be made punishable under law. That is absolutely in the realm of criminal law. It is not for the Bank to decide whether an offence has been committed. It is for the court. Apart from the disciplinary proceedings initiated by the appellant- Bank, the Bank has not set the criminal law in motion either by registering an FIR or by filing a criminal complaint so as to establish that the misconduct leading to dismissal is an offence involving moral turpitude. Under sub-Section (6)(b)(ii) of the Act, forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, and convicted accordingly by a court of competent jurisdiction.

19. In Jaswant Singh Gill v. Bharat Coking Coal Limited and others³, it has been held by this Court that forfeiture of gratuity either wholly or partially is permissible under sub-Section (6)(b)(ii) only in the event that the termination is on account of riotous or disorderly conduct or any other act of violence or on account of an act constituting an offence involving moral turpitude when he is convicted. To quote paragraph-13:

"13. The Act provides for a close-knit scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential pro-

visions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. As noticed hereinbefore, sub-section (6) of Section 4 of the Act contains a non obstante clause vis-à-vis sub-section (1) thereof. As by reason thereof, an accrued or vested right is sought to be taken away, the conditions laid down thereunder must be fulfilled. The provisions contained therein must, therefore, be scrupulously observed. Clause (a) of sub-section (6) of Section 4 of the Act speaks of termination of service of an employee for any act, wilful omission or negligence causing any damage. However, the amount liable to be forfeited would be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or damage. It was not found that the damages or loss caused to Respondent 1 was more than the amount of gratuity payable to the appellant. Clause (b) of sub-section (6) of Section 4 of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude. Conditions laid down therein are also not satisfied."

20. In the present case, there is no conviction of the respondent for the misconduct which according to the Bank is an offence involving moral turpitude. Hence, there is no justification for the forfeiture of gratuity on the ground stated in the order dated 20.04.2004 that the "misconduct proved against you amounts to acts involving moral turpitude". At the risk of redundancy, we may state that the requirement of the statute is not the proof of misconduct of acts involving moral turpitude but the acts should constitute an offence involving moral turpitude and such offence should be duly established in a court of law.

21. That the Act must prevail over the Rules on Payment of Gratuity framed by the employer is also a settled position as per Jaswant Singh Gill (supra). Therefore, the appellant cannot take recourse to its own Rules, ignoring the Act, for denying gratuity.

22. To sum-up, forfeiture of gratuity is not automatic on dismissal from service; it is subject to sub-Sections (5) and (6) of Section 4 of The Payment of Gratuity Act, 1972. "

12. In view of the law laid down by the Supreme Court in the case of C. G. Ajay Babu (supra) it is apparent that forfeiture of gratuity is not automatic on dismissal from service and it is subject to Section 5(6) of the Act of 1972. From the return and document annexed with the return it is quite vivid that before taking decision not to release gratuity show cause notice has also not been issued to the petitioner which is also violation of Section 4(6)(a) of Payment of Gratuity Act and is also against the judgment passed by the Allahabad High Court in case of Hindalco Industries Ltd. vs. Appellate Authority and Others {2004 (101) FLR 1063}, judgment of Karnataka High Court in case of Canara Bank vs Appellate Authority in WP NO. 40600/2011 (L-PG), judgment of Madhya Pradesh

High Court in case of Manager Western Coalfield Ltd. vs. Prayag Modi {2018 (157) FLR 323} and again the judgment of Gujarat High Court in case of Union Bank of India vs. K.R. Ajwalia (2005) 1 LLJ 824 Guj. Thus, on the basis of the settled precedent it is clear that gratuity amount could not have been forfeited without notice being issued to the employee which has been done by the bank in the present case, also employer cannot forfeit the amount of gratuity without following the principles of natural justice and without determining the extent of damages or loss caused to the employer.

13. In the facts of the present case the provisions of the Regulations of 2013 which contains scheme for payment of gratuity and by virtue of regulation 72 the only event in which forfeiture of gratuity of a dismissed employee would be permissible is the act of misconduct which caused financial loss to the bank and in that case to that extent only. As there is no accusation of causing financial loss to the bank as evident from the dismissal order dated 05.05.2015 non-releasing of gratuity is nothing but suffers from arbitrariness or highhandedness of the bank which deserves to be interfered by this Court by issuing direction to the bank to release the gratuity forthwith.

14. Learned Sr. Advocate for the petitioner would submit that the petitioner is also entitled to get leave encashment as Regulation 45 clearly provides that leave encashment and gratuity can be withheld till completion of disciplinary proceeding and thereafter release of benefit shall be as per the final order of the competent authority. The regulations framed by the Bank is statutory in nature and binding upon the bank as well as upon the petitioner.

15. In the present case, there is no prohibition for releasing the leave encashment of privileged leaves as reflected from dismissal order dated 05.05.2015, if the submission made by the bank in their return as well as in their oral and written submission with regard denial of leave encashment then the Regulation 45 of the Regulation 2013 shall become a dead letter. Such construction of the bank cannot be considered and deserves to be rejected by this Court. Therefore, the inaction of the bank in releasing the leave encashment is also without any legal foundation and the bank deserves to be directed by this Court to release leave encashment to the petitioner forthwith. The respondent Bank in their return has referred to the Chhattisgarh Rajya Gramin Bank (Employees) Pension Regulations, 2018 and would submit that this provisions entail for forfeiture of his entire past service in case of cessation of service of employee either by resignation not amounting voluntary retirement or dismissal or termination, meaning thereby that petitioner's service having come to its end and his entire past service stands forfeited for the purposes of consideration of pension and therefore, claim of the petitioner for grant of pension does not bear any substance at all. This submission is not relevant for considering the petitioner's claim with regard to gratuity and leave encashment of privilege leave as there is separate statutory provisions governing the leave encashment and gratuity. Even otherwise, while passing the order of dismissal dated 05.05.2015

there was no whisper about non releasing of leave encashment and gratuity, as such, subsequent stands taken by the bank that in view of the Regulation 22 the Regulation 2018 the past service of the petitioner stands forfeited, is not acceptable as Pension Regulation, 2018 made effective from the date it was published in the Gazette i.e on 26.09.2018, on that date, the petitioner was not an employee as defined in the Regulation, 2018. Similar issue in Bank of Baroda vs S.K. Kool reported in (2014) 2 SCC 715 has come up for consideration before the Hon'ble Supreme Court, wherein, Hon'ble the Supreme Court has held in paragraphs 13 and 14 as under:

13. Article 22 of the Regulation, which is relied on to deny the claim of the employee reads as follows:

"22. Forfeiture of service:

(1)Resignation or dismissal or removal or termination of an employee from the service of the Bank shall en-tail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits." From a plain reading of the aforesaid Regulation, it is evi-dent that removal of an employee shall entail forfeiture of his entire past service and consequently such an employee shall not qualify for pensionary benefits. If we accept this submission, no employee removed from service in any event would be entitled for pen-sionary benefits. But the fact of the matter is that the Bipartite Settlement provides for removal from service with pensionary benefits "as would be due otherwise under the Rules or Regulations prevailing at the rele-vant time". The consequence of this construction would be that the words quoted above shall become a dead letter. Such a construction has to be avoided.

14. The Regulation does not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulation whereas Chapter IV deals with qualifying service. An employee who has rendered a minimum of ten years of service and fulfils other conditions only can qualify for pension in terms of Article 14 of the Regulation. Therefore, the expression "as would be due otherwise" would mean only such employees who are eligible and have put in minimum number of years of service to qualify for pen-sion. However, such of the employees who are not eli-gible and have not put in required number of years of qualifying service shall not be entitled to the superan-nuation benefit though removed from service in terms of clause 6(b) of the Bipartite Settlement. Clause 6(b) came to be inserted as one of the punishments on ac-count of the Bipartite Settlement. It provides for pay-ment of superannuation benefits as would be due oth-erwise."

16. Considering the above stated factual and legal position the writ petition deserves to be allowed and accordingly it is allowed. The respondent Bank is directed to release the gratuity and leave encashment of the petitioner within one month from the date of receipt of copy of this order passed by this Court, failing which the gratuity amount will carry 10% interest from the date of receipt

of copy of the order till the payment is actually made.