

(2017) 02 MP CK 0231
In the Madhya Pradesh High Court
Case No : 5788 of 2014

Smt. Sadhana Singh Tomar & Anr.

APPELLANT

Vs

State of M.P. and Ors.

RESPONDENT

Date of Decision : 13-02-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Payment of Gratuity Act, 1972, Section 14,
Section 7(4) - Act to over

Citation : (2017) 02 MP CK 0231

Bench : Single Bench

Advocate : Arvind K. Pandey, T.K. Malik

Judgement

1. With consent of learned counsel for the parties, the matter is heard finally.
2. By this petition, under Article 226 of the Constitution of India, petitioner calls in question the correctness of order-dated 17.12.2013; whereby, the Appellate Authority under Payment of Gratuity Act, 1972 (for short "Act of 1972"), dismissed the appeal preferred by the petitioner.
3. The appeal preferred by the petitioner was directed against the order-dated 14.5.2013 passed by the Controlling Authority whereby, in exercise of the powers under sub-section (4) of Section 7 of Act of 1972, held the respondent entitled to receive gratuity amount along with the interest thereon @ 10% per annum till date of this order.
4. Relevant facts giving rise to controversy, briefly, are that respondent/employee as Manager in the Central Bank of India was subjected to Departmental Inquiry vide charge-sheet dated 22.10.2009 for committing irregularities in disbursement of loan.
5. The departmental enquiry culminated in the order of punishment of compulsory retirement in terms of Regulation 4(h) of the Central Bank of India

Officers Employees (Discipline and Appeal) Regulation 1976. And, that a First Information Report bearing No.RC0092009A0012 dated 29.8.2009 was also lodged by the Central Bureau of Investigation against the respondent on the charge of demanding/accepting illegal gratification from the borrower.

Respondent since was compulsorily retired and was subjected

6. Writ Petition No.5788/2014 [CHAIRMAN CUM MANAGING DIRECTOR CENTRAL BANK OF INDIA VERSUS SHRI ANIL MADHAV CHINCHOLKAR] to criminal prosecution was denied the service gratuity on the basis of Regulation 46(1)(e) of the Central Bank of India (Officers) Service Regulations, 1979 and Regulation 46 of the Central Bank of India (Employees") Pension Regulations, 1995, which respectively stipulate:-

Regulation 46 of 1979 stipulates -

"46. GRATUITY:

(1) Every Officer 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

(d) resignation after completing ten 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.

(2) The amount of gratuity payable to an Officer shall be one month's pay for every completed years of service, subject to a maximum of 15 months pay. Provided that where an Officer has completed more than 30 years, 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.

7. Provided further that pay for the purpose of Gratuity for an Officer who ceased to be in service during the period 1.7.1993 to 31.10.1994 shall be with regard to scale of pay as specified in sub regulation (1) of Regulation 4. Provided also that pay for the purpose of Gratuity of an officer who ceased to be in service during the period 1.4.1998 to 31.10.1999 shall be with regard to scale of Writ Petition No.5788/2014 [CHAIRMAN CUM MANAGING DIRECTOR CENTRAL BANK OF INDIA VERSUS SHRI ANIL MADHAV CHINCHOLKAR] pay as specified in sub-regulation (2) of Regulation 4. Note: If the fraction of service beyond completed years of service is 6 months or more, gratuity will be paid pro- rata for the period.

8. Regulation 46 of the Regulations, 1995 stipulates - Provisional Pension - (1) An employee who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are

instituted or departmental proceedings are continued, a provisional pension, equal to the maximum pension which would have been admissible to him, would be allowed subject to adjustment against final retirement benefit sanctioned to him, upon conclusion of the proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld etc, either permanently or for a specified period.

9. In such cases the gratuity shall not be paid to such an employee until the conclusion of the proceedings against him. The gratuity shall be paid to him on conclusion of the proceedings subject to the decision of the proceedings. Any recoveries to be made from an employee shall be adjusted against the amount of gratuity payable.

Explanation. - In this chapter -

(a) the expression "serious crime" includes a crime involving an offence under the Official Secrets Act, 1923 (19 of 1923);

(b) the expression "grave misconduct" includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in section 5 of the Official Secrets Act, 1923 (19 of 1923) which was obtained while holding office in the Bank so

Writ Petition No.5788/2014 [CHAIRMAN CUM MANAGING DIRECTOR CENTRAL BANK OF INDIA VERSUS SHRI ANIL MADHAV CHINCHOLKAR] as to prejudicially affect the interests of the general public or the security of the State;

(c) The expression "fraudulently" shall have the meaning assigned to it under section 25 of the Indian Penal Code, 1860 (45 of 1860);

(d) The expression "criminal breach of trust" shall have the meaning assigned to it under section 405 of the Indian Penal Code, 1860 (45 of 1860);

(e) The expression "forgery" shall have the meaning assigned to it under Section 463 of the Indian Penal Code, 1860 (45 of 1860).

10. Aggrieved, the respondent preferred an application under Section 7 of the Act of 1972 before the Controlling Authority.

11. Petitioner-Bank contested the claim on the anvil of Regulation 46 of the Regulations, 1979 and Regulation 46 of the Regulations, 1995 as also on the fact that the respondent having suffered a punishment of compulsory retirement and a criminal proceeding is pending against him.

12. Controlling Authority upheld the entitlement of respondent stating that "...I find that the employer is liable to pay interest @ 10% on the principal amount of gratuity. It shall not absolve the employer from its statutory responsibility to pay interest, once it is established that the employer failed to discharge the obligation cast upon it by the Act to pay the gratuity within 30 days from the date it becomes payable. The applicant is therefore entitled to get interest til the

date of actual payment of gratuity. ..."

13. The Controlling Authority directed the petitioner to make payment of gratuity as per provisions of the Act of 1972 from the date of compulsory retirement along with simple interest @ 10% per annum.

14. Aggrieved, petitioner herein preferred an appeal under Section 7(7) read with Rule 18 of the Act of 1972.

15. Writ Petition No.5788/2014 [CHAIRMAN CUM MANAGING DIRECTOR CENTRAL BANK OF INDIA VERSUS SHRI ANIL MADHAV CHINCHOLKAR] The Appellate Authority, vide impugned order dated 17.12.2013, dismissed the appeal and affirmed the order passed by the Controlling Authority. The Appellate Authority observed that in view of the conflict between Central Bank of India (Employees) Pension Regulations 1995 and the provisions of Payment of Gratuity Act, 1972, latter would prevail and the Rules of 1995 will give a way to statute in view of the provision under Section 14 of the 1972 Act.

16. Assailing the order passed by the Authorities under the Act of 1972, it is contended on behalf of the petitioner that the Regulation being a special law and having the force of law will prevail over the Payment of Gratuity Act, 1972, which is a general law and since the Regulation of the petitioner-Bank provides for withholding of payment of gratuity in case of pending criminal prosecution, the Authorities were not justified in directing the entitlement to the respondent for gratuity.

17. Reliance is placed on decision in *Ranjan Sandhi vs Union of India* (2010) 10 SCC 338 and *R. Veerabhadram vs Govt. of A.P.*: (1999) 9 SCC 43, unreported judgment of the High Court of Judicature at Rajasthan, Bench at Jaipur in C.W.P. No.14358/2008 (*Rajendra Giriraj Prasad Tiwari vs. Central Bank of India*).

18. Countering the contention, it is stated on behalf of respondent that having been compulsorily retired, the respondent was entitled to receive all the retiral benefits, as the compulsory retirement even it is on the basis of departmental enquiry does not bar an employee for settlement of retiral dues. It is further contended that merely launching of criminal prosecution also does not debar the respondent from receiving the retiral dues.

19. Placing reliance of sub-section (6) of Section 4 of the Act of 1972, it is urged that unless the stipulation contained therein are Writ Petition No.5788/2014 [CHAIRMAN CUM MANAGING DIRECTOR CENTRAL BANK OF INDIA VERSUS SHRI ANIL MADHAV CHINCHOLKAR] meted out a regulation framed by the petitioner-Bank will not have overriding effect.

20. It is, accordingly, contended that the Controlling Authority under the Act of 1972, was well justified in directing the petitioner to settle the gratuity.

Considered the rival submissions.

Perused the records.

21. The basic facts being not disputed that the respondent is compulsorily retired having found guilty of charges and that an offence is registered against him under the Prevention of Corruption Act, 1988.

22. The question which crops up for consideration is whether while invoking clause 46 of the Central Bank of India (Officers) Service Regulations, 1979 and Pension Regulations, 1995, the petitioner is justified in non-grant of gratuity and whether the Authorities under the Act of 1972 are justified in holding that in view of provisions contained under Section 14 read with Section 4(6) of Act of 1972, the respondent is entitled for the gratuity.

23. The Payment of Gratuity Act, 1972 was enacted to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. Section 5 whereof empowers the appropriate Government, by way of notification and subject to such conditions as may be specified in the notification, exempt any establishment.

24. In the present case, learned counsel for the petitioner does not dispute that the petitioner is not exempted. Thus, the provisions of Act of 1972 are applicable.

Sub-section (1) of Section 4 of Act of 1972 stipulates that

Writ Petition No.5788/2014 [CHAIRMAN CUM MANAGING DIRECTOR CENTRAL BANK OF INDIA VERSUS SHRI ANIL MADHAV CHINCHOLKAR] 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.

Sub-section (6) of Section 4 carves out an exception to sub-section (1) stipulating that -

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

(a) 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;

(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 or 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".

Section 14 stipulates that the provisions of Act of 1972 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.

25. The first aspect for consideration is as to whether the Service Regulations and Pension Regulations framed by the Board of

Writ Petition No.5788/2014 [CHAIRMAN CUM MANAGING DIRECTOR CENTRAL BANK OF INDIA VERSUS SHRI ANIL MADHAV CHINCHOLKAR] Directors of Central Bank of India after consultation with the Reserve Bank of India and with the previous sanction of the Central Government in exercise of the powers conferred clause (6) of sub-section (2) of Section 19 read with sub-section (2) of Section 12 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 will have the overriding effect on the provisions of Payment of Gratuity Act, 1972.

26. Decision of the Supreme Court in Y.K. Singla vs. Punjab National Bank (2013) 3 SCC 472 clinches the issue; wherein Pension Regulations similar to one in the present case, was under consideration. It has been held in Y.K. Singla (supra) -

"22. ... A perusal of Section 14 leaves no room for any doubt, that a superior status has been vested in the provisions of the Gratuity Act vis-à-vis any other enactment (including any other instrument or contract) inconsistent therewith. Therefore, insofar as the entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of the Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/ enactments (including any instrument or contract having the force of law), the provisions of the Gratuity Act cannot be ignored. The term "instrument" and the phrase "instrument or contract, having the force of law" shall most definitely be deemed to include the 1995 Regulations, which regulate the payment of gratuity to the appellant. ...

24. Furthermore, from the mandate of Section 14 of the Gratuity Act, it is imperative to further conclude, that the provisions of the Gratuity Act would have overriding effect, with reference to any inconsistency therewith in any other Writ Petition No.5788/2014 [CHAIRMAN CUM MANAGING DIRECTOR CENTRAL BANK OF INDIA VERSUS SHRI ANIL MADHAV CHINCHOLKAR] provision or instrument...." Since the issue as to effect of the provisions of Payment of Gratuity Act, 1972 over the Pension Regulations, 1995 was directly and substantially involved in Y.K. Singla (supra) wherein it has been held that being of superior status the provisions of Act of 1972 will have the overriding effect on the Pension Regulations, 1995.

27. This leads to consideration of second aspect as to whether an employee as, in the present case, compulsorily retired on the outcome of a departmental enquiry would tantamount to "termination" for any act which constitutes "an offence involving moral turpitude, as would disentitle him for gratuity under sub-clause

(ii) of clause (b) of sub-section (6) of Section 4 of the Act of 1972.

Regulation 33 of the Pension Regulations, 1995 stipulates - "33. Compulsory Retirement Pension - (1) An employee compulsorily retired from service as a penalty on or after 1st day of November, 1993 in terms of Discipline and Appeal Regulations or settlement by the authority higher than the authority competent to impose such penalty may be granted pension at a rate not less than two-thirds and not more than full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension on superannuation on that date. (2) Whenever in the case of a bank employee the Competent Authority passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these regulations, the Board of Directors shall be consulted before such order is passed. (3) A pension granted or awarded under sub- regulation (1) or, as the case may be, under sub- regulation (2), shall not be less than the amount of rupees three hundred and seventy five per mensem.

Writ Petition No.5788/2014 [CHAIRMAN CUM MANAGING DIRECTOR CENTRAL BANK OF INDIA VERSUS SHRI ANIL MADHAV CHINCHOLKAR] Thus, clear it is that the compulsory retirement, by way of punishment, is not treated as termination as would disentitle an employee of the pensionary benefits. And, it needs no elaboration to establish that the gratuity is an element of pension in view of decision in Bakshish Singh vs. Darshan Engineering Works (1994) 1 SCC 9, wherein it is held -

16. ... The recognition of gratuity as a retiral benefit brought in its wake further modifications of the concept. It could be paid even if the employee resigned or voluntarily retired from service. The minimum qualifying service for entitlement to it, rate at which it was to be paid and the maximum amount payable was determined likewise on the basis of the said factors. It had also to be acknowledged that it could not be denied to the employee on account of his misconduct. He could be denied gratuity only to the extent of the financial loss caused by his misconduct, and no more".

Thus, merely because the respondent is compulsorily retired by way of punishment and is being prosecuted, will not disentitle him from gratuity.

28. In view whereof, the order passed by the Controlling Authority and affirmed in appeal does not warrant any interference.

Consequently, petition fails and is dismissed. No costs.