
(2019) 05 DEL CK 0414

In the Delhi High Court

Case No : Letter Patent Appeal No. 324 Of 2019

Syndicate Bank

APPELLANT

Vs

Surendra

RESPONDENT

Date of Decision : 10-05-2019

Acts Referred:

Payment Of Gratuity Act, 1972 — Section 2(q), 2(r), 4(1), 4(6), 4(6)(a), 4(6), 4(6)(b), 4(6)(b)(ii), 6(a)

Citation : (2019) 05 DEL CK 0414

Hon'ble Judges : G.S. Sistani, J; Jyoti Singh, J

Bench : Division Bench

Advocate : Puneet Taneja, Rajesh Mahindru, Manmohan Singh Narula, Sarabjeet Singh

Final Decision : Dismissed

Judgement

G.S. Sistani, J

C.M.22475/2019 (Exemption)

Allowed subject to all just exceptions.

C.M.22477/2019 (delay)

There is delay of 34 days in filing the accompanying appeal.

For the reasons stated in the application, the delay is condoned and the application is disposed of.

LPA 324/2019

1. The appellant-Bank is aggrieved by the order dated 13th February, 2019 passed by a learned Single Judge of this Court in a writ petition filed by the employee assailing the order dated 18th October, 2017 passed by the appellate authority constituted under the Payment of Gratuity Act, 1972

(hereinafter referred to as "the Gratuity Act"). The appellate authority has upheld the administrative order dated 5th March, 2016 passed by the appellant-Bank.

2. Some necessary facts which are required to be noticed for disposal of this appeal at the admission stage itself are that the respondent joined the services of the appellant-Bank on 21st August, 1982. He worked in various branches/offices of the Bank. An order of compulsory retirement was passed after he had put in 33 years and 2 months of continuous service. The respondent was served with a charge-sheet on 3rd November, 2014 and an inquiry was conducted into the matter. The disciplinary authority vide its order dated 6th October, 2015 imposed the punishment of "compulsory retirement" from services of the Bank. Post the passing of this order, a notice to show-cause dated 23rd December, 2015 was issued to the respondent as to why his gratuity be not forfeited. Being dissatisfied with the response of the respondent, an order dated 5th March, 2016 was passed forfeiting the gratuity of the respondent. The administrative order, as noticed above, was upheld by the appellate authority. However, learned Single Judge has allowed the writ petition of the employee and set aside the order of the appellate authority and also the administrative order.

3. Mr. Taneja, learned counsel appearing for the Bank, submits that learned Single Judge has failed to take into account the nature of charge against the respondent. He contends that on account of the acts of the employee, his services were in fact terminated or put to an end as he was awarded the punishment of compulsory retirement. He submits that learned Single Judge has failed to take note of the fact that the word "termination" has to be given a broader meaning and also that after inquiry, the said punishment was awarded. In view of the nature of allegations, which stood proved, the respondent became disentitled to the benefits under the Gratuity Act. Strong reliance is placed by Mr. Taneja on Section 4(6)(b)(ii) of the Gratuity Act. While drawing the attention of this Court to the charge-sheet, Mr. Taneja has strongly urged before us that the services of the respondent were in fact terminated for the offence involving "moral turpitude" and such offence was committed by him during the course of his employment.

4. Mr. Taneja submits that the judgment in the case of Jaswant Singh Gill v. Bharat Coking Coal Ltd. and Ors, reported at 2007 (4) ALT 23 (SC),

relied upon by learned Single Judge would not apply to the facts of the present case, as in the said case, Jaswant Singh Gill had retired and post his

retirement, proceedings were sought to be initiated and it is in that context, that the judgment was delivered. He submits that in fact his case would be

fully covered by a decision of the Madras High Court in the case of Suganthi Gomez v. UCO Bank Regional Office & Ors., reported at 2018 LawSuit

(Mad) 3904. Mr. Taneja has relied upon paragraphs No.12, 13, 14, 16 & 17 of this judgment, which we reproduce below: -

12. A reading of Sub Section (6) of Section 4 of the Act shows that the employer has the power to forfeit the gratuity of an employee fully or

partly 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 or her, in the course of its employment. So the essential conditions that must be shown to exist are a termination of

service and the termination should have been for an act which constitutes an offence involving moral turpitude. If these two ingredients are shown to

exist then the employer undoubtedly has the power to forfeit the gratuity of the delinquent employee. The contention of the learned counsel appearing

for the appellant in this regard are two fold, the first part of his contention is that there has been no termination of the services on the other hand the

punishment imposed on the employee is one of compulsory retirement and secondly, the proved charges do not amount to have an act which

constitutes an offence involving moral turpitude on the part of the delinquent employee.

13. We have been taken through the charges that are framed and the conclusions of the Disciplinary Authority. As rightly pointed out by the learned

Single Judge, the charges particularly the allegations 9 and 10 which have been extracted by the learned Single Judge would definitely show a

dishonest intention on the part of the official to unjustly enrich himself. We are of the considered opinion that these acts coupled with the other charges

which also show that the delinquent official had appropriated funds of the customers without Authority and had issued fake authorization slips

particularly when he was on leave would definitely show that the delinquencies are in the nature offences involving moral turpitude. The term Moral

Turpitude according to Black's Law Dictionary means Conduct that is contrary to Justice, honesty or morality. At no stretch of imagination can it be

said that the proved charges in this case do not amount to an offence involving Moral Turpitude. We are therefore unable to accept the contention of

the learned counsel for the appellant that the proved charges do not amount to act which constitutes an offence involving moral turpitude within a

meaning of Section 4(6)(b)(ii).

14. The next contention of the learned counsel for the appellant is that unless it is shown that there was a valid order of termination of the service of

the delinquent employee, the employer had no power to invoke Section 4(6) of the Act to forfeit the gratuity. Of course, Section 4(6) uses the word

terminated as a condition precedent to enable the employer to forfeit the gratuity payable to an employee. The question that would arise is as to the

meaning that should be given to the word terminated in the context it is used. The words termination or terminated has not been defined in the

Payment of Gratuity Act, but Section 4(1) which has been extracted above shows that gratuity is payable to an employee on termination of his

employment after he has rendered a continuous service of 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:

15. Clauses (a) and (c) do not stand attracted in the case on hand. Clause (b) makes gratuity payable to an employee on his retirement or resignation.

Section 2(q) of the Payment of Gratuity Act, 1972, defines the word retirement as termination of service of an employee otherwise than on

superannuation, therefore, a termination of the service of an employee otherwise than on superannuation would amount to retirement under the Act.

While considering the scope of the definition of the word retirement defined under Section 2(q) of the Payment of Gratuity Act, the Honble Supreme

Court in *State of Punjab v. The Labour Court, Jullundur and others*, reported in AIR 1979 SCC 1981, had observed as follows:

4. The second contention on behalf of the appellant is that retrenchment does not fall within section 4(1) of the Payment of Gratuity Act, under

which gratuity is payable to an employee on the termination of his employment. The termination envisaged occurs either

(a) on his superannuation, or

(b) on his retirement or resignation, or

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

5. Having regard to the definition of "superannuation" in Section 2(r) of the Act, it is clear that the case is not one under clause (a). Nor, admittedly, is

it a case which falls under clause (c). As regards clause (b), it is not a case of resignation. The only question is whether it can be regarded under

clause (b) as a case of retirement. The expression "retirement" has been defined by Section 2(q) to mean "termination of the service of an employee

otherwise than on superannuation." The definition is framed in the widest terms. Except for superannuation, any termination of service would amount

to "retirement" for the purposes of the Act. Retrenchment is a termination of service. It is immaterial that the termination is occasioned by the need to

discharge surplus labour.

16. From the above observations of the Hon'ble Supreme Court it could be gathered that compulsory retirement would also amount to retirement

within a meaning of Section 2(q) of the Act. The word terminated has been defined in P.Ramanatha Aiyar's Advanced Law Lexicon as

"Brought or come to a close" in Black's Law Dictionary, the word terminate has been defined as "To put an end to; to bring to an end" and

the word termination is shown to mean "The act of ending something"

The order of compulsory retirement passed by the Bank on 28.09.2006 undoubtedly puts an end to the employer-employee relationship between the

delinquent official (husband of the appellant) and the Bank. Therefore, we are in entire agreement with the learned Single Judge, when he disagreed

with the authorities under the Act and held that the word termination need not necessarily be a termination per se. As pointed out by the Hon'ble

Supreme Court in *State of Punjab v. The Labour Court, Jullundur and others*, cited supra, the definition of the word retirement under Section 2(q) of

the Act is in the widest possible amplitude and would taken within its sweep any form or mode of termination of service.

17. We are therefore unable to countenance the contention of the learned counsel for the appellant that the word termination used in Section 4(6)

should be given a restricted meaning. In our considered opinion the word terminated used in Section 4(6) would mean and include any act by which

the employer or the employee puts an end to the contract of an employment. We

therefore see no reason to interfere with the judgment of the learned

Single Judge. We find that the learned Single Judge has been magnanimous in allowing the appellant to withdraw a further sum of Rs.62,500/- and the

Bank has also been charitable in not challenging the order of the learned Single Judge. For the foregoing reasons, the Writ Appeal is dismissed.

However there will be no order as to costs.â??

5. Mr. Taneja has also relied upon a decision of the Himachal Pradesh High Court in the case of Madan Lal Sharma v. H.P.Khadi and Village

Industries Board, reported at 2013 LAB. I.C. 1007. Paragraphs No.2, 3, 19, 20 & 25 of this judgment are reproduced below: -

â??2. Mr. Ashwani K. Sharma, learned counsel for the appellant has vehemently argued that the petitioner has not admitted his charges and he has

only explained the same. He then contended that a regular inquiry should have been held on the basis of charge-sheet dated 29.4.1995. He then

contended that his client has been acquitted by the learned Chief Judicial Magistrate, Hamirpur in criminal case on 19.6.2004 and in these

circumstances, the dismissal order is liable to be set aside. He also argued in the alternative that the gratuity of the petitioner could not be withheld.

3. Ms. Rita Goswami, learned counsel for the respondent has supported the judgment dated 24.2.2009 passed by the learned single Judge.

19. Now, we will advert to the plea raised by Mr. Ashwani K. Sharma, learned counsel for the appellant that the gratuity of the petitioner could not be

forfeited.

20. According to Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972, the gratuity payable to an employee may be wholly or partially forfeited, 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.

25. In the instant case, since the petitioner has committedâ?? grave misconduct of embezzlement, he cannot be granted gratuity.â??

6. Reliance is also placed by Mr. Taneja on a judgment rendered by learned Single Judge of the Calcutta High Court in the case of Indian Iron and

Steel Company Ltd. v. Himangshu Bikash Sarkar and others, reported at (2006) 3 CHN 469. Paragraph No.19 of the said judgment is as under: -

â??19. I would think that anything which is disagreeable to conscience is

immoral. An act or omission which is disagreeable to conscience is not always an offence punishable by law. It can hardly be disputed that a riotous or disorderly conduct or any act of violence is also an offence and the Legislature was fully conscious about it. A distinction has nonetheless been made between an offence and an offence involving moral turpitude. For instance a case of strict liability does not involve any moral turpitude. An unintended violation of traffic rule is punishable offence although even the element of mens rea may be missing. It is also comparable with the case of manslaughter. All manslaughters are not murders in the eyes of law. A distinction has been made by Ss. 302 and 304 of I.P.C. I am inclined to think that the true distinction lies in finding out whether the act or omission was just an instance of inadvertence or an error of judgment or whether it was a well-planned deliberate act. In all those cases where the act or omission is both immoral and deliberate one can say without hesitation that it is a case of moral turpitude covered by Sub-cl. (ii) of Cl. (b). A conviction by a criminal Court of competent jurisdiction is not required for the purpose of forfeiting gratuity either under Sub-cl. (i) or under Sub-cl. (ii) of Cl. (b) of Sub-sec. 6 of S. 4 of the Act. One of the objects sought to be achieved by all industrial legislations is to secure industrial peace. Peace without fear is hardly possible. Therefore, that construction should be given to a statute which is conducive to the object sought to be achieved. It is not proper to import something which the Legislature did not provide. Conviction by a Court of Criminal jurisdiction is not required by the section. To insist upon that not provided by law is sheer obstinacy. A fear, about a loss to which a person may be exposed, in general is a deterrent. The policy is to deter a person from committing an act or omission which amounts to an act or omission of moral turpitude and not to encourage him to resort to any such thing by pedantic interpretation of law.â??

7. We have heard Mr. Taneja, learned counsel appearing for the appellant-Bank, and carefully examined the order passed by learned Single Judge. In this case, a charge-sheet was issued to the respondent, copy whereof has been placed on record. The disciplinary authority passed the order of compulsory retirement against the respondent. As per the charge-sheet, the main allegation against the respondent was that he had sanctioned various credit facilities without conducting due diligence; he had sanctioned enhanced

credit facilities to clear the over-dues in other accounts; fresh loans were sanctioned; shown undue favours; exposed the Bank to the risk of financial loss and had failed to take all possible steps at all time to ensure and protect the interest of the Bank.

8. We may note at the outset that there is no finding that any actual loss was suffered by the Bank. Consequently, there is no order for recovery from the respondent. We may also note that from the order of the disciplinary authority and the appellate authority, Mr. Taneja has not been able to point out, that any observation has been made that the conduct of the respondent amounted to moral turpitude. Mr. Taneja has, however, submitted that when the show-cause notice was issued, the words "moral turpitude" had been used and it was mentioned that respondent had perpetuated fraud and misappropriated funds of the Bank/ customers during the course of his employment, which amounted to moral turpitude. No doubt, such words have been used in the show-cause notice dated 23rd December, 2015, however, nothing has been brought to the notice of this Court that a finding of perpetuated fraud and misappropriation of funds has been given by the Enquiry Officer. If there is no finding in the report of the inquiry officer or in the findings of the disciplinary authority and appellate authority, loosely using these words in the show-cause notice would have no bearing. We find that the observations of the Supreme Court in the case of Jaswant Singh Gill (supra) are useful in this matter as also the observations in the case of the Divisional Personnel Officer, Southern Railway and Ors. Vs. T.R. Chellappan and Ors, reported at AIR 1975 SC 221. Both the observations we reproduce below: -

10. The Act provides for a closely neat scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions 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, subsection (6) of Section 4 of the Act contains a non-obstante clause vis-a-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, willful 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 No. 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. Termination of services for any of the causes enumerated in Sub-section (6) of Section 4 of the Act, therefore, is imperative.â??

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â?.....The words where any penalty is imposed in Rule 14(i) should actually be read as â??where any penalty is imposableâ?, it because so far as the disciplinary authority is concerned it cannot impose a sentence. It could only impose a penalty on the basis of the conviction and sentence passed against the delinquent employee by a competent Court. Furthermore the Rule empowering the disciplinary authority to consider circumstances of the case and make such Orders as it deems fit clearly indicates that it is open to the disciplinary authority to impose any penalty as it likes. In this sense, therefore, the word â??penaltyâ? used in Rule 14 (i) of the Rules of 1968 is relatable to the penalties to be imposed under the Rules rather than a penalty given by a criminal Court.

10. Another important aspect of the matter is that a criminal Court after conviction does not impose any penalty but passes a sentence whether it is one of fine, or imprisonment or whipping or the like. The Penal Code has been on the statute book for a large number of years and the rule-making authority was fully aware of the significance of the words â??convictionâ? and â??sentenceâ? and if it really intended to use the word â??penaltyâ? as an equivalent for â??sentenceâ?â?, then it should have used the word â??sentenceâ? and not â??penaltyâ?.....â??

9. Section 4(6) of the Gratuity Act, which we reproduce below, deals with the

situation where an employer can forfeit the gratuity: -

4 Payment of gratuity.

xxxxx

xxxxx

(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 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. Section 6(a) of the Gratuity Act is with respect to an employee, whose services have been terminated for any act of wilful omission or negligence,

causing any damage or loss or destruction of property belonging to the employer. No such ground is made out and thus, Section 6(a) would not apply.

Section 4(6)(b)(1) of the Gratuity Act is with respect to withholding partly or the entire gratuity, if the services of an employee has been terminated for

his riotous or disorderly conduct or any other act of violence, which conduct has not been canvassed before us.

11. Mr. Taneja submits that his case would fall under Section 4(6)(b)(ii) of the Gratuity Act as the services of the respondent have been terminated

for an act which constitutes an offence of moral turpitude and this offence was committed by him during the course of his employment. We are

unable to accept the submission of learned counsel as, firstly, there is nothing on record to show as to what stopped the appellant-Bank from

dismissing the services of the employee and why the Bank considered it appropriate to pass an order of compulsory retirement. If the stand of the

Bank is to be believed that the employee had perpetuated fraud and further, he

had misappropriated the funds of the Bank and customers, why an amount was not quantified and why recoveries were not sought and why a complaint was not made to the police for registration of an FIR.

12. We also find that there is no clear-cut finding pertaining to moral turpitude. The Bank has not been able to show any damage suffered by the Bank. To argue that the word "termination" is to be given a broad meaning and compulsory retirement would be covered under "termination", if accepted would mean that any form/mode by which the services of employee come to an end, even by voluntary retirement or superannuation would amount to termination and in such cases as well, there would be forfeiture of gratuity. The broader meaning is to be given in the facts of the relevant cases.

13. The learned counsel for appellant has relied on the judgment of Madras High Court Suganthi Gomes (supra) to contend the word

"termination" cannot be given a restricted meaning and in the context of Section 4(6) of the Act, it would mean and include any mode by which a

contract of employment is put to end. We cannot persuade ourselves to agree with this view. If we were to subscribe to this view then even

superannuation would be termination and read in the context of section 4(6) the gratuity could be forfeited. In our view, the word "termination"

would have to be interpreted in the context and for the purpose it appears in Section 4(6). Section 4(6) is in the nature of a penal provision. While

Section 4(1) of the Act deals with entitlement to gratuity, Section 4(6) deals with forfeiture of the gratuity in whole or in part. The words used by the

legislature in this sub-section 6 of Section 4 are indicators that termination would have to be read to mean termination as a penalty. When we look at

this word in the context of a penalty, the only interpretation that can be given, in our opinion, is termination by way of removal or dismissal. Any lesser

degree of penalty would not amount to termination under Section 4(6). In the present case, the penalty involved is compulsory retirement with no

allegations of moral turpitude, bribe, fraud or misappropriation. For a finding of moral turpitude, intent is essential. The appellants have not even alleged

any loss to the bank and therefore, there is neither any quantification of loss or damage nor a recovery. The compulsory retirement, therefore, in the

present case will not amount to termination for an offence amounting to "

moral turpitudeâ?. The ingredients of Section 4(6)(b)(ii) are not fulfilled in the present case and the judgment of the Madras High Court, therefore, does not help the appellant.

14. The judgment of the Calcutta High Court relied upon by the learned counsel for the appellant also would not apply to the present case as in that case, there was a clear finding of â??moral turpitudeâ? against the employee, while there is no such finding in the present case against the respondent.

15. Resultantly, we find no infirmity in the view taken by learned Single Judge. No grounds are made out to entertain the appeal. The appeal is accordingly dismissed. Let the payment be released in favour of the respondent within a period of four weeks from today.

C.M.22476/2019 (stay)

The application also stands dismissed in view of the order passed in the appeal.