(2008) 01 AHC CK 0054

In the Allahabad High Court

Uco Bank APPELLANT

Vs

Regional Labour Commissioner (Central), Assistant Labour Commissioner (Central) and S.P. Singh Sroy RESPONDENT

Date of Decision : 11-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 2, 4, 7
Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 2, 4, 7
Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 2, 4, 7

Citation : (2008) 117 FLR 437 : (2008) 2 UPLBEC 1066

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Arun Tandon, J.—Nationalized Uco Bank, a body corporate, has filed this writ petition for quashing the orders dated 25.04.2001 and dated 8/11.06.2001 passed by the Regional Labour Commissioner (Central) and dated 13.09.2000 passed by the Assistant Labour Commissioner (Central) in proceedings under the Payment of Gratuity Act, 1972 (hereinafter referred to as ''Act, 1972''). The facts giving rise to the present writ petition are as follows:

2. Respondent No. 3 S.P. Singh Sroy was employed as Assistant Manager (Cash) at Bulandshahar Branch of the petitioner Bank. He was compulsorily retired from the service of the Bank by way of punishment on the proven charge of misappropriation/theft of Rs. 16,650/- vide an order dated 02nd September, 1997. No appeal was filed by respondent No. 3 against the said order of the Disciplinary Authority and the order was permitted to become final. Respondent No. 3 made an application for payment of gratuity, which was deposited in the employees gratuity fund during the period of his employment. The Trustees, Uco Bank Employees Gratuity Fund took a decision to forfeit the gratuity payable to

respondent No. 3 on the ground of proven misconduct which constituted an offence involving moral turpitude. The decision so taken was communicated to the petitioner, as is apparent from the letter of the Chief Officer dated 03.04.1999. Accordingly, the payment of gratuity was not made to respondent No. 3 by the Bank.

3. Aggrieved respondent No. 3 made an application u/s 7 of the of Act, 1972 read with Rule 10 of the Payment of Gratuity (Central) Rules, 1972 (hereinafter referred to as ''Central Rules, 1972'') before the Controlling Authority. Notices were issued to the Bank on the application so made. The Bank submitted its reply and claimed that the gratuity of Respondent No. 3 has been forfeited by the Trustees of Gratuity Fund as per the letter dated 03.04.1999 in exercise of powers u/s 4(6)(b)(ii) of the Act, 1972.

4. The Controlling Authority vide its order dated 13.09.2000 allowed the application of Respondent No. 3 and directed the Bank to make payment of gratuity amount of Rs. 2,38,896/- along with 10% simple interest.

5. Not being satisfied with the decision so taken by the Controlling Authority, the Bank filed an appeal before the Appellate Authority u/s 7(7) of the Act, 1972. For entertainment of the appeal, the petitioner deposited the total amount as directed under the order of the Controlling Authority, to be precise a sum of Rs. 3,12,000/-. In the memo of appeal amongst others a specific ground was taken that the application, as filed by Respondent No. 3, was beyond the prescribed period of limitation and no application for condonation of delay was filed nor orders were passed for condoning the delay, therefore, the proceedings were not maintainable. Other grounds justifying the forfeiture of the gratuity, as noticed herein above, were also raised.

6. By means of the order dated 25.04.2001, the appeal filed by the petitioner was rejected. The Bank made a recall application before the Appellate Authority on the ground that an adjournment was prayed for by their Counsel, which had not been considered and, therefore, the order dated 25.04.2001 be recalled. This application of the Bank has also been rejected. Hence this petition.

7. Counsel for the Bank, with reference to the grounds of appeal filed before the Appellate Authority specifically paragraph-3, submits that a specific objection was raised qua the maintainability of the application of Respondent No. 3 itself before the Controlling Authority, inasmuch as Respondent No. 3 had retired from service on 02nd September, 1997 and had filed the application before the Controlling Authority under the Act, 1972 after more than two years, to be precised in the month of December, 1999 only. Rule 10 of the Central Rules, 1972, which was applicable in the facts of the present case, permits making of an application before the Controlling Authority within 90 days of the occurrence of the cause for application u/s 7(4). A power has been conferred upon the Controlling Authority under the aforesaid rule to accept an application beyond the time so prescribed, if sufficient cause is shown. It submitted that there being no

application for furnishing sufficient cause for not making the application within 90 days from the date when the cause had arisen, the Controlling Authority could not have proceeded with the matter. Counsel for the petitioner submits that despite such a specific objection having been raised in the memo of appeal, the Appellate Authority has not examined the aforesaid aspect of the matter while rejecting the appeal.

8. Even otherwise it is contended that the disciplinary proceedings against the employee of the Bank are initiated in accordance with the service and conduct rules applicable to a particular employee of the Bank. Payment of gratuity and forfeiture thereof u/s 4(6) of the Act, 1972 is provided for under a different statutory provision. The service rules and the payment of gratuity rules are not over lapping, they operate in separate fields. The order of compulsory retirement is included within the definition of termination u/s 2(q) of the Act, 1972. Therefore, if compulsory retirement has been directed because of an act of the employee, which constitutes an offence involving moral turpitude, the Bank had every right to forfeit the gratuity in exercise of powers u/s 4(6)(b)(ii) of the Act, 1972. He clarifies that any order passed by the Disciplinary Authority under the service rules applicable would not in any way curtail the power of the Bank to forfeit the gratuity u/s 4(6)(b)(ii) of the Act, 1972. The Controlling Authority as well as the Appellate Authority have failed to appreciate the aforesaid legal aspect of the matter while allowing the application made by the Respondent No. 3 and while holding that in view of the order passed by the Disciplinary Authority in departmental enquiry proceedings, gratuity payable to Respondent No. 3 could not have been forfeited. He submits that in the order of the Appellate Authority, except for recording that he has examined the direction of the Controlling Authority, the ground raised in the appeal and has found no reason for interference. No other reasons have been recorded.

9. The contention so raised on behalf of the petitioner is countered by Sri Vishnu Bihari Tiwari, Counsel for Respondent No. 3, stating that the order of punishment itself contained a recital that the penalty of compulsory retirement will not entail any adverse effects on the calculations of the terminal benefits of the Respondent No. 3if he is otherwise eligible to receive and, therefore, the said order of punishment could not have been made a tool for forfeiting the gratuity amount. He further submits that since nobody appeared on behalf of the petitioner to press the grounds before the Appellate Authority, no infirmity can be attributed to the order of the Appellate Authority in case it has not examined the issue as to whether the application filed u/s 7(4) of the Act, 1972 read with Rule 10 of the Central Rule, 1972 was beyond the prescribed period of 90 days or not. Even otherwise, this Court under Article 226 of the Constitution of India may not deny the payment of gratuity to petitioner on technicalities.

10. I have heard Counsel for the parties and have gone through the records of the writ petition.

So far as the first contention raised on behalf of the petitioner with regards to delay in filing of the application u/s 7(4) of the Act, 1972 read with Rule 10 of the Central Rules, 1972 is concerned, this Court is not inclined to enter into the aforesaid issue, inasmuch as from the records it is established that the Bank or its Counsel did not appear before the Appellate Authority to press the said ground and in absence of the said ground having been pressed before the Appellate Authority, for any reasons whatsoever, it will be too harsh for this Court to non-suit the employee qua payment of his gratuity. Consequently, this Court refuses to enter into the issue as to whether application filed by the employee was within the time specified. More so, there is a specific provision for condoning the delay, if any in filing of the application, with the Controlling Authority under Rule 10 itself.

11. I The issue, however, survive is as to whether in the facts of the case the Bank could exercise its power u/s 4(6)(b)(ii) of the Act, 1972 to forfeit the gratuity, as was payable to Respondent No. 3 or not.

12. It is apparent from the records that an order of punishment, compulsorily retiring Respondent No. 3, was passed in the background that he had misappropriated a sum of Rs. 16,650/- from the cash of the Bank. It is admitted that this amount in fact was paid by Respondent No. 3 to the Bank subsequently. It is further admitted that the Respondent No. 3, while facing the disciplinary proceedings, made an application for voluntarily retirement. The Disciplinary Authority, having regard to all these circumstances, passed an order directing compulsory retirement of Respondent No. 3 and in its order amongst other recorded as follows:

Before inflicting the punishment, it was well thought for that the CSO is on the verge of retirement, he has deposited the amount found short with the Bank, as such the Bank suffered no losses. From the records, it has been advised that the CSO has recently moved for seeking the voluntary retirement from the Bank''s services. However, his acts/omission are liable to be punished. In this view of the matter, it is thought that the CSO may be given the penalty of compulsory retirement, which will not entail any adverse effects on the calculations of the terminal benefits if he is otherwise eligible to receive. With the observation, the undersigned as the Disciplinary Authority imposes the following penalty:

Sri S.P. Singh sroy (PFM No. 7944), Asstt. Manager (Cash) of our Bulandshahar branch is compulsorily retired from the Bank''s services with immediate effect. The above penalty is hereby implemented with clear observations that it will not effect adversely on the amount of his terminal benefits if he is otherwise eligible to receive the same. All the concerned may be advised accordingly. He will not be entitled to receive the full wages and other benefits of service for the period of suspension.

13. The underlined observations have led the Controlling Authority as well as Disciplinary Authority to record that under the order of the punishment the terminal benefits, to which the employee concerned was entitled after the order

of punishment of compulsory retirement, could not be adversely effected and, therefore, it was not open to the Bank to exercise the power u/s 4(6)(b)(ii). The Controlling Authority has recorded that since the Bank did not take any steps to prosecute Respondent No. 3 in a criminal court of law for the alleged offence, therefore it cannot be said that he has been convicted of any offence involving moral turpitude, which could provide a ground for forfeiture of gratuity u/s 4(6)(b)(ii). Lastly it has been recorded that although the charge of shortage of cash was found proved, yet no mala fide intention of misappropriation of Bank money could be proved because of shortage of the cash. The Payment of Gratuity Act, being a social beneficial legislation, has to be interpreted so as to provide benefit to the employees and not to deprive then of the same. The Appellate Authority under the impugned order, after reproducing the underlined portion of the order passed by the Disciplinary Authority referred to above, has proceeded to record that it does not find any reason to interfere with the order of the Controlling Authority.

14. In the opinion of the Court the Controlling Authority as well as the Appellate Authority were under legal obligation to examine as to whether termination of the employment of Respondent No. 3 with reference to Section 4(6)(b)(ii) was occasioned for an act which constitutes an offence involving moral turpitude or not. If the answer to the query was in positive, the Bank had the power to withhold the gratuity amount. The recitals made in the order of punishment, quoted above, will not in any way whittle down the applicability of Section 4(6)(b)(ii) of the Act, 1972, inasmuch as the disciplinary proceedings taken against the employee concerned under the Service Rules do not overlap the Payment of Gratuity Act. The order directing the forfeiture of gratuity amount passed by the Bank against Respondent No. 3 has to be examined with reference to the provisions of the Payment of Gratuity Act only.

15. The terminal benefits, referred to in the order of punishment, which were not to be adversely affected because of the punishment order of compulsory retirement of the employee concerned, necessarily related to the benefit to which the employee concerned was entitled to receive in terms of his service conditions applicable qua payment of pension etc. Such observations made by the Disciplinary Authority, who may or may not be the competent authority to take any decision under the Act, 1972 viz-a-viz forfeiture of gratuity amount cannot in any way bind the authority concerned having jurisdiction to forfeit the gratuity in exercise of powers u/s 4(6)(b)(ii) of the Act, 1972.

16. In the opinion of the Court any observations made by the Disciplinary Authority, while inflicting the punishment, would not curtail the competence of the authority under the Act, 1972 to forfeit the gratuity payable to an employee with reference to the power conferred u/s 4(6)(b)(ii) of the Act, 1972. The aforesaid aspect of the matter has completely been ignored both by the Controlling Authority as well as by the Appellate Authority.

17. Large number of judgments have been cited before this Court both on behalf

of the petitioner and workman for the purposes of establishing their respective claims. However, it is not necessary for this Court to refer to the judgments so relied upon, inasmuch as the issue as to whether the observations made by the Disciplinary Authority, while passing the order of punishment, would bind the authority concerned (in the facts of the case the Board of Trustees) u/s 4(6) of the Act, 1972 has not at all be examined by the Controlling Authority as well as Appellate Authority. In absence of any finding on the aforesaid aspect, which would determine the implications which follow from the observations made in the order passed by the Disciplinary Authority, the impugned orders cannot be sustained.

18. It is still to be examined by the Controlling Authority as well as By the Disciplinary Authority as to whether Board of Trustees, who had taken a decision to forfeit the gratuity, had any legal authority to do so with reference to the provisions of the Act, 1972 or not.

19. This Court may further record that the observation of the Controlling Authority that unless the employee concerned was prosecuted by a criminal court of law and was punished for an offence involving moral turpitude his gratuity u/s 4(6) cannot be forfeited is not legally justified and is based on misreading of the said section.

20. It may be clarified that Section 4(6)(b)(ii) of the Act, 1972 contemplates termination of the services of the employee concerned for an act involving moral turpitude and it is wholly irrelevant as to whether any criminal proceeding for the same act has been initiated or not. The reason to the contrary assigned by the Controlling Authority, as affirmed by the Appellate Authority, cannot be sustained.

21. In view of the aforesaid, the orders impugned are hereby quashed. The matter is remanded to the Controlling Authority to decide the application of Respondent No. 3 afresh after examining as to whether any observations made in the order by the Disciplinary Authority will have any binding effect on the competence of the concerned authority (in the facts of the case Board of Trustees of the Bank) under the Act, 1972 to exercise powers u/s 4(6)(b)(ii) of the Act, 1972 to forfeit the gratuity of Respondent No. 3 or not and whether the order of forfeiture had been passed by a competent authority or not.

22. The aforesaid exercise may be completed after affording opportunity of hearing to the parties concerned, preferably within three months from the date a certified copy of this order is filed before the Controlling Authority.

Writ petition is allowed subject to the observations made above.