

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4886-2014 (O&M)
Date of decision: 28.02.2017

Pale Ram Kandhal

.....Petitioner

versus

Central Bank of India and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Jagbir Malik, Advocate for the petitioner
Mr.Ravi Sharma, Advocate for the respondents

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Petitioner was working as a Senior Manager with Central Bank of India, Karnal. On 23.11.2012, he was suspended and a departmental inquiry was initiated. On 21.1.2013, four charges were levelled against him by respondent no.2 as under:-

Charge No.1

Mr.Kandhal, Sr.Manager (U/S) while working at B/O GT Road Karnal opened Account No.3203436525 in the name of Mr.Anil without ensuring the proper procedure.

Charge No.2

Mr.P.R.Kandhal Sr.Manager (U/S) while working at branch Office GT Road Karnal have authorised transfer entries from inoperative account No.1472333138 of Bhagalpur Branch to the credit of newly opened accounts No.2303436525, 3210553397 and 3210517643 made by Sh.Satish Rohilla (ID No.77357) without taking precautions which are required abnormal amount of inter-branch transaction in a newly opened account which resulted in a fraud.

Charge No.3

Mr.P.R.Kandhal, Sr.Manager (U/S) while working at B/O G T Road, Karnal have passed a self drawn cheque of Sh.Arun without observing the laid down norms in a newly opened account which resulted in to fraudulent transaction.

Charge No.4

Mr.Kandhal, Sr.Manager (U/S) GT Road Karnal while working as Branch Manager, Branch Office, Mahesh Nagar, Ambala Cantt processed, recommended and disbursed the credit facilities to M/s Balaji Industries to the tune of Rs.83.80 lacs as term loan and Rs.12.00 lacs as C/C without observing the laid down norm of credit policy.”

One D.K.Gosain, Chief Manager, Branch Office, Panchkula was appointed as an inquiry officer. After conducting the inquiry, he submitted the inquiry report on 22.4.2013, in which, it was reported that charge nos.1 and 3 are “not proved”, whereas charge no.2 stands “proved” and charge no.4 is “partly proved”. Thereafter, after issuing the show cause notice and obtaining the reply, the punishment order dated 13.5.2013 (Annexure P7) was passed, vide which, the punishment of compulsory retirement under Regulation 4(h) of the Central Bank of India Officers Employees' (Discipline & Appeal) Regulations, 1976 (in short, 'Regulations 1976') was imposed upon the petitioner with the further clarification that the petitioner will not be entitled to difference of full wages and subsistence allowance during the period of his suspension and he will not get any increment for the period he remained under suspension. Subsequently, administrative order (Annexure P8) of the same in this regard was passed. Subsequently, a show cause notice dated 16.9.2013 (Annexure P12) was issued to the petitioner for forfeiture of his gratuity under Section 4(6) of Payment of Gratuity Act, 1972 (in short, 'Gratuity Act 1972') read with Central Bank of India Employees'

Gratuity Fund Rules, 1975) (in short, 'Gratuity Fund Rules 1975') intimating him that on account of irregularities committed by the petitioner, which also resulted into financial loss to the bank, necessary disciplinary proceedings were initiated resulting into compulsory retirement order dated 13.5.2013. Now, in accordance with Rule 7(6) of the Gratuity Act 1972 read with Gratuity Fund Rules 1975, the gratuity payable to the petitioner is liable to be forfeited. The petitioner was given 15 days to reply the said notice dated 16.9.2013 (Annexure P12). Petitioner submitted the reply (Annexure P13). After considering the same, the impugned order dated 8.10.2013 (Annexure P14) was passed, vide which, it was held that the loss likely to be suffered by the bank in the fraud case of branch office GT Road Karnal is Rs.20 lacs and in account of Bala Ji Industries Mahesh Nagar, Ambala Cantt is Rs.86.1 lacs. Therefore, under Rule 4(6)(a)/4(6)(b) of Gratuity Act 1972 and Rule 12 of Gratuity Fund Rules 1975 the gratuity of the petitioner is forfeited. Petitioner is aggrieved by the said order dated 8.10.2013 (Annexure P14), vide which, his gratuity was forfeited. It is claimed that the said order is illegal on the various grounds.

In the written statement, holding of inquiry and imposing of punishment of compulsory retirement is not denied. It is stated that the bank has rightly forfeited the gratuity amounting to Rs.10 lacs under Section 4(6) (a) and 4(6)(b) of Gratuity Act 1972 read with 12 of Gratuity Fund Rules 1975. It is stated that under Regulation 4(h) of the Regulations 1976, compulsory retirement is one of the major penalties. Relevant Rule 4(6) and Rule 12 were also reproduced in the written statement to assert that the bank has a right to forfeit the gratuity.

I have heard learned counsel for the parties and have carefully

gone through the file.

Admittedly, in this case, the petitioner was charge sheeted on four charges, which have been reproduced above. He was exonerated of charge nos.1 and 3 and held guilty of charge no.2, whereas charge no.4 was partly proved. There was no specific charge in the charge sheet that the petitioner has caused financial loss to the bank and to which extent. The charge no.2 was regarding making unauthorized transfer entries which could not result in financial loss to the bank. Charge no.4 was regarding granting, processing, recommending and disbursing credit facility to M/s Balaji Industries to the tune of Rs.83.80 lacs as a term loan and Rs.12 lacs as C/C without observing the laid down norms of credit policy. As per findings recorded in the inquiry report dated 13.5.2013 (Annexure P7), the charge was only proved to the extent that periodical inspections were not carried out. The loan account of M/s Balaji Industries was out of order and not NPA. Loan was not insured for nine months after the disbursal of the loan and that the property mortgaged was already acquired by the HUDA. It was also held that the presenting officer has failed to prove why Rs.13,50,000/- paid one month prior should not be treated as advance payment. Hence, this part of charge is not proved. There was no specific finding in the inquiry report as to whether the petitioner has caused any financial loss to the bank and if so, to which extent. Accordingly, the punishment order of compulsory retirement was passed. The action of forfeiture of gratuity is sought under Rule 4(6) of Gratuity Act 1972 read with Rule 12 of Gratuity Fund Rules 1975. Rule 4(6) and Rule 12 are reproduced as under:-

4(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 4[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.”

Rule 12: *In case of termination of service of the member on account of proven misconduct, gratuity payable shall not be forfeited, except where such misconduct causes financial loss to the bank and in that case the forfeiture of the gratuity shall be to the extent of the financial loss only.*

Perusal of the Rule 4(6) shows that gratuity can be forfeited only in case of termination for any act, willful omission or negligence causing any damage or loss, or destruction of the property belonging to the employer and forfeiture is only to the extent of damage or loss so caused. Similarly, in Rule 12 also, the word 'termination of service' used for any proven misconduct.

In this case, in show cause notice dated 16.9.2013 (Annexure P12) shows that it was not mentioned as to how much financial loss is suffered by the bank and on which account said financial loss is calculated. Reference is to the compulsory retirement order dated 13.5.2013. Therefore, basically, the show cause notice is on the basis of the compulsory retirement order dated 13.5.2013. The show cause notice dated 16.9.2013 (Annexure P12) is reproduced as under:-

“Whereas on account of irregularities committed by you which also resulted in the financial loss to the Bank necessary disciplinary proceedings were initiated resulting in your Compulsory Retirement vide order dated 13.5.2013.

In accordance with section 4(6) of Payment of Gratuity Act, 1972 read with Central Bank of India Employees' Gratuity Fund Rules, 1975, the gratuity payable to you is liable to be forfeited.

In view of above, the Board contemplates to take action and thus you are hereby called upon to reply to the notice within a period of 15 days from the date of receiving the notice failing which, it shall be constructed that you don't have any objection to forfeit the gratuity.

However, in the impugned order dated 8.10.2013 (Annexure P14) there is a specific mention of causing loss to the extent of Rs.20 lacs to the branch office GT Road Karnal and Rs.86.1 lacs in account of M/s Balaji Industries, Branch Office, Mahesh Nagar, Ambala Cantt. This loss was never mentioned in the show cause notice and therefore, on account of the said fact, show cause notice followed by the order of forfeiture (Annexure P12) and (Annexure P14) are liable to be quashed.

In any case, there is second ground also. Notice of forfeiture shows that it is based on the punishment order dated 13.5.2013, which is further based on the inquiry report (Annexure P7). Neither it is mentioned as to whether the petitioner has caused any financial loss to the bank and to which extent nor there was any specific charge to that effect in the said inquiry report.

Now, further question would arise as to whether in case of punishment of compulsory retirement, the gratuity could be forfeited by passing a separate order?

Rule 4(6) and Rule 12 reproduced above shows that word 'termination' has been used. The word 'termination' has not been defined in the Gratuity Act 1972 or the Gratuity Fund Rules 1975. In the Regulations, punishment of dismissal from service and removal from service is provided and then there is also punishment of compulsory retirement. These are the distinct punishments having different effect.

Now, the question would arise whether the order of compulsory retirement is deemed to be a termination order?

I find the reply in negative. The matter was examined by this Court in a case pertaining to UCO Bank titled as Ashwani Kumar Sharma vs. UCO Bank and others, 2006(4) SCT 171, wherein, it was observed as under:-

17. *So far withholding of gratuity is concerned the respondents have only relied upon para 46 of the Service Regulations to justify their action. This Regulation reads as under:—*

“46 (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.”

Basically the contents of para 46(1)(e) of the Regulation reproduced above have been pressed by the respondents to withhold gratuity. This para again makes a provision for grant of gratuity by laying down as to how all would be eligible for payment of gratuity. Accordingly, officers on their retirement, death, disablement rendered unfit to further service, resignation after completing 10 years of service are eligible and entitled for

payment of gratuity. It is then provided under Clause 46(1)(e) of the Regulation that in case of termination of service after completion of 10 years of service, officer is also eligible for gratuity except where termination is by way of punishment. Thus an officer whose services are terminated is also entitled to the payment of gratuity but this termination (emphasis supplied) should not be by way of punishment. It has been contended that since the petitioner was compulsorily retired by way of punishment, he is not eligible for payment of gratuity in view of para 46(1)(e) of the Service Regulations. This argument in my view cannot seek support from the contents of the Regulation relied upon. The difference and distinction between compulsory retirement and other from of termination of service is required to be appreciated and kept in view. Termination of service can result on account of different penalties that are awardable under the Disciplinary Regulations of the Bank. As per these Regulations, major penalty awardable to an officer are enumerated in para-4 of the said Regulations. The reduction in lower stage of time scale, reduction to lower grade or post, compulsory retirement, removal from service and dismissal are major penalties provided under the Disciplinary Regulations. It is thus, seen that termination of service has not been provided as a punishment under the Disciplinary Regulations. The term 'termination of service' in para. 46 (1)(e) of the Service Regulations apparently is used in a literal sense. If compulsory retirement is allowed to be included in this term 'termination of service' to deny the benefit of gratuity to an employee so punished then obvious difference and distinction between this punishment of compulsory retirement and removal from service, dismissal would cease to exist. If compulsory retirement can lead to withholding of the gratuity then gratuity would not be payable in case of all these punishments of compulsory retirement, removal and dismissal. Would it be permissible having regard to the nature and gravity of the three punishments which are distinctive in nature? Even dismissal

and removal are two different forms of punishments though these both may be leading to termination as such. [See Dr. Dattatraya Mahadev Nadkarni since deceased by his L.Rs. v. The Municipal Corporation of Greater Bombay, JT 1992 (1) SC 495] : [1992 (3) SCT 150 (SC)] : Compulsory retirement can certainly not be equated with 'dismissal or removal'. The award of this punishment leads to end of service but as retirement though compulsorily. It cannot be allowed to operate as dismissal or removal. It can reasonably be equated with retirement used in para 46 (1)(e) of the Service Regulations. Compulsory retirement would be nearer to retirement than termination, removal, dismissal etc. It would otherwise also sounds totally illogical that a person who is compulsorily retired would be entitled to the grant of pension but he is not eligible or entitled to payment of the gratuity. Right of the petitioner to gratuity is statutory right and no provisions has specifically been pointed out which could authorize withholding of the gratuity as a major punishment or otherwise. The provisions of para 46 of the Service Regulations are providing for the conditions of eligibility for payment of gratuity and cannot be construed to justify the forfeiture of gratuity except in case of clear termination by way of removal or dismissal. Forfeiting the gratuity, payable to the petitioner after the order of compulsory retirement in fact may amount to a punishment which is not permissible by any provision statutory or otherwise applicable to the petitioner. Reliance on para 46 as already discussed in this case would not entitle the respondents to withhold the gratuity payable to the petitioner. Though not relied upon by the respondent-bank but a copy of the Employees Gratuity Fund Rules was found annexed with the compilation handed over by the counsel for the bank alongwith the Statutory Regulations as referred to above. Rule 3 of these Rules regulates the payment of gratuity to the employees. The same is reproduced below:—

“3. Gratuity shall be payable to an employee in case of

(a) retirement on superannuation or (b) voluntary retirement or resignation or (c) termination of service by the Bank or (d) death whilst in the service of the Bank, in the manner and subject to the condition hereinafter mentioned:

a) On retirement on superannuation:

On retirement on or after attaining the age of 58 years, gratuity will be payable at the rate of one month's salary for each completed year of active service, subject to a maximum of 15 months' salary.

b) On voluntary retirement or resignation from the Bank's service or an termination of service by the Bank, after completion of 10 years' service in the Bank's on ground other than misconduct such as in subordination, moral turpitude, fraud of any act of commission or omission on his part resulting in financial loss to the Bank.”

Then Rule 10 makes an provision for forfeiture of gratuity which reads as under:—

“10. (a) The gratuity of an employee to all employees shall be wholly forfeited if the services have been terminated on account of any misconduct resulting in financial loss or damage to the Bank, shall be forfeited to the extent of the damage or loss so caused.

(b) The gratuity payable to an employee shall be wholly 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.”

Thus, it is clear that as per these Rules, gratuity can be forfeited only in the case of termination of services when it is done for an offence involving moral turpitude. The question again then is to see whether the compulsory retirement can be equated with termination of service or not. It has already been noticed above the termination of service is not provided as a punishment whereas compulsory retirement is a punishment. Termination of

service would result in complete cessation of Master and Servant relationship as in the case of dismissal and removal but the punishment of compulsory retirement would maintain such relationship for the purpose of grant of retiral benefits. This can be seen even from the Pension Regulations framed by the bank. Chapter 5 of these Regulations refer to a Clause of Pension and it covers superannuation pension, pension on voluntary retirement, invalid pension, compassionate allowance, premature retirement pension and compulsory retirement pension (emphasis supplied). It is then specifically provided in Regulation 33, reproduced above, about the compulsory retirement pension. It is thus, clear that compulsory retirement though may bring to an end the relationship of Master and Servant but it does not end such relationship for the purpose of grant of retiral benefits.; Though in different context even Hon'ble Supreme Court in case reported as UCO Bank v. Sanawar Mal, 2004 Labour & Industrial Cases 1752 : [2004 (3) SLR 629 (SC)] noticed the distinction between the resignation and voluntary retirement to say that the resignation brings about complete cessation of Master and Servant relationship whereas voluntary retirement maintained the relationship for the purpose of grant of retiral benefits. A similar analogy can be drawn in the case at hand. Here also the right of the petitioner to earn retiral benefits would continue to subsist. Accordingly, it cannot be said that the services of the petitioner were terminated to deny him the right to his gratuity in terms of regulation 46 relied upon by the respondent-bank or-the other Rules referred to above. In any case, the petitioner also had acquired a right to receive the gratuity after putting in long service and the same has been denied to him without issuing any show cause notice or giving him any opportunity to urge anything against such a proposed action or order. Apart from the other grounds, this order is not sustainable in view of the violation principle of natural justice and of denial of opportunity of hearing to the petitioner. This order, as such, is

also not sustainable.

LPA No.191 of 2006 against the aforesaid judgment was dismissed by a Division Bench of this Court vide order dated 1.2.2010. Therefore, the word 'termination' used in the above noted rules has to be distinguished from the compulsory retirement. Therefore, it has to be held that compulsory retirement is not included in word 'termination' and consequently, the said Rule 4(6) of Gratuity Act 1972 and Rule 12 of Gratuity Fund Rules 1975 are not attracted in the present case. Moreover, as observed above, in the charge sheet, there was no charge of causing financial loss nor it was held that financial loss has been caused by the petitioner to the bank and then to which extent. The impugned order is in fact a second punishment on the basis of same facts, which is otherwise illegal.

As a result of foregoing discussion, the present writ petition is allowed. The impugned show cause notice dated 16.9.2013 (Annexure P12), followed by punishment order dated 8.10.2013 (Annexure P14) are hereby quashed. As a consequent thereof, the respondents are directed to release the gratuity of the petitioner along with interest @ 9% per annum from the date of retirement till payment, within two months from the date of receipt of a certified copy of this order.

28.02.2017

gk

**(Kuldip Singh)
Judge**

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes