

**THE HIGH COURT OF MADHYA PRADESH,
JABALPUR**

Writ Petition No.	:	8913 of 2019
Parties Name	:	The General Manager Canara Bank vs. Shri Prakash N. Mandve and others
Bench Constituted	:	Hon'ble Shri Justice Vishal Mishra, J.
Name of counsel for parties	:	For Petitioner: Shri Hans Raj Mutreja, Advcoate For Respondent: Shri Tej Kumar Malik, Advocate
Whether approved for reporting	:	Yes/No
Law laid down	:	(I) Pension and Gratuity are not the bounties, but they are the hard earned properties by an employee by rendering his services to the department. They are not the fundamental rights but are the constitutional rights and are held to be property of an employee. (ii) Gratuity can be withheld during pendency of disciplinary proceedings, as the disciplinary authority has powers to punishment of dismissal or any other major penalty even after employee attains age of superannuation as the disciplinary proceedings were initiated while he was in service.
Significant paragraphs	:	13 to 17

O R D E R

03.02.2022

With the consent of the parties the matter is finally heard.

1. Challenge in this petition has been made to an order dated 10th July, 2019 passed by the Gratuity Appeals Nos. 60/18 and 61/18, whereby, Deputy Chief Labour Commissioner, Central Jabalpur has

passed an order to pay gratuity amount alongwith interest to the respondent No.1. Challenge is being made on limited issue that whether the respondent No.1 is entitled for grant of interest for the delayed payment of gratuity by the authority or not?

2. It is pointed out that the petitioner are a cooperate body constituted under the Banking Companies Act, 1970 having its head office at Manipal and an incorporate office at Bangalore. The respondent no.1 was appointed on 02nd April, 1977 as Probationary Clerk by the Bank and was confirmed on 28.10.1977. While working in the petitioner's bank at its Gandhi Bagh, Nagpur Branch between 09.11.2010 to 30.09.2011, the respondent by corrupt and illegal means or otherwise by abusing his official position demanded and accepted pecuniary advantage of Rs.5000/- from one Rakhika, a customer of the Bank on 14th July, 2011. The respondent No.1 was trapped by ACB, CBI Nagpur on the complaint of the customer and after investigation , an FIR was registered against him for offences punishable under Prevention of Corruption Act and a charge-sheet has been filed against the respondent No.1. A departmental enquiry was drawn up against the respondent no.1 and charges were found to be proved and the disciplinary authority vide order dated 31st May, 2016 found that respondent No.1 liable for breach of Regulation 3(1) read with Regulation 24 of the Syndicate Bank Officer Employees' (Conduct) Regulations, 1976 and punishment of dismissal from service was imposed upon the respondent No.1. An appeal preferred by the respondent No.1, was rejected and thereafter show cause notice dated 19th October, 2016 was issued to the respondent No.1, wherein, he was

asked to submit a reply as to why his gratuity amount should not be forfeited. A reply was duly submitted by the respondent No.1 and the authority after considering reply of respondent No.1 had decided that the act committed by the respondent No.1 falls within the purview of offence involving moral turpitude, therefore, he was informed that he was not entitled for any gratuity as per Rule 8(1)(ii) of the Payment of Gratuity Act, 1972.

3. The respondent No.1/employee aggrieved by the action of the petitioner/bank had raised a claim in prescribed form before the Regional Labour Commissioner (Central) Jabalpur. The case was registered as ALC 36-(45) and the Controlling Authority under Payment of Gratuity Act, 1972 and RLC, Bhopal. The controlling authority after considering the reply filed by the respondent No.1 as well as the evidence led by the authorities had arrived at a conclusion that the respondent No.1 was entitled for payment of gratuity and the claim to the tune of Rs.10.00 lac was allowed in favour of the respondent/employee. Thereafter a notice was for payment of gratuity to the bank in prescribed form on 27.03.2018 was issued, but no claim was granted by the authority. An appeal was preferred by the respondent No.1 before the Deputy Chief Labour Commissioner, (Central) Jabalpur as well as by the employer and the appeal were registered as Gratuity Appeal Nos.60/18 and 61/18. The appellate authority vide impugned order has dismissed the appeal filed by the employer i.e. the petitioner and has allowed the appeal filed by the respondent/employee and has further directed for payment of interest alongwith payment of gratuity.

4. It is submitted that the employee/respondent is not entitled for any interest as the appeal was not filed within time, the prescribed limit as provided under the Payment of Gratuity Act is 120 days and in terms of the Section 7 (7) of the Act, the appeal was filed with a delay without there being any explanation for the same. It is argued that the respondent/employee while in service was caught red handed by the CBI personnel and was placed under suspension and disciplinary action was taken against the respondent/employee. The disciplinary authority had terminated the services of the respondent/employee, but the aforesaid order of termination was quashed by this Hon'ble Court vide order dated 06.04.2018 passed in W.P.No.3011/2017, whereby, this Hon'ble Court while quashing the termination orders granted liberty to the authorities to pass a fresh order keeping in view the Syndicate Bank (Employees') Pension Regulations, 1995. Thereafter, the authorities have not chosen to take any action against the respondent/employee. It is further pointed out that a criminal case which was registered against the respondent/employee under the provisions of Prevention of Corruption Act, the respondent/employee has been honorably acquitted by the judgment of Special Judge vide order dated 23.09.2019 passed in Special CBI case No.34/11. It is submitted that once the respondent/employee has been acquitted by the Special Court and termination order has been quashed by this Court and there is no action subsequently taken by the authorities, the respondent/employee is duly entitled for interest. Reliance has been placed a the judgment passed by Hon'ble Supreme Court in the case of **Union Bank of India vs. C.G. Ajay Babu in Civil Appeal 8251/2018** decided on 14th August, 2018 and also in the case of **Prakash M. Mandve vs General Manager,**

Syndicate Bank, W.P.No.3011/2017 decided on 06.04.2018 holding that in such circumstances, the authorities have directed for payment of gratuity amount alongwith interest.

5. In the present case, the authorities have confined their challenge only with respect of interest part. It is submitted that both the appeals; one submitted by the employer and other by the employee were taken into consideration for analogous hearing and were decided by a common order. The authorities have found no substance in the appeal preferred by the employer and the appeal preferred by the employee was allowed considering the aforesaid judgments of the Hon'ble Supreme Court and the law with respect of grant of interest on the gratuity amount. It is submitted that the pension and gratuity can only be withheld under exceptional circumstances and can be withheld only as per provisions mandate under the law. It is argued that Section 4 of the Payment of Gratuity Act has specifically prescribed for payment of gratuity. It is argued that only in terms of provisions of Section 4 sub-section 6 of the Act, the authorities can withhold the gratuity amount, therefore, there is no justification of the authorities in withholding the gratuity without even waiting for outcome of the criminal proceedings. Once there is a presumption that until and unless the employee or accused is held guilty and punished by the criminal court, he has always be treated as an innocent person. The respondent/employee stood retired during these proceedings, therefore, the authorities were duty bound to make payment of gratuity, even otherwise, the gratuity can only be withheld only in exceptional circumstances, whereby offence in the nature of forgery having ingredients of moral turpitude is being committed. As per the Banking Rules, the Bank can always

withhold or recover amount towards the loss to the Bank and forfeiture of the gratuity amount is permissible to that extent only. Therefore, the order passed by the appellate authority granting interest to the respondent/employee is just and proper, does not warrant any interference in the present petition. He has prayed for dismissal of the writ petition.

6. Heard learned counsel for the parties at length and perused the record.

7. From a perusal of the record, the admitted position is that the respondent No.1 while in service in the Bank was caught red handed for taking bribe of Rs.5000/- from the customer. He was placed under suspension and disciplinary proceedings were initiated alongwith criminal proceedings against him. The disciplinary proceedings ended in termination of service, which subsequently was put to challenge before this Court and this Court vide order dated 06.04.2008 passed in W.P.3011/2017 has quashed the termination order of the respondent/employee, however, extended the liberty to the authorities i.e. even if they want, they can pass a fresh order. Admittedly no subsequent proceeding is drawn up by them, therefore, the order of this Court have attained finality. The respondent/employee was acquitted in the criminal case by all the authorities and it was an honorable acquittal. Thus, no charges were found to be proved against the respondent/employee. In such circumstances, the respondent/employee is entitled for payment of gratuity.

8. Even in this petition challenge is made by the authority to the extent of grant of interest. It is submitted that the matter was already sub-judiced by various Courts, therefore, until and unless a decision is

taken, the authorities were duty bound and cannot pay gratuity amount to the respondent/employee. It is further argued that the appeal filed by the respondent/employee claiming interest amount itself is not maintainable as the same was filed with delay.

9. The Hon'ble Supreme Court in the case of **Union Bank of India and others vs. C.G. Ajay Babu and another** reported in **AIR 2018 SC 3792** has held as under:

“9. Section 4 the Act, to the extent relevant, reads as follows:

“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 nominees 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.” (Emphasis supplied)

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.

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.”

10. The Hon’ble Supreme Court in the case of **Jaswant Singh Gill vs. Bharat Coking Coal Ltd. and others** reported in **(2007) 1 SCC 663** has held as under:

“13. 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, sub-section (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.”

11. The Hon’ble Supreme Court in the case of **State of Jharkhand and others vs. Jitendra Kumar Srivastava and another**, reported in **AIR 2013 SC 3383** has held as under:

“7. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. Vs. Union of India; (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

“The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service? What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad vs. State of Bihar and Ors. AIR 1971 Su. S.C.R. 634 wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one’s discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Anr. vs. Iqbal Singh (1976) IILLJ 377SC.”

8. It is thus hard earned benefit which accrues to an employee and is in the nature of “property”. This right to property cannot be taken away without the due process of law as per the provisions of Article 300 A of the Constitution of India.”

12. The Hon'ble Supreme Court in the case of **State of W.B. vs. Haresh C. Banerjee and others**, reported in **(2006) 7 SCC 651** has held as under:

“5. Articles 19(1)(f) and 31(1) have been repealed by the Constitution (Forty-Fourth Amendment) Act, 1978 w.e.f. 20th June, 1979. The right to property is no longer a fundamental right. It is now a constitutional right, as provided in Article 300 A of the Constitution. Right to receive pension was a fundamental right at the time of framing of Rules in 1971. The question is whether a Rule framed under proviso to Article 309 of the Constitution providing for withholding of the pension would ipso facto be ultra vires, being violative of Article 19(1) (f) as it stood in 1971 when Rules were framed.”

13. Thus, from the aforesaid analysis, it is clear that pension and gratuity are not the bounties, are the hard earned properties by rendering his services to the department and are declared to be a constitutional right.

14. The question before this Court for consideration is whether the respondent No.1 is entitled for interest on the delayed payment of gratuity. Some dates are important to be considered:-

Dates	Event
14.07.2011	FIR was registered against the respondent No.1 while he was in service;
19.06.2014	Charge-sheet was issued to him;
30.06.2014	He attained the age of superannuation;
31.05.2016	Termination order was passed after his superannuation;
18.11.2016	Appellate order affirming termination order was passed;
06.04.2018	Both orders were quashed by this Court in W.P.No.3011/2017,
23.09.2019	He was acquitted in criminal case.

From the aforesaid, it is clear that criminal proceedings as well as disciplinary proceedings were drawn against the respondent No.1

while he was in service. Serious allegation of taking bribe was against him as he was caught red handed and the entire proceedings continued upto 23.09.2019 i.e. upto his acquittal in criminal case by the learned Special Judge.

15. The Hon'ble Supreme Court recently in the case of **Chairman-cum-Managing Director, Mahanadi, Coalfields Limited vs. Rabindranath Choubey**, reported in **AIR 2020 SC 2978** has considered the aspect of withholding of gratuity during pendency of disciplinary proceedings and held as under:

“10.17 Section 4 provides for payment of gratuity. Section 4(6) contains a non-obstante clause to sub-section 1. In case of service of the employee have been terminated for wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, gratuity shall be forfeited to the extent of the damage or loss so caused as provided under section 4 (6)(a). Even in the absence of loss or damage, gratuity can be wholly or partially forfeited under the provisions of section 4(6)(b), in case termination of services was based upon disorderly conduct or act of violence on his part or offence involving moral turpitude committed during the course of employment. Thus, it is apparent that not only damage or loss can be recovered, but gratuity can be wholly or partially withheld in case services are terminated for the reasons specified in section 4 (6)(b).

10.31 Several service benefits would depend upon the outcome of the inquiry, such as concerning the period during which inquiry remained pending. It would be against the public policy to permit an employee to go scot-free after collecting various service benefits to which he would not be entitled, and the event of superannuation cannot come to his rescue and would amount to condonation of guilt. Because of the legal fiction provided under the rules, it can be completed in the same manner as if the employee had remained in service after superannuation, and appropriate punishment can be imposed. Various provisions of the Gratuity Act discussed above do not come in the way of departmental inquiry and as provided in Section 4(6) and Rule 34.3 in case of dismissal gratuity can be

forfeited wholly or partially, and the loss can also be recovered. An inquiry can be continued as provided under the relevant service rules as it is not provided in the Payment of Gratuity Act, 1972 that inquiry shall come to an end as soon as the employee attains the age of superannuation. We reiterate that the Act does not deal with the matter of disciplinary inquiry, it contemplates recovery from or forfeiture of gratuity wholly or partially as per misconduct committed and does not deal with punishments to be imposed and does not supersede the Rules 34.2 and 34.3 of the CDA Rules. The mandate of Section 4(6) of recovery of loss provided under Section 4(6)(a) and forfeiture of gratuity wholly or partially under Section 4(6)(b) is furthered by the Rules 34.2 and 34.3. If there cannot be any dismissal after superannuation, intentment of the provisions of Section 4(6) would be defeated. The provisions of Section 4(1) and 4(6) of Payment of Gratuity Act, 1972 have to be given purposive interpretation, and no way interdict holding of the departmental inquiry and punishment to be imposed is not the subject matter dealt with under the Act.

11. In view of the above and for the reasons stated above and in view of the decision of three Judge Bench of this Court in Ram Lal Bhaskar (supra) and our conclusions as above, it is observed and held that (1) the appellant – **employer has a right to withhold the gratuity during the pendency of the disciplinary proceedings, and (2) the disciplinary authority has powers to impose the penalty of dismissal/major penalty upon the respondent even after his attaining the age of superannuation, as the disciplinary proceedings were initiated while the employee was in service.**

Under the circumstances, the impugned judgment and order passed by the High Court cannot be sustained and the same deserves to be quashed and set aside and is accordingly hereby quashed and set aside and the order passed by the Controlling Authority is hereby restored. However, the appellant-employer is hereby directed to conclude the disciplinary proceedings at the earliest and within a period of four months from today and pass appropriate order in accordance with law and on merits and thereafter necessary consequences as per Section 4 the Payment of Gratuity Act, 1972, more particularly Sub-section (6) of Section 4 the Gratuity Act and Rule 34.3 of the CDA Rules shall follow. The present appeal is

accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.”

16. From the aforesaid analysis, it is clear that the amount of gratuity can be withheld pending enquiry against an employee, if the proceedings were initiated while he was in service. There is no dispute with respect to the fact that the criminal as well as departmental proceedings were initiated against the respondent/employee while he was in service. The disciplinary proceedings ended on 31.05.2016 and he was terminated from service. Termination was quashed on 06.04.2018 by this Court in W.P.No.3011/2017. In criminal case, he was acquitted on 23.09.2019. The petitioner/employer has deposited the amount of gratuity on 17.07.2018 with the controlling authority Bhopal vide demand draft No.503484 dt. 13.07.2018, as the criminal case was pending against the respondent No.1. Thus, it is clear that the petitioner/employer has taken a prompt action to deposit the gratuity amount. It cannot be said to be with delay. Counsel for the petitioner has fairly stated that amount towards gratuity is received, but interest is not paid.

17. From the aforesaid analysis of the case, it is held that, there is no delay in making the payment towards gratuity. Respondent No.1 is not entitled for any interest on the gratuity amount, in view of the judgment of Hon'ble Supreme Court in the case of **Rabindranath Choubey** (supra).

18. The petition is allowed. No orders as to cost.

(VISHAL MISHRA)
JUDGE