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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VISHAL DHAGAT**

ON THE 20th OF MARCH, 2023

MISC. PETITION No. 3085 of 2021

BETWEEN:-

1. **GENERAL MANAGER (PERSONNEL) UNION BANK OF INDIA CENTRAL OFFICE 239 VIDHAN BHAWAN MARG NARIMAN POINT, MUMBAI 400021 THR. THE REGIONAL HEAD, UNION BANK OF INDIA, REGIONAL OFFICE, GURUNANAK MARKET RUSSEL CROSSING JABALPUR (MADHYA PRADESH).**
2. **MANAGING DIRECTOR AND C.E.O., UNION BANK OF INDIA, CENTRAL OFFICE, 239 VIDHAN BHAWAN MARG NARIMAN POINT MUMBAI 400021 THR. THE REGIONAL OFFICE, GURUNANAK MARKET RUSSEL CROSSING, JABALPUR (MADHYA PRADESH).**

.....PETITIONERS

(SHRI S.K. RAO - SENIOR ADVOCATE WITH SHRI SANTOSH KUMAR TIWARI - ADVOCATE FOR PETITIONERS)

सत्यमेव जयते

AND

1. **SHRI B.D. MUKHERJEE S/O LATE SHRI B.C. MUKHERJEE OCCUPATION: EX ASSISTANT GENERAL MANAGER AND REGIONAL HEAD UNION BANK OF INDIA OFFICE INDORE NOW PERMANETLY REISDING AT B 20/41, D 1 A BHELUPURA VARANASI (UTTAR PRADESH)**
2. **APPELLATE AUTHROITY UNDER THE PAYMENT OF GRATUITY ACT AND DEPUTY CHIEF LABOUR COMMISSIONER CENTRAL 10 CIVIC CENTRE JABALPUR (MADHYA PRADESH)**
3. **CONTOLLING AUTHROITY UNDER THE PAYMENT OF GRATUITY ACT AND DEPUTY CHIEF LABOUR COMMISSIONER CENTRAL NIRMAN SADAN C.G.O COMPLEX ARERA HILL (MADHYA PRADESH)**

**(SHRI AKASH CHOUDHURY - ADVOCATE FOR RESPONDENT NO.1 AND
SHRI DEVESH BHOJNE - ADVOCATE FOR RESPONDENTS NO. 2 AND 3)**
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This petition coming on for admission this day, the court passed the following:

ORDER

Petitioners have filed this petition under Article 227 of the Constitution of India challenging order dated 26.07.2021 passed by Appellate Authority i.e. respondent No.2 and order dated 13.10.2020 passed by the Controlling Authority i.e. respondent No. 3 under Payment of Gratuity Act, 1972.

2. Learned Senior Counsel appearing for the petitioners submitted that respondent No. 1 was serving as Assistant General Manager-cum-Regional Head of Bank's Regional Office, Indore. He committed serious misconduct resulting into financial losses to the bank of Rs. 717.52 lacs. He was served with charge -sheet and disciplinary enquiry was conducted against him and major penalty of compulsory retirement was imposed upon him vide order dated 16.10.2003. Thereafter, gratuity amount of Rs. 3,50,000/-, which is payable to respondent No. 1, was forfeited vide order dated 29.10.2007. Respondent No. 1 filed an application under Section 7 of the Payment of Gratuity Act, 1972 on 27.03.2018. There is delay of 11 years in filing application under Section 7 of the Payment of Gratuity Act, 1972. No application for condonation of delay was filed. Controlling Authority without taking into consideration the reply submitted by the bank and without consideration of provisions of the Payment of Gratuity Act, 1972 and Bank's Gratuity Funds Rules, on hypothetical figures directed the bank to pay forfeit gratuity amount of Rs. 3,50,000/- and also Rs. 4,22,220/- which was 10% interest for entire period.

3. Learned Senior Counsel appearing for the petitioners submitted that respondent No. 1 had never challenged the penalty order nor order of forfeiture of gratuity amount before higher forum. Controlling Authority as well as Appellate Authority committed an error of law in passing impugned orders dated 13.10.2020 and 26.07.2021. In aforesaid circumstances, learned Senior Counsel appearing for the petitioners made a prayer for quashing of said orders being illegal and without jurisdiction. Learned Senior Counsel also submitted that as per Section 7(7) of the Payment of Gratuity Act, any person aggrieved by order under sub-section (4) ought to have filed an application before Controlling Authority within a period of 90 days as per Rule 10 of Payment of Gratuity (Central) Rules, 1972 and if application is filed beyond said period, then it is to be accompanied by application for condonation of delay. It is further submitted that as per Clause 3 of Schedule A of Bank's Gratuity Fund Rules, 1975, disciplinary/competent authority is empowered to forfeit the gratuity to the extent of damages or losses caused to the bank. Therefore, order is within jurisdiction of competent authority. Further, reliance is placed on Regulation 46 and it was argued that respondent No.1 is not entitled to gratuity as per Regulation 46. In view of aforesaid submission, prayer is made for allowing the writ petition and quashing the impugned orders.

4. Counsel appearing for respondent No.1 submitted that Regulation and Rules of the bank, which are contrary to the provisions of Payment of Gratuity Act, 1972, cannot be relied for setting aside the order of payment of gratuity. He placed reliance on Section 14 of the Payment of Gratuity Act, 1972, which is quoted as under :

"14. Act to override other enactments, etc. The provisions of this Act or any rule made there under 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."

5. It is submitted that Payment of gratuity are mandatory in nature have overriding effect over rules and regulations of bank, which are contrary to the provisions of the Act of 1972. Counsel for the respondent No. 1 further argued that as per Section 4(6) of Payment of Gratuity Act, gratuity of an employee can be forfeited. Provisions of Section 4(6) is quoted as under :

"(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."

6. It is submitted that respondent No.1 is not terminated in disciplinary enquiry therefore, his gratuity cannot be forfeited under Section 4(6). Respondent No. 1 is outside the ambit of Section 4(6). Since gratuity of respondent No.1 cannot be forfeited under Payment of Gratuity Act, 1972, therefore, petitioners cannot forfeit the gratuity taking aid of banking rules and

regulations. It is submitted that orders forfeiting the gratuity is without jurisdiction. There is complete want of jurisdiction, therefore, orders forfeiting gratuity shall be void and nonest in the eye of law. Respondent No. 1 was exonerated in criminal trial thereafter, he filed an application in year 2018 for grant of gratuity. Further, it is submitted that if an order is without jurisdiction same is question of law and not of fact therefore, limitation will not come in way of respondents No.1 in challenging the order of forfeiture and claiming relief.

7. Heard the counsel for the parties.

8. On going through the provisions of Payment of Gratuity Act, 1972, it is found that Section 14 is mandatory in nature and Payment of Gratuity Act, 1972 will have overriding effect over other Acts which are in consistent with it. Banking Regulations and Acts, if same are inconsistent with the Payment of Gratuity Act, 1972, then provisions of Act of 1972 will prevail over other laws. Gratuity of respondent No. 1 can be forfeited if case of respondent No. 1 falls within ambit of Section 4(6) of the Payment of Gratuity Act, 1972. In disciplinary proceedings, which was initiated against respondent No.1, he was not terminated from service and punishment of compulsory retirement was imposed upon him. Section 4(6) provides for forfeiting of gratuity of an employee whose services have been terminated. Since respondents No. 1 does not fall under Section 4(6)(a) or 4(6)(b), therefore, gratuity amount of respondent No. 1 cannot be forfeited. Order of forfeiture of gratuity amount is without jurisdiction. In view of same, limitation will not be a bar for challenging such an order. Controlling Authority as well as Appellate Authority has rightly passed the orders granting gratuity and no interference is called for.

9. Appellate authority as well as controlling officer committed an error of law in entertaining time barred application for payment of gratuity. As per Rule 7 of

the Payment of Gratuity (Central) Rules, 1972, application for payment of gratuity is to be filed within period of 30 days from date of gratuity became payable, in Form-I to employer. Any application filed beyond period of 30 days can also be entertained by an employer if applicant adduces sufficient cause for delay in preferring his claim and no claim for gratuity under this Act shall be invalid merely because claimant failed to present his application within specified period. Any dispute is to be referred to Controlling Authority for decision. Rule 10 provides for filing an application in form-N for issuing direction by controlling authority within period of 90 days. Petitioner has filed an application for grant of gratuity and had submitted before controlling authority that payment of Gratuity Act, 1972 will supersede the banking regulation, claim of applicant was allowed. However, limitation prescribed under Act was not taken into consideration. Petitioner bank has filed an appeal before appellate authority.

10. Question of delay in filing application for payment of gratuity was raised therein and stated that no application for condonation of delay was filed before controlling authority and application was barred by limitation. Appellate authority did not pass any order to condone the delay and has affirmed the order passed by controlling authority.

11. Now question before Court is whether petitioner can claim relief of payment of gratuity by filing an application after lapse of 11 years?

12. Gratuity amount and interest was forfeited by order dated 29.10.2007. Application claiming gratuity was filed on 27.03.2018. Respondent explained delay by stating that application was filed after respondent No.1 was exonerated in criminal trial. Criminal trial and payment of gratuity is separate proceedings. Respondent No.1 gets cause of action to file application when gratuity amount

was forfeited by order of Bank. Therefore, explanation of pendency of criminal trial is not sufficient to condone the delay.

13. Counsel for respondent No.1 also argued that respondent No.1 is having continuous cause of action on non-payment of gratuity amount each day. Respondent No.1 will have a continuing cause of action if gratuity is not paid. However, in this case, there is a specific order of forfeiture of gratuity. Respondent's cause of action is arising from order of forfeiture and non-payment is only consequential. Cause of action is not repetitive or continuing one, therefore, respondent No.1 ought to have filed application within limitation prescribed from date of order of forfeiture.

14. It is trite law that limitation bars judicial remedy but does not extinguish the right of parties. Thus, limitation does not restrict a party to raise a defence based on his rights but bars action and time bar recovery. In view of same, respondent No.1 can not bring action for payment of gratuity but in an action against him can raise defence that order is without jurisdiction. It was duty of Court to see whether claim is barred by limitation. A time barred claim is to be dismissed. "*Interest Reipublicae ut sit finis litium*" Which means that in interest of state as a whole there should be limit to litigation. There is another latin maxim "*vigilantibus non dormientibus jura subveniunt*" which means law will assist who are vigilant.

15. In view of aforesaid discussion, respondent No.1 ought to have filed application within limitation prescribed under the law. If application cannot be filed within limitation period then respondent No.1 ought to have filed an application for condonation of delay in filing his claim. authority below committed an error of law in disregarding limitation. Authority considered time barred claim which has been filed after period of 10 years.

16. In view of above, impugned orders dated 26.07.2021 and 13.10.2020 are quashed. Miscellaneous petition filed by petitioners is *allowed*.

(VISHAL DHAGAT)
JUDGE

vkt/shabana

