

Jyotirmay Ray Vs. The Field General Manager, Punjab National Bank & Ors.

Civil Appeal No. 6611 of 2015
2023-01-01 | J.K. Maheshwari, J.
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Full judgment text

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J.K. Maheshwari, J.

1. Appellant, who was compulsorily retired as Sr. Manager, was denied the benefit of leave encashment, employer's contribution of provident fund, gratuity and pension by the Punjab National Bank (hereinafter referred to as the "Bank"). On rejection of his representation by the authorities, a challenge was made by filing a writ petition before the High Court. The said writ petition was contested by the Bank, taking the plea that due to irregularities in granting loans and cash credit facilities under the Credit Guarantee Fund Trust Scheme for Micro & Small Enterprises (for short "CGTMSE") and otherwise in routine loans, loss was caused to the Bank.

2. The background facts were that earlier, the appellant was chargesheeted on 16.10.2009 and also served with a supplementary chargesheet on 20.11.2009. On submitting of reply by the appellant, departmental enquiry was conducted and the enquiry report dated 11.01.2010 was submitted to the disciplinary authority who found him guilty and vide order dated 29.01.2010, penalty of compulsory retirement was inflicted. The appeal filed by the appellant was also dismissed by appellate authority on 28.07.2010.

3. The appellant by filing the writ petition did not challenge the order of compulsory retirement and only claimed the terminal benefits i.e., leave encashment, employer's contribution of provident fund, gratuity and pension. In the meantime, the review filed by the appellant before the appellate authority was also dismissed on 06.01.2011. During pendency of the writ petition, the Board of Directors of the Bank vide resolution dated 20.12.2010 refused to give employer's contribution of provident fund to the tune of Rs. 8,80,085/to the appellant.

Learned Single Judge vide order dated 03.04.2012 allowed the said writ petition in part and directed the Bank to release the employer's contribution of the provident fund as well as gratuity with interest @ 8.5% p.a. and leave encashment in terms of Regulation 38 of the Punjab National Bank (Officers') Service Regulations, 1979 (for short "1979 Regulations"). It was also clarified that the dues be calculated from the date of compulsory retirement and be released within a period of eight weeks from the date of communication. Learned Single Judge denied the benefit of pension because the appellant was not an inservice candidate when the scheme for shifting to the pension regime became operational.

4. On filing the Special Appeal by the Bank, the Division Bench allowed the same in part maintaining the order of grant of leave encashment, but set aside the grant of provident fund (Bank's contribution) and gratuity on the pretext that by an act of the appellant, loss has been caused to the Bank.

5. In view of the foregoing facts, grant of leave encashment to appellant is no more res integra. The appellant is not challenging the refusal to grant pension as he was not an inservice candidate at the time of change of scheme. The only question that falls for consideration is whether the denial of employer's contribution of Provident Fund and nonpayment of gratuity to appellant because of the order of compulsory retirement, as directed by the impugned order, is justified or not?

6. Mr. Irshad Ahmad, learned counsel appearing for the appellant contends that Rule 13 of the Punjab National Bank Employees' Provident Fund Trust Rules (for short "P.F. Trust Rules") gives first lien to the Bank on the contributions made by it to recover any loss, damages and liabilities which the Bank may at any time sustain or incur by reasons of any dishonest act, deed or omission or gross misconduct by a member of the provident fund.

It is submitted that in the main chargesheet or in the supplementary chargesheet, it is not alleged that due to grant of loan under the scheme or in other loans, any loss has been caused to the Bank. In the report of enquiry, finding of loss having been caused to the Bank has not been recorded. Learned counsel contends that the Board of Directors unilaterally passed a resolution which has rightly been interfered with by the learned Single Judge.

7. Learned counsel contends that while reversing those findings, the Division Bench has not assigned any cogent reason or even discussed the issue. It is also submitted that the Punjab National Bank, Personnel Division, Head Office, New Delhi issued Circular No. 1563 on 16/01/1997 having due reference to the provisions of the Payment of Gratuity Act, 1972 (for short "Gratuity Act") and payment under the 1979 Regulations. Explanation to clause 14(1)(a) of the said circular makes it clear that the gratuity is payable on termination of service to an officer on completion of at least 10 years of service.

It is clarified that the said termination should not be by way of punishment as dismissal or removal. Learned Single Judge has rightly observed that Regulation 4 of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations 1977 (for short "1977 Regulations") makes it clear that a dismissal of an employee shall ordinarily be a disqualification for future employment whereas removal from service shall not be a disqualification for future employment.

It is also stated that no aggravating circumstance of causing loss by appellant or finding as to loss being caused has been recorded in the enquiry. There was no quantification of loss or damage. It is urged that on inflicting a penalty of compulsory retirement after enquiry, ipso facto would not result in forfeiture of the gratuity as directed by the impugned order. Even otherwise the forfeiture of gratuity affects the civil right of an employee having adverse consequence which cannot be directed in violation of the principles of natural justice.

8. Per contra, Mr. Rajesh Kumar Gautam, learned counsel for the respondent Bank argued in support of the findings recorded in the impugned order passed by the Division Bench and contends that the normal retirement of an employee cannot be equated with compulsory retirement inflicted by way of penalty. Therefore, gratuity and Bank's contribution towards provident fund have rightly been withheld by the order impugned.

In support of his contention, reliance has been placed on the Full Bench judgment of the Punjab & Haryana High Court in LPA No. 566 of 2012 titled UCO Bank and others vs. Anju Mathur decided on 07.03.2013. It is urged that the said judgment was cited and relied upon by the High Court of Delhi in B.R. Sharma vs. Syndicate Bank and others, 2015 SCC Online Del 13989. Learned counsel has also placed reliance on the judgment of this Court in Canara Bank and another vs. Lalit Popli (Dead) through Legal Representatives (2018) 11 SCC 87.

9. We have heard learned counsel for the parties at length. The issue of payment of provident fund (Bank's contribution) and payment of gratuity and its forfeiture are required to be analysed with reference to the relevant provisions of the Act, Rules, Regulations and the circulars issued by the Bank from time to time. They are being considered in the subsequent subheadings and the paragraphs.

GRANT OF PROVIDENT FUND AND WHEN IT CAN BE FORFEITED:

10. Chapter IX of 1979 Regulations deals with the terminal benefits. As per Regulation 45(1), every officer shall become a member of the Provident Fund constituted by the Bank and shall be bound by the Rules governing such fund. The Rules governing such fund are known as P.F. Trust Rules. As per Rule 2 of the Trust Rules, the contribution of the employee and employer shall be deposited in the provident fund trust account, which shall be a contributory provident fund. Rules 13 and 14 whereof are relevant for the purpose of this case and are reproduced as thus:

"13. The Bank shall have first lien on the contributions made by it to the individual account of any member together with interest thereon or accretions thereto, to recover any loss, damages and liabilities which the Bank may at any time sustain or incur by reasons of any dishonest act, deed or omission or gross misconduct of or by such member.

14. In case where the Bank shall have first lien as provided in Rule No. 13 above, the Trustees shall on receipt of the resolution passed by the Bank's Board of Directors pay to the Bank out of such member's individual account in the Fund, such portion thereof not exceeding the Bank's contribution to it, as the Board might ask the Trustees to pay, and the receipt of the Bank for any payment so made, shall be

complete discharge to the Trustees. In the event of any such payment, the remaining amount out of the Provident Fund balance shall be paid to him. The recovery of such losses by the Bank shall be limited to the extent of such financial loss only."

On perusal, it is clear that the Bank shall have first lien on the contributions made by it to the individual account of any member together with interest thereon or accretions thereto, to recover any loss, damages and liabilities, sustained any time by the Bank or incurred by reasons of any dishonest act, deed or omission or gross misconduct of the member. It is further apparent that the Board of Directors shall pass an order to pay the contribution of the Bank which is in the account of fund to the Bank to the extent of recovery of the loss, damages and liabilities.

11. Let us apply the said Rules to the facts of the present case in the context of the allegations made in the chargesheet dated 16.10.2009 and supplementary chargesheet dated 20.11.2009 to consider the position that emerges.

12. It was alleged that while granting the loans or extending cash credit facilities under the CGTMSE or otherwise, due diligence of the procedure was not followed by the appellant. In the chargesheet, it is not alleged that by such an act, the Bank has suffered loss nor has the quantification of the amount of loss been done. In the report of enquiry, finding about loss being caused or quantification of the amount of loss has not been recorded.

The contribution of Bank to provident fund was forfeited as per resolution dated 20/12/2010 of the Board of Directors based on the communication dated 19/11/2010 as referred by the learned Single Judge. The said resolution refers that the Bank has suffered a loss of Rs. 77.59 lakhs by an act of the appellant for which the penalty of compulsory retirement has been directed. However, the recommendations were made for appropriation of the Bank's contribution of provident fund to the tune of Rs. 8,80,085/and it was withheld from the provident fund account of the appellant.

By filing this appeal, the appellant has averred and produced the report of the internal auditor dated 27/7/2009 (Annexure P1). The said report was of the prior date, from the date of issuance of the chargesheet. However, relying on the said report, it is submitted that no loss has been caused to the Bank. It is contended that nothing is alleged towards loss in the chargesheet.

13. In the counter affidavit to this appeal, it is stated that the Report (Annexure P1) was not part of the record of the writ petition before the High Court and without an application to take the additional evidence on record, it cannot be read by this Court. On perusal of the averments of the counter affidavit, the existence of the report (Annexure P1) has not been denied by the respondents. In the finding of the enquiry report, quantification of the loss caused is not recorded.

The resolution of the Board of Directors dated 20/12/2010 is subsequent to the order of penalty of compulsory retirement. Thus, prior to the chargesheet as per report of the internal auditor, loss has not been reported to the Bank. Presumably, it appears to us, for the said reasons in the chargesheet, allegations causing loss and quantifying the amount of loss have not been specified. The Board of Directors on the basis of information unilaterally passed the resolution alleging loss of Rs. 77.59 lakhs. Prior to passing the resolution, notice asking response and opportunity was not afforded to the appellant.

In the facts as discussed, the unilateral report cannot be relied upon by the Board of Directors to deny the benefit of payment of employer's contribution of provident fund. In this view of the matter, learned Single Judge was right in observing that the Board of Directors has not afforded an opportunity to the appellant on the issue of causing loss or damage to the Bank, prior to the passing of the resolution of appropriation of the contribution of the Bank from the provident fund account of the appellant.

Moreover, in the absence of any allegation in the chargesheet about the quantifiable amount of loss, the argument as advanced by respondents is bereft of any merit. In view of the above discussions, the findings recorded by learned Single Judge with regard to payment of Bank's contribution of provident fund is equitable, just and is liable to be upheld, setting aside the findings of the Division Bench.

PAYMENT OF GRATUITY AND WHEN IT CAN BE WITHHELD:

14. Regulation 46 of Chapter IX of 1979 Regulations deals with gratuity. The relevant extract of the said Regulation is reproduced as thus:

"46. Gratuity:

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.

15. In view of the above, an officer of the Bank shall be eligible for gratuity on retirement; death; disablement rendering him unfit as certified by an approved medical officer; resignation after completion of 10 years of continuous service or termination of service after completion of 10 years except in a case if such termination is by way of punishment. However, the said Regulations are silent on the contingency as to what would happen if an officer is met with a penalty of compulsory retirement.

16. Further if we look at Section 4 of the Gratuity Act, it elucidates the conditions of payment of gratuity to an employee on termination of his services. In particular, subsection (6) of Section 4 highlights the conditions when gratuity can be withheld to an employee on his termination. The relevant portion has been reproduced as under:

(6) Notwithstanding anything contained in subsection (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 shall be wholly 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.

17. The provisions of Gratuity Act make it clear that forfeiture of gratuity may be directed to the extent of damage or loss so caused or destruction of property belonging to employer. In twin situations where the termination is due to riotous or disorderly conduct or involvement of the employee in a criminal case involving moral turpitude, the gratuity shall be wholly forfeited.

18. This Court in the case of Y.K. Singla vs. Punjab National Bank and others (2013) 3 SCC 472, while considering the issue of interest on the late payment of gratuity to a retired employee of Punjab National Bank held that the payment of Gratuity Act will override the Punjab National Bank (Employees') Pension Regulations, 1995 (for short "1995 Pension Regulations"). While dealing with the issue of recovery from gratuity under Regulation 46 or withholding of pension under Regulation 46(2) of the said Regulations, this Court in paragraph 22, after referring to Section 14 of the Gratuity Act, has held as under:

"22. In order to determine which of the two provisions (the Gratuity Act, or the 1995 Regulations) would be applicable for determining the claim of the appellant, it is also essential to refer to Section 14 of the Gratuity Act, which is being extracted hereunder:

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

A perusal of Section 14 leaves no room for any doubt that a superior status has been vested in the provisions of the Gratuity Act visàvis any other enactment (including any other instrument or contract) inconsistent therewith. Therefore, insofar as the entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of the Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law), the provisions of the Gratuity Act cannot be ignored. The term "instrument" and the phrase "instrument or contract having the

force of law" shall most definitely be deemed to include the 1995 Regulations, which regulate the payment of gratuity to the appellant."

19. In view of the above, it is apparent that the provisions of the Gratuity Act have superiority over all other provisions of Regulations.

20. The Bank harmonizing the provisions of Regulation 46 of 1979 Regulations and the Gratuity Act issued Circular No. 1563 on 16.01.1997 through its personnel division. Therein harmonizing the Regulations with the provisions of the Gratuity Act and in clauses 8 and 14 of the Circular, the instances as to when gratuity could be forfeited, have been specified. Those clauses are relevant and have been reproduced as under:

"8. FORFEITURE OF GRATUITY UNDER ACT

The gratuity payable under the payment of gratuity act, is liable to full or partial forfeiture under different circumstances. Section 4(1) of payment of gratuity act deals to payment of gratuity whereas section 4(6) of the act deals with forfeiture of gratuity. Section 4(1) reads as under:

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.

Section 4(6) provides as under:

"Notwithstanding anything contained in subsection (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 employee, 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.

14. PAYMENT UNDER OFFICERS SERVICE REGULATIONS

Rules relating to payment of gratuity of officers staff have been laid down under Regulation 46 of PNB Officers Service Regulations, 1979 which is as under:

(I) 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, or
- (d) resignation after completing ten years of continuous service or termination of service in any other way except by way of punishment after completion of 10 years of service.

Explanation: We have to clarify that gratuity may be paid in case of termination of service, subject to the condition that the officers has put in at least 10 years of service with the bank and provided that the termination is not by way of dismissal or removal from service as punishment.

(II) The amount of gratuity payable to an officer shall be one month's pay for every completed year of service, subject to a maximum of 15 months' pay.

Provided that where an officer has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of month pay for each completed year of service beyond thirty years.

Pay for the purpose of gratuity in case of officer shall mean basic pay only. While calculating gratuity, that part of PQA & FPA drawn by an officer, which rank for superannuation benefit, shall also be taken into account.

Note: If the fraction of service beyond completed years of service is six months or more, gratuity will be paid prorata for the period. In this connection, we have to clarify that for the purpose of calculating gratuity, the number of days, beyond 6 months period is also to be taken into account.

On a combined reading of the provisions of the Gratuity Act, 1979 Regulations and the circular, it becomes clear that the gratuity shall become payable to every officer on retirement, death, disablement or on resignation except in a case of termination of service in any other way, by way of punishment after completion of 10 years of continuous service.

21. At this stage, it is relevant to refer to the provisions of 1977 Regulations. Regulation 4 of the said Regulations specifies major penalties:

"Major penalties:

(f)

(g)

(h) Compulsory retirement;

(i) Removal from service which shall not be a disqualification for future employment;

(j) Dismissal which shall ordinarily be a disqualification for future employment."

The explanation to Regulation 4 under the heading "Major Penalties" specifies some of the situations which shall not amount to penalty within the meaning of this Regulation. As those conditions are not relevant for the present case, they are not being referred to.

22. Under Regulation 4 of the 1977 Regulations, the compulsory retirement of an officer is a major penalty. The explanation as given in clause 14(1)(a) of the said Circular clarifies that in case of termination after at least 10 years of service in the Bank, if such termination is not by way of punishment as dismissal or removal, the gratuity may be paid. In the said explanation, the denial of gratuity to an employee, who is inflicted with the major penalty of compulsory retirement, has not been included.

Therefore, the gratuity is payable to the appellant under the 1979 Regulations in terms of the explanation under the said Circular. Even otherwise, if we see the provisions of the Gratuity Act, gratuity can be withheld in case of damages or loss so caused or destruction of property belonging to the employer or otherwise where the termination of service is due to riotous or disorderly conduct or due to criminal case involving moral turpitude.

23. The facts of the case at hand are not a case of riotous behaviour of appellant or his involvement in any criminal case. As discussed hereinabove, while dealing with the issue of forfeiture of employers' contribution of provident fund in the enquiry report, no finding regarding causing loss to the bank or on quantification of the amount of loss has been recorded.

24. While passing an order of withholding of gratuity, opportunity of hearing has not been afforded to the appellant. In this regard, the judgment of the Full Bench of Punjab & Haryana High Court in UCO Bank (supra) is relevant, wherein the Full Bench has duly considered the issue of forfeiture of gratuity and the relevant paras of the said judgement are reproduced as under:

"22. No doubt, in the chargesheet as many as 24 accounts are mentioned where the respondent had given loans or other financial accommodation either beyond her powers or without obtaining proper securities. That would show that certain accounts were overdrawn. Even the operation of these accounts was not satisfactory. However, whether the appellant Bank ultimately suffered loss and what was the actual loss is not reflected.

No doubt, the irregularities committed by the respondent may have exposed the Bank to such losses. However, that is entirely different from loss having been actually suffered by the bank. Even if some accounts became bad and the Bank had to file suits for recovery concerning those accounts against the defaulting parties, that would not automatically lead to the conclusion that the loss/damage has been suffered. It is possible that Bank is able to recover full money in those proceedings. Whether that happened in fact or not and whether loss is actually suffered or not is not discernible from either the chargesheet or the enquiry report.

23. It is for this reason that it was incumbent upon the appellant Bank to mention specifically about the actual loss having been suffered, if it suffered, in the show cause notice itself with particulars of that loss in order to enable the respondent to meet the same. That has not been done even in the final order. Though the figure of 4 crores is given, in the final order, even that is not substantiated by giving particulars thereof. We are, therefore, of the opinion that the show cause notice or the final orders passed, forfeiting the gratuity, do not meet the legal requirements and have to be set aside."

25. In the facts of the present case, the said judgement squarely applies looking to the situation wherein the quantification of loss has not been proved in the enquiry. Even otherwise, prior to passing of an order of forfeiture of gratuity, opportunity of hearing has not been afforded to the appellant. We acknowledge the view taken by the Full Bench in the said judgment and reaffirm the same.

26. The counsel for appellant also relied upon the judgement of B.R. Sharma (supra), in which the riotous behaviour of the employee was found proved. However, the said judgment does not apply in the facts of the present case. Similarly, reliance was also placed on the case of Canara Bank (supra) wherein as per the Regulations of the Canara Bank, the withholding of the amount of gratuity to the extent of loss caused was permissible.

In the facts of the present case and contents of Regulations and Circular of the Bank, the said judgment being distinguishable, has no application. The learned Single Judge has correctly observed that as per the 1977 Regulations, compulsory retirement; removal from service which shall not be a disqualification for future employment and dismissal which shall ordinarily be a disqualification for future employment are distinct and separate punishments.

The act of forfeiture of gratuity is not envisaged in the present case as the provisions are silent on the aspect of forfeiture in case of compulsory retirement. As per Circular No. 1563 dated 16.01.1997 of the Bank, in our view, the Division Bench erred in reversing the judgment of the learned Single Judge.

27. Therefore, taking a wholistic view of the 1977 Regulations, 1979 Regulations, Circular dated 16.01.1997 and the facts on record, we are of the view that the present civil appeal deserves to be allowed.

We affirm the findings of the learned Single Judge and set aside the judgement rendered by the Division Bench.

The appeal is allowed. No order as to costs.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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