

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

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 6th OF OCTOBER, 2025

WRIT PETITION No. 21393 of 2021

SMT. BABITA MOR

Versus

CENTRAL MADHYA PRADESH GRAMIN BANK

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Appearance:

Shri Ashish Trivedi - Advocate for the petitioner.

Shri Vikram Johri- Advocate for respondent No.1- Bank

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ORDER

The petitioner is widow of late Rajesh Mor, who was dismissed officer of respondent- Bank. She claims gratuity that was payable to her deceased husband.

2. The factual matrix in brief for the purpose of disposal of present petition is that the deceased employee was subjected to departmental/disciplinary proceedings by issuance of charge sheet dated 30.08.2016 which levelled two charges which were as under:-

(a) The first charge was that the petitioner did not open the branch of the bank on 30.07.2016 despite being In-charge of the branch.

(b) The second charge was that the petitioner committed defalcation of Rs.1.00 Lakh in the cash chest of the branch on 29.07.2016.

3. Upon both the charges being found proved in the departmental enquiry, the deceased husband of petitioner was dismissed from service vide order dated 30.04.2017 which was confirmed in appeal vide order Annexure P-4 dated 02.11.2017. The husband of the petitioner thereafter expired on 19.11.2017, shortly after his appeal had been rejected by the appellate authority of the bank.

4. The petitioner had submitted an application for release of gratuity which was rejected by the bank vide Annexure P-5 dated 20.01.2018 on the ground that as per Section 4(6)(b) of Payment of Gratuity Act read with Clause 72(e) of Service Regulations of the Bank, gratuity is not payable in cases of dismissal. Thereafter the petitioner filed WP No.7205/2020 before this Court which was disposed off directing the respondents to decide representation of the petitioner and now the bank has passed a fresh order (Annexure P-9) dated 18.08.2021 which is impugned in the present petition. In the said order it has been mentioned that as per Clause-72(e) of the Service Regulations of the bank, the husband of the petitioner being an officer, therefore as per Clause 72 (2) there would be forfeiture of gratuity because he stood dismissed on account of misconduct, and proviso would not apply on him.

5. The learned counsel for the petitioner has vehemently argued that there was no loss caused to the bank because even the alleged amount of defalcation had been deposited by the deceased employee at the relevant point of time and therefore as per Section 4(6) of Payment of Gratuity Act, 1972 (for short referred to as 'Act of 1972') the forfeiture of gratuity could only have taken place to the extent of loss caused but since there is no loss caused, therefore the right to claim gratuity has matured in view of the Act

of 1972 and the proviso to Clause 72(2) of Service Regulations would have to give way to the provisions of the Act of 1972.

6. *Per contra*, learned counsel for the bank has argued that bank has framed its own regulations known as Central Madhya Pradesh Gramin Bank (Officers and Employees) Service Regulations, 2010 and as per Clause- 72 of the Regulations, gratuity stands forfeited as the deceased husband of the petitioner was not an 'employee' in terms of the Regulations but was 'officer' in terms of the said regulations and therefore, the proviso to Clause 72(2) extinguishes the right of the deceased husband to claim gratuity upon dismissal from service.

7. Upon hearing the rival parties and on perusal of the record, it is seen that the bank has framed Regulations 2010, the relevant Clause-72 whereof is as under:-

"72 Gratuity:

(1) An officer or employee shall be eligible for payment of gratuity either as per the provisions of the Payment of Gratuity Act, 1972 (39 of 1972) or as per sub-regulation (2), whichever is higher.

(2) Every officer or employee 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 10 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:

Provided that in respect of an employee there shall be no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only.

(3) The amount of gratuity payable to an officer or employee shall be one months pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 month's pay:

Provided that where an officer or employee 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 a month's pay for each completed year of service beyond 30 years:

Provided further that in respect of an officer the gratuity is payable based on the last pay drawn:

Provided also that in respect of an employee pay for the purposes of calculation of the gratuity shall be the average of the basic pay (100%), dearness allowance and special allowance and officiating allowance payable during the 12 months preceding death, disability, retirement, resignation or termination of service, as the case may be."

8. Upon perusal of the said regulations, it is clear that by virtue of Clause 72 (2)(e), an officer or employee shall be entitled for gratuity upon termination of service in any other way except by way of punishment after completion of 10 years of service and this Clause (e) has been heavily relied by learned counsel for the bank on the ground that the proviso only saves 'employees' from forfeiture of gratuity but since the deceased husband of petitioner was 'officer' and did not fall within the purview of employee in terms of the Regulations, 2010, therefore the gratuity to the deceased husband of the petitioner has been rightly forfeited. It has been argued before this Court that "employee" is differently defined in clause 2(j) while "officer" is differently defined in clause 2 (l) of the Regulations, 2010.

9. However, it is seen the substantive part of Clause-72 i.e. Clause 72(1) clearly mentions that an officer or employee shall be entitled for payment of gratuity either under the Act of 1972 or as per the Regulations 2010, whichever is higher. Even if this saving of the Act of 1972 had not been there, even in that event, the Act of 1972 would not have ceased to apply in view of provisions of Section 14 of Act of 1972 which mentions as under:-

"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."

10. Further, the said provision and service regulations framed by employer containing provisions inconsistent with the substantive provisions of Act of 1972 has been subjected to interpretation of the Hon'ble Apex court in the case of **Jaswant Singh Gill v. Bharat Coking Coal Ltd., (2007) 1 SCC 663** wherein the Hon'ble Apex Court has held as under:-

8. The Act was enacted with a view to provide for a scheme for payment of gratuity to the employees engaged inter alia in mines. Section 3 of the Act provides for appointment of an officer to be the controlling authority. The controlling authority is to be responsible for administration of the Act. Different authorities, however, may be appointed for different areas. Section 4 of the Act entitles an employee to gratuity after he has rendered continuous service for not less than five years inter alia on his superannuation. Sub-section (6) of Section 4 contains a non obstante clause stating:

"4. (6)(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."

9. The Rules framed by the Coal India Limited are not statutory rules. They have been made by the holding company of Respondent 1.

10. The provisions of the Act, therefore, must prevail over the Rules. Rule 27 of the Rules provides for recovery from gratuity only to the extent of loss caused to the Company by negligence or breach of orders or trust. Penalties, however, must be imposed so long an employee remains in service. Even if a disciplinary proceeding was initiated prior to the attaining of the age of superannuation, in the event the employee retires from service, the question of imposing a major penalty by removal or dismissal from service would not arise. Rule 34.2 no doubt provides for continuation of a disciplinary proceeding despite retirement of employee if the same was initiated before his retirement but the same would not mean that although he was permitted to retire and his services had not been extended for the said purpose, a major penalty in terms of Rule 27 can be imposed.

11. Power to withhold penalty (sic gratuity) contained in Rule 34.3 of the Rules must be subject to the provisions of the Act. Gratuity becomes payable as soon as the employee retires. The only condition therefor is rendition of five years' continuous service.

12. A statutory right accrued, thus, cannot be impaired by reason of a rule which does not have the force of a statute. It will bear repetition to state that the Rules framed by Respondent 1 or its holding company are not statutory in nature. The Rules in any event do not provide for withholding of retiral benefits or gratuity.

13. The Act provides for a close-knit 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-à-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, wilful 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 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 learned counsel for the bank has vehemently argued by placing reliance on the judgment of Hon'ble Apex Court in the case of ***P. Rajan Sandhi v. Union of India, (2010) 10 SCC 338*** to contend that other enactments or regulations can prevail over the mandatory provisions of Act of 1972. However, the said judgment would not apply to the present case because in the said case the Hon'ble Supreme Court had held that the Working Journalists Act, 1955 is a special Act in the matter of payment of gratuity to working journalists and therefore, the said enactment would prevail over the Act of 1972. However, in the present case the executive instructions/regulations framed by the bank would not prevail over the Act of 1972 because the Act under which the regulations have been framed i.e. Regional Rural Bank Act, 1976 does not contain any contradictory or repugnant provisions in the matter of payment of gratuity so as the question to prevail over the Act of 1972 would have arisen. Therefore, the reliance

placed by learned counsel for the bank on the judgment in the case of ***P. Rajan Sandhi (supra)*** is utterly misplaced.

12. The learned counsel for the bank had further argued that since the husband of the petitioner had been dismissed from service, therefore as per Section 4(1) read with Section 4(6)(b)(ii), still the gratuity can be forfeited wholly or partly because the act of the deceased husband of the petitioner was an act involving moral turpitude which was committed by him during the course of employment and therefore, despite being no ultimate loss caused to the bank inasmuch as the amount of Rs.1.00 Lakh which was defalcated had been refunded, but as there was dismissal for an act of moral turpitude, therefore the bank could still forfeit the gratuity as per Section 4(6)(b)(ii).

13. The aforesaid argument cannot be accepted for the reason that to invoke the aforesaid clause, there should have been an act which constitutes a criminal offence involving moral turpitude. The aforesaid Clause of Act of 1972 has been interpreted by the Hon'ble Supreme Court in the case of ***Union Bank of India v. C.G. Ajay Babu, (2018) 9 SCC 529*** and it has been held that unless there is a conviction by a Court of competent jurisdiction, there cannot be any presumption of criminal offence involving moral turpitude and once the employee had simply been dealt with by the employer in accordance with service regulations without subjecting him to any criminal prosecution, then forfeiture of gratuity by invoking Section 4(6)(b)(ii) cannot be upheld. The Hon'ble Apex Court held as under:-

15. Under sub-section (6)(a), also the gratuity can be forfeited only to the extent of damage or loss caused to the Bank. In case, the termination of the employee is for any act or wilful omission

or negligence causing any damage or loss to the employer or destruction of property belonging to the employer, the loss can be recovered from the gratuity by way of forfeiture. Whereas under clause (b) of sub-section (6), the forfeiture of gratuity, either wholly or partially, is permissible under two situations: (i) in case the termination of an employee is on account of riotous or disorderly conduct or any other act of violence on his part, (ii) if the termination is for any act which constitutes an offence involving moral turpitude and the offence is committed by the employee in the course of his employment. Thus, clause (a) and clause (b) of sub-section (6) of Section 4 of the Act operate in different fields and in different circumstances. Under clause (a), the forfeiture is to the extent of damage or loss caused on account of the misconduct of the employee whereas under clause (b), forfeiture is permissible either wholly or partially in totally different circumstances. Clause (b) operates either when the termination is on account of: (i) riotous, or (ii) disorderly, or (iii) any other act of violence on the part of the employee, and under clause (ii) of sub-section (6)(b) when the termination is on account of any act which constitutes an offence involving moral turpitude committed during the course of employment.

16. *“Offence” is defined, under the General Clauses Act, 1897, to mean “any act or omission made punishable by any law for the time being in force” [Section 3(38)].*

17. *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.*

19. 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 20-4-2004 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.

20. That the Act must prevail over the Rules on Payment of Gratuity framed by the employer is also a settled position as per Jaswant Singh Gill [Jaswant Singh Gill v. Bharat Coking Coal Ltd., (2007) 1 SCC 663 : (2007) 1 SCC (L&S) 584] . Therefore, the appellant cannot take recourse to its own Rules, ignoring the Act, for denying gratuity.

21. To sum up, forfeiture of gratuity is not automatic on dismissal from service; it is subject to sub-sections (5) and (6) of Section 4 of the Payment of Gratuity Act, 1972.

14. In view of the above since there was no criminal prosecution of the employee, therefore the bank cannot invoke Section 4(6) of the Act to deny payment of gratuity and it could have at the most forfeited the gratuity to the extent of loss caused to the bank. However, it is not disputed between the parties that the alleged defalcation amount had been refunded back by the employee to the bank and therefore, there cannot even be any recovery from gratuity payable to the deceased husband of the petitioner.

15. In view of the above, the petition deserves to be and hereby allowed. The respondents are directed to calculate the gratuity payable to the deceased husband of the petitioner as per Payment of Gratuity Act, 1972. Let the amount be calculated and paid to the petitioner within 60 days along with interest of 6% per annum from the date of death of deceased employee till the actual payment.

16. It is made clear that if after payment of Gratuity by the Bank, the petitioner has any subsisting grievance in the method of quantification and calculation of amount of gratuity under the Act of 1972, then she would be at liberty to invoke the provisions of Act of 1972 and approach the Controlling Authority.

17. In the above terms, the petition is **allowed**.

nks

(VIVEK JAIN)
JUDGE