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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 27th January, 2022

Date of decision: 24th March, 2022

\+ **W.P.(C) 4486/2021 & CM APPL. 13708/2021**

UNION BANK OF INDIA & ANR. ..... Petitioners

Through: Mr. Rajat Arora, Advocate.

versus

SH D.C. CHATURVEDI & ANR. ..... Respondents

Through: Mr. Atul Tripathi, Advocate for R-1.
Mr. Ajay Digpaul, CGSC and Mr. Kamal R Digpaul, Advocate for UOI.

AND

\+ **W.P.(C) 4604/2021 & CM APPL. 14086/2021**

UNION BANK OF INDIA & ANR. ..... Petitioners

Through: Mr. Rajat Arora, Advocate.

versus

SHRI RAJINDER KUMAR SINGHAL & ANR. ..... Respondents

Through: Mr. Abhinav Sharma, Advocate for R-1.

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. This pronouncement has been done through hybrid conferencing.

Facts in W.P.(C) 4486/2021

2. The Respondent herein- Mr. D.C. Chaturvedi, was an employee of the Petitioner Bank-Union Bank of India *(hereinafter "Bank")*. A charge sheet was issued against him on 7th November, 1994, alleging that loans were issued

by him accommodating certain parties which caused losses to the Bank. A show cause notice was issued and, thereafter, an Inquiry Officer was appointed. The report of the Inquiry Officer held the Respondent/Employee *(hereinafter "Employee No.1")* guilty of the charges levelled against him. Accordingly, the Disciplinary Authority of the Bank vide order dated 21st August, 1998 imposed the penalty of dismissal on Employee No.1. The relevant extract of the dismissal order passed by the Disciplinary Authority is set out hereinbelow:

> *"The inquiry record proves that three tractor loans and several crop loans were raised in fictitious names. The complaints of the real persons are on the records denying availment of loans in their names. It further strengthened the allegations that such tractor loans were adjusted within a period of 3 to 4 months after sanction. Had the borrowers so much of funds to repay the Bank loans of Rs. 1,30,000/- to Rs. 1,70,000/- within a period of 3 to 4 months then there was no need for them to avail loans after going through the cumbersome procedure. However, the fact is that such loans were adjusted within 3 to 4 months instead the longer period of say 5 to 7 years generally taken for repayment of such loans. The loan applications/papers had number of irregularities and were not complete in all respects. Before sanctioning such loans, had Shri Chaturvedi taken due care as regards establishment of identity of borrowers as also the completion of formalities/papers/documents, the true things would have come to light. However, he did not do so but sanctioned loans in fictitious names in haste without even thinking that the huge funds of the Bank were being put to stake. Considering the vital issue from various angles,* ***I am of the view that***

> ***Shri Chaturvedi did not discharge his duty with integrity. Once the aspect of integrity is under cloud, such employee cannot be said to be honest and therefore I am of the opinion that he has failed to perform his duties with honesty and integrity.***
>
> *Considering the nature and gravity of the misconducts proved against Shri Chaturvedi, I am of the opinion that the punishment of dismissal, if imposed on Shri Chaturvedi, would be just and proper. In pursuance of the powers vested in terms of Regulation 7 of the Union Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976, I pass the following order:*
>
> *ORDER*
>
> *Shri D. C. Chaturvedi be and is hereby dismissed from the service of the Bank with immediate effect."*

3. In the appeal filed against the order of the Disciplinary Authority, the Appellate Authority of the Bank went through the entire record, examined the charges and upheld the penalty imposed. The operative portion of the Appellate Authority's order dated 30th December, 1999 is set out below:

> "*…I am, therefore, of the opinion that the punishment of dismissal from the services of the Bank with immediate effect imposed on the Appellant by the Disciplinary Authority by holding him guilty of all the charges levelled against him including that of failure to discharge his duties with honesty and integrity is just and proper to meet the ends of justice and I do not find any reason to interfere with the same. Similarly, the contention of the appellant that he should be paid salary for the period of his suspension is not tenable as he has been found guilty of the charges levelled against him and has been punished suitably for the same.*
>
> *The appeal dated 15.10.98 of Shri D.C. Chaturvedi is therefore rejected."*

4. Thereafter, vide inter-office memo dated 27th June, 2002 the gratuity of Employee No.1 was forfeited. The same was supposed to be communicated to the Employee No.1, however, it was never communicated. The basis of the said inter-office memo was the monetary loss caused to the Bank which was also quantified in another inter-office memo dated 29th September 1999. In view of the said memo, gratuity was never paid to Employee No.1.

5. After a gap of almost 14 years, on 15th April, 2016, Employee No.1, approached the Controlling Authority. The Controlling Authority framed the following three issues for consideration:

> "*i. Whether the delay in filing claim for gratuity can be condoned?*
> *ii. Whether the action of forfeiting the amount of gratuity payable to the applicant on account of unquantified loss occurred to the bank? 1f not what amount is payable to him?*
> *iii. If the gratuity is payable to the applicant, whether it should be paid with interest or not?"*

6. The Controlling Authority vide order dated 16th May, 2019 condoned the delay in filing the claim for gratuity. On issue number (ii), the Controlling Authority passed an order directing the release of the gratuity amount on the presumption that the employee was compulsorily retired from service and held that interest would be payable to the employee. The operative portion of the order of the Controlling Authority dated 16th May, 2019 reads as under:

> *"Thus, the applicant is entitled for payment of gratuity of Rs. 2,12,158/-(Rupees Two Lac Twelve Thousands One Hundred fifty eight only) along with interest @10%per annum. Non-applicant is directed to pay the amount of Rs. 2,12,158/-(Rupees Two Lac Twelve Thousands One Hundred fifty eight only) along-with simple interest @10% per annum*

> *on the payable gratuity amount of Rs, 2,12,158/- (Rupees Two Lac Twelve Thousands One Hundred fifty eight only) with effect from 07-09-1998 to the date on which it is paid to Shri D.C. Chaturvedi (Employee No:-163527) within Thirty days of receipt of this order. As per section 8 of the Payment of Gratuity Act 1972 provided that the amount of interest payable shall in no case exceed the amount of gratuity payable under this Act."*

7. This order was appealed against by the Bank and the Appellate Authority vide order dated 13th July, 2020 merely held that the Controlling Authority has elaborately decided all the issues and no interference is called for. The operative portion of the order of the Appellate Authority reads as under:

> "*On perusal of relevant records submitted by both the parties along with the records in claim application No. ALC-II//36(21)/2016, I am of the considered opinion that the CA has elaborately dealt with all the issues raised by the Appellant and has decided all the relevant and pertinent issues by applying his mind judiciously by citing the relevant judgments of Hon'ble Delhi High Court in his order. I find no reason to differ with the findings of the CA. The order dated 16.05.2019 of the Controlling Authority is thus confirmed."*

8. In the first round of litigation before this Court, the Bank had challenged the order of the Appellate Authority dated 13th July, 2020 in writ petition being ***W.P.(C) 7643/2020*** titled ***Union Bank of India v. D.C. Chaturvedi & Anr***. After hearing the ld. Counsels for the parties and considering the nature of the order which was passed by the Appellate Authority, this Court directed as under:

"*11. The Court has perused the impugned orders of the Appellate Authority and the Controlling Authority, as well as the various documents placed on record. The stand of the Bank appears to be justified, inasmuch as the order of the Controlling Authority proceeds on the footing that the employee was compulsorily retired whereas the order of the Disciplinary Authority is clear that he was dismissed from service. The order of dismissal has not been challenged by the employee and has attained finality. The question as to whether gratuity would be liable to be forfeited or not in spite of the dismissal, would be an issue to be determined by the Appellate Authority after perusing the record. Thus, the Appellate Authority ought to have considered the stand of the Bank without being affected by the findings of the Controlling Authority and ought to have taken into consideration, the documents relating to the dismissal, the show cause notice for the forfeiture of the gratuity and the orders passed forfeiting the gratuity etc., Without considering these documents, the appeal could not have been decided without attributing any reasons.*

12. After hearing the parties, this Court is convinced that the Appellate Authority ought to take a relook at the appeal filed by the Bank. The amounts, which have been imposed upon the Bank, are stated to have already been deposited before the Appellate Authority. Thus, no prejudice is caused to the employee.

13. Accordingly, the impugned order dated 13th July, 2020 passed by the Appellate Authority under the Act is set aside. The Appellate Authority shall now consider the appeal filed by the Bank on merits and pass a reasoned order after considering the record and the provisions of law. The Appellate Authority shall also consider the issue of limitation.

> *14. The writ petition is allowed in the above terms and the matter is remanded back to the Appellate Authority. All the pending applications are also disposed of. Considering that the dismissal took place way back in 1998, the Appellate Authority shall endeavour to conclude the proceedings and pass its order by 31st January, 2021."*

9. The Appellate Authority was directed to conclude the proceedings by 31st January 2021 and pass a reasoned order. In pursuance of the said order, the impugned order dated 29th January, 2021 has come to be passed by the Appellate Authority. The impugned order of the Appellate Authority dated 29th January 2021 has been challenged again by the Bank resulting in the present second round of litigation before this Court. The operative portion of the order impugned in the present petition reads as under-

> *"The Controlling Authority has discussed each and every issue mentioned above in detail with relevant judgment to substantiate his decision on each of the issues.*
> *I have gone through in detail the Order of the Controlling Authority dated 16.05.2019 and find it in order. There is no reason to change or modify the order dated 16.05.2019. Hence it is confirmed.*
> *The Appeal is disposed off accordingly. Given under my hand and deal on 29 January 2022 and parties are informed accordingly."*

Facts in WP(C) 4604/2021

10. The Respondent herein- Rajinder Kumar Singhal was also an employee of the Petitioner Bank. A charge sheet was issued against him on 5th March, 2012 alleging that he was involved in lending loans in blatant violation of lending norms without completing the requisite formalities, sanctioning

higher amounts of loans to borrowers whose earlier loans were either NPA or overdue, which allegedly caused losses to the Bank. A show-cause notice was issued and, thereafter, an Inquiry Officer was appointed. The report of the Inquiry Officer dated 6th October, 2012 held the Respondent/employee *(hereinafter, "Employee no.2")* guilty of the charges levelled against him. Accordingly, the Disciplinary Authority of the Bank vide order dated 7th March, 2013 imposed major penalty of dismissal on the Employee No.2. The relevant extract of the dismissal order passed by the Disciplinary Authority is set out hereinbelow:

> *"Based on the allegations proved against the CSO, the Inquiring Authority has rightly held following charges as proved against him and I concur with the findings of the Inquiring Authority:*
>
> 1. *Failure to take all possible steps to ensure and protect the interest of the Bank.*
> 2. *Failure to discharge his duties with utmost devotion and diligence.*
> 3. *Failure to discharge his duties with utmost integrity and honesty.*
> 4. *Acting otherwise than in his best judgement in the performance of his official duties.*
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> *Looking to the nature & seriousness of the aforesaid allegations/charges held as proved against Shri Singhal, I am of the opinion that the ends of the justice will be met by imposing on him the major penalty of Dismissal from the services of the Bank with immediate effect.*
>
> *Accordingly, in exercise of the powers vested in me in term of Regulation 7 of Union Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976, I hereby pass the following order.*
>
> *ORDER*

> *The major penalty of Dismissal from the services of the Bank will immediately effect, be and is hereby imposed on Shri R. K. Singhal."*

11. In the appeal filed against the order of the Disciplinary Authority, the Appellate Authority of the Bank went through the entire record, examined the charges and upheld the penalty imposed. The operative portion of the Appellate Authority's order dated 17th April, 2014 is set out below:

> "*The Appellant has not brought on record any new facts/evidence which would warrant reconsideration of the penalty imposed on him. Therefore, I do not find any merit to interfere with the decision of the Disciplinary Authority. I am of the opinion that the Major penalty of 'Dismissal from the services of the Bank' imposed on the Appellant is just and proper.*
>
> *The appeal of Shri RK Singhal is hereby rejected"*

12. Later, the Employee No.2 is stated to have filed an application with the Controlling Authority in December 2016 claiming gratuity from the Bank. Thereafter, notice of forfeiture of gratuity was issued by the Bank for forfeiture of gratuity on 24th March, 2017. The basis of the said notice was that monetary loss to the tune of Rs. 6,17,89,079/- caused to the Bank. It was stated that as per Section 4(6)(a) of the Payment of Gratuity Act, 1972 *(hereinafter "Act")* the gratuity amount was liable to be forfeited. This notice resulted in order dated 29th June, 2017 directing forfeiture of the gratuity amount of Rs. 10,00,000/- due to Employee No.2 under section 4(6)(a) & 4(6)(b)(ii) of the Act.

13. In the application filed by Employee No.2, the Controlling Authority framed the following four issues for consideration:

> "*i. Whether the applicant can file the gratuity case in controlling authority Delhi jurisdiction.*
> *ii. Whether the delay in filing claim for gratuity can be condoned?*
> *iii. Whether the action of forfeiting the amount of gratuity payable to the applicant on account of quantified loss occurred to the bank? 1f not what amount is payable to him?*
> *iv. If the gratuity is payable to the applicant, whether it should be paid with interest or not?"*

14. Thereafter, the Controlling Authority vide order dated 23rd January 2019 held that it had jurisdiction to decide the issue as the employee was residing in Delhi. The delay in filing the claim for gratuity was condoned. On issue number (iii), the Controlling Authority passed an order directing the release of the gratuity amount on the presumption that the employee was compulsorily retired from service and held that interest would be payable to Employee No.2. The order of the Controlling Authority dated 23rd January, 2019 reads as under:

> "*Thus the applicant is entitled-for payment of gratuity of Rs. 1 0,00,000/- (Rupees Ten Lac Only) along with interest @10% per annum. Non-applicant is directed to pay the amount of Rs. 10,00,000/- (Rupees ten Lac Only) along-with simple interest @10% per annum on the payable gratuity amount of Rs.10,00,000/ with effect from 13-03-2013 to the date on which it is paid to Sh. Rajinder Kumar Singhal (Employee No:-212705) within Thirty days of receipt of this order and I order accordingly. Section 8 of the Payment of Gratuity Act 1972 provides that the amount of interest payable shall in no case exceed the amount of gratuity payable under this Act."*

15. This order was appealed against by the Bank and the Appellate Authority *vide* impugned order dated 13th July, 2020 merely held that the Controlling Authority has elaborately decided all the issues and no interference is called for. The operative portion of the order of the Appellate Authority reads as under:

> "*On perusal of relevant records submitted by both the parties along with the records in claim application No. ALC-II//36(70)/2016, I am of the considered opinion that the CA has elaborately dealt with all the issues raised by the Appellant and has decided all the relevant and pertinent issues by applying his mind judiciously by citing the relevant judgments of Hon'ble Delhi High Court in his order. I find no reason to differ with the findings of the CA. The order dated 23.01.2019 of the Controlling Authority is thus confirmed.*"

16. The Bank had then challenged the order of the Appellate Authority dated 13th July, 2020 in writ petition being ***W.P.(C) 7642/2020*** titled ***Union Bank of India v. Rajinder Kumar Singhal & Anr***. After hearing the ld. Counsels for the parties and considering the nature of the order which was passed by the Appellate Authority, this Court on 9th October, 2020 directed as under:

> *"11. The Court has perused the impugned orders of the Appellate Authority and the Controlling Authority, as well as the various documents placed on record. The stand of the Bank appears to be justified, inasmuch as the order of the Controlling Authority proceeds on the footing that the employee was compulsorily retired whereas the order of the Disciplinary Authority is clear that he was dismissed from service. The order of dismissal has not been challenged by the employee and has*

attained finality. The question as to whether gratuity would be liable to be forfeited or not in spite of the dismissal, would be an issue to be determined by the Appellate Authority after perusing the record. Thus, the Appellate Authority ought to have considered the stand of the Bank without being affected by the findings of the Controlling Authority and ought to have taken into consideration, the documents relating to the dismissal, the show cause notice for the forfeiture of the gratuity and the orders passed forfeiting the gratuity etc., Without considering these documents, the appeal could not have been decided without attributing any reasons.

12. After hearing the parties, this Court is convinced that the Appellate Authority ought to take a relook at the appeal filed by the Bank. The amounts, which have been imposed upon the Bank, are stated to have already been deposited before the Appellate Authority. Thus, no prejudice is caused to the employee.

13. Accordingly, the impugned order dated 13th July, 2020 passed by the Appellate Authority under the Act is set aside. The Appellate Authority shall now consider the appeal filed by the Bank afresh on merits and pass a reasoned order after considering the record and the provisions of law. The Appellate Authority shall also consider the issue of limitation.

14. The writ petition is allowed in the above terms and the matter is remanded back to the Appellate Authority. All pending applications are also disposed of. Considering that the dismissal took place way back in 2012, the Appellate Authority shall endeavour to conclude the proceedings and pass its order by 31st January, 2021."

17. The Appellate Authority was directed to conclude the proceedings by 31st January 2021 and pass a reasoned order. In pursuance of the said order, the impugned order dated 29th January, 2021 has come to be passed by the Appellate Authority. The impugned order of the Appellate Authority dated 29th January 2021 has been challenged again by the Bank vide the present petition. The operative portion of the impugned order reads as under:

> *"The Controlling Authority has discussed each and every issue mentioned above in detail with relevant judgment to substantiate each of the issues.*
> *Therefore, I am of the considered opinion that the Order of the Controlling Authority is in order and there is no reason to change or modify the order dated 23.01.2019. Hence it is confirmed.*
> *The Appeal is disposed off accordingly. Given under my hand and seal on 29 January 2021 and parties are informed accordingly."*

Submissions

18. Mr. Arora, ld. counsel appearing for the Bank submits that firstly, the order passed by this Court in ***WP(C) 7643/2020*** & ***WP(C) 7642/2020*** have not been complied with, as no adequate reasoning has been given by the Appellate Authority for holding that the gratuity would be liable to be awarded. The first reason that is stated to be given by the Appellate Authority is that there was no "full and final settlement of accounts" by the Bank and this gave an opportunity to the employees to challenge the forfeiture at a later date. It is further submitted by Mr. Arora, ld. Counsel, that the second reason given by the Authority is that the loss was also not established on record. He submits that the Appellate Authority has failed to consider that the application by the employee before the Controlling Authority was hopelessly barred by

limitation, inasmuch as in the case of Employee No.1, the termination took place on 21st August, 1998 and as per the inter-office memo his gratuity was forfeited on 27th June 2002. But the application before the Controlling Authority was filed by only on 15th April, 2016 i.e., almost 14 years later. In terms of Rule 10(1) of The Payment of Gratuity (Central) Rules, 1972, *(hereinafter "Rules")* any application for a claim of gratuity amount has to be filed within 90 days of the occurrence of the cause for the application. Though, of course there is a proviso that the said application may be accepted even after the expiry of the specified period on sufficient cause being shown by the applicant. In the present case, there can be no reason or justification for accepting a claim 14 years after the gratuity was forfeited by the Bank.

19. As far as full and final settlement of accounts in case of Employee No.1 is concerned, he relies upon the letter dated 27th June, 2002, which is in the form of inter-office memo, which clearly states the amount of loss caused to the Bank to be Rs.3,26,854/-. The same is justified on the basis of the inter-office memo dated 29th September, 1999 where three loan transactions are clearly set out. Out of the three transactions, in respect of the first two transactions, the loan amount was fully justified. In respect of third loan transaction, it was held to have been irregularly dealt with by the Employee No.1, in which the total loss caused towards principal amount was to the tune of Rs.1,74,859/- and interest was Rs.1,51,995/-. Thus, the total amount of loss caused to the Bank was Rs.3,26,854/- which was fully justified within the Bank's record. He, thus, submits that the forfeiture of gratuity is permitted under Section 4(6)(a) of the Act, so long as the loss is quantifiable.

20. Reliance is placed upon the judgement of the Bombay High Court in ***Ramchandra S. Joshi v. Bank of Baroda, 2010-IV-LLJ-119 (Bom)*** to argue

that the entire concept of gratuity itself is that the gratuity is meant to be given to persons who render long and unblemished service to the employer. The Bombay High Court has followed the judgement of the Supreme Court in ***The Management of Tournamulla Estate v. Workmen, AIR 1973 SC 2344*** to hold that the gratuity amount is not a payment which is gratuitously made i.e., merely as a matter of boon. It is an amount paid to deserving persons who render meritorious service to an organization. Reliance is also place upon the judgment of the Supreme Court in ***U.P. State Sugar Corporation v. Kamal Swaroop Tandon, AIR 2008 SC 1235***. Moreover, the issue of limitation has not even been discussed by the Controlling Authority or the Appellate Authority. Thus, as per Mr. Arora, the orders are liable to be set aside.

21. On the other hand, on behalf of Employee No.1, Mr. Tripathi, ld. counsel submits that the forfeiture of gratuity under Section 4(6)(a) of the Act, though permissible, there is a specific procedure which has to be followed, before the said forfeiture can be effected. Firstly, a notice has to be given to the employee informing that the gratuity is being forfeited. The amount which the organization claims to be its loss, has to be mentioned and justified in the said notice. Secondly, an opportunity ought to be granted to the employee to reply to these allegations and it is only thereafter the forfeiture can be effected. In support of this submission, Mr. Tripathi relies upon the following judgments.

- ***Hindalco Industries Ltd. V. Appellate Authority under Payment of Gratuity Act, 1972, 2004 (101) FLR 1063***
- ***Union Bank of India v. K.R. Ajwalia, (2005) 1LLJ 824 Guj***
- ***Canara Bank v. The Appellate Authority under Payment of Gratuity Act, 1972, [W.P. No.40600/2011 (L-PG)]***

22. He, thus, submits that the memo dated 27th June, 2002 relied upon by Mr. Arora is not a notice to Employee No.1 and is merely an inter-office memo which was never communicated to the Employee No.1. Thus, on the basis of the settled precedent it is clear that the gratuity amount could not have been forfeited without notice being issued to the employee, which has been done by the Bank in the present case.

23. Mr. Atul Tripathi, ld. Counsel, reiterates the fact that whenever forfeiture of gratuity is effected, there has to be a quantification of loss and opportunity of hearing has to be given to the employee. Reliance is placed on the judgment of the Madhya Pradesh High Court in ***W.P.(C) 20795/2016*** titled ***The Manager Western Coalfields v. Prayag Modi 2018 (157) FLR 323*** dated 6th February, 2018 wherein various other judgments, including the judgment of the same Court in ***Permali Wallance Ltd. v. State of M.P. 1996 MPLJ 262*** have also been relied upon to hold that the employer cannot forfeit the amount of gratuity without following the principles of natural justice and without determining the extent of damage or loss caused.

24. He further submits that the allegations against the Employee No.1 are that of sanction of a loan. In the banking system, loan approval is not a one-man decision. There is a team which is involved in the decision making for the loan amount. There is no clarity in this case as to whether any other person is made liable by the Bank in respect of the loan which has been issued. Secondly, it is also not clear as to whether any gratuity has been forfeited of any other officials in respect of the said loan since there are no details available with the Bank of the claim forfeiture on the basis of actual loss to the Bank.

25. It is, further, submitted that the Employee No.1 has already suffered enormously in view of the fact that the amount which was contributed by the Bank to his pension fund has also not been released. It is only the employee's own contribution to his provident fund which has been released to him at the time of his dismissal. He seeks to distinguish the judgment in ***Ramchandra S Joshi v. Bank of Baroda, 2010 (4) LLJ 119,*** which has been relied upon by the Petitioner, to argue that in the said case the amount of loss was clearly quantified. Insofar as the charges themselves are concerned, a perusal of the order of the Disciplinary Authority dated 21st August, 1998 would show that the Inquiry Officer held that charges as to honesty and integrity were not proved, however, the Disciplinary Authority held otherwise. Moreover, in the charges which were mentioned, financial loss to the Bank is not mentioned at all. This, itself shows that the Employee No.1 never got an opportunity to present his case.

26. On the question of limitation, Mr. Tripathi, ld. Counsel, vehemently submits before this Court that there is no limitation under the provisions of the Act for claiming gratuity. In fact, a perusal of the provisions of the Act along with the amendments made thereto, would show that the entire obligation of payment of gratuity lies on the employer irrespective of whether an application is made or not. He submits that the legislative mandate in a beneficial legislation of this nature is for the payment of gratuity along with interest in case of delay in payment of the same. Since there is no obligation on the employee to claim the gratuity within a particular period, the argument of limitation agitated by the Petitioner is bereft of merit. Reliance is placed upon judgment in ***H. Jayarama Shetty v. The Sangli Bank Ltd. 2005 (3) BomCR 10*** wherein the detailed scheme of the Act and the Rules framed

thereunder is set out and it has been held by the Court that the interest is also liable to be paid by the employer. He, submits that the Rules framed in 1972 cannot be read beyond the provisions of the Act, especially after the amendment in 1984 and 1987. He submits, from a reading of this judgment, that the entire obligation of paying gratuity vests on the employer and not the employee. Thus, the payment of the gratuity along with the interest being a statutory right, the same cannot be curtailed in any manner. Finally, Mr. Tripathi, ld. Counsel draws the attention of the Court to the inter-office memo dated 27th June, 2002 to argue that the memo refers to the memo/letter dated 29th September 1999 to establish that financial loss is caused to the Bank. However, the said memo uses the phrase *"may be loss to the Bank"*. Thus, the language in the memo dated 29th September, 1999 does not specifically indicate that any loss is 'actually' caused to the Bank. Thus, the loss alleged by the Bank is merely speculation and there was no actual loss that was caused to the Bank. Therefore, until and unless any actual loss is caused which may be reflected from the documents of the Bank, the amount of gratuity cannot be forfeited.

27. Finally, it is clarified in respect of the issue of moral turpitude that the Bank has not relied on the said ground for the purpose of the present writs, so no submissions are made by Mr. Tripathi, ld. counsel on the said grounds.

28. Mr. Abhinav Sharma, ld. Counsel for the Employee No.2, submits that the case of his client is slightly different from the case of Mr. Chaturvedi. In his case, Employee No.2 was dismissed from service on 7th March, 2013 pursuant to the order of dismissal passed by the Disciplinary Authority. The employee filed an appeal before the Appellate Authority which was also dismissed on 17th April, 2014. Employee No.2 then approached the

Controlling Authority on 20th December, 2016 seeking release of the gratuity amounts and a notice was issued to the Petitioner Bank by the Controlling Authority. It was only thereafter that the notice of forfeiture of the gratuity was issued by the Bank on 24th March 2017. Vide a letter dated 29th June 2017 the gratuity of the Employee was forfeited by the Petitioner Bank. The Controlling Authority vide order dated 23rd January 2019 directed the payment of the gratuity amount to Employee No.2. The Appellate Authority has finally, in pursuance of the order passed by this Court, vide order dated 29th January 2021 read with the corrigendum issued thereto dated 17th February 2021 dismissed the appeal of the Petitioner and has upheld the award of gratuity passed by the Controlling Authority. It is this order that is challenged by the Bank in this writ petition. Thus, it is his submission that there has been no delay in his case.

29. Mr. Sharma, ld. Counsel highlights that in the order dated 7th March 2013 passed by the Disciplinary Authority, there was no discussion in respect of gratuity at all. Reference is made by the ld. Counsel to the order of the Disciplinary Authority dated 7th March, 2013 to argue that in the said order, various failures of Employee No.2 are noted but there is no discussion of any loss caused to the Bank nor the Disciplinary Authority directing forfeiture of the gratuity. He submits that the gratuity entitlement is a valuable right which accrues in favour of the employees after a fixed term of service and the same cannot be forfeited in all cases. He relies upon the judgment in ***Union Bank of India v. C.G. Ajay Babu, (2018) 9 SCC 529*** to argue that there are cases of moral turpitude, etc. which are punishable under law wherein gratuity can be forfeited. He argued that it is for the Court to decide whether any crime has been committed or not by the employee and it is not for the Bank to decide

the same. In the present case, there is not even an FIR filed by the Bank. No criminal charges have been framed and under such circumstances, the Bank cannot on its own forfeit the gratuity amount. He also relies upon the judgment in ***Jaswant Singh Gill v. Bharat Cooking Coal (2007) 1 SCC 663*** in which it was held that the Act not only lays down the right but also lays down the conditions under which the employee may be denied the said right. It is this procedure which has to be scrupulously observed. Thus, he argues that there is no justification in the present case for forfeiting the gratuity. Furthermore, as per ***Jaswant Singh (supra)***, the conditions for forfeiture have to be fulfilled i.e., notice has to be given, the loss has to be quantified, and the employee has to be heard, only thereafter the forfeiture can be affected. He further argues that provisions of the Act would prevail over the Rules, especially after the amendments. Reliance is also placed on the judgment in ***Sujoy Kumar Roy v. Union Bank of India 2013(5) GLT 755*** which reiterates that reasonable opportunity of hearing has to be given to the employee during the exercise of quantification of loss. The judgment of the Supreme Court in ***D.V. Kapoor v. Union of India, (1990) 3 SCC 314*** proceeds on similar reasoning wherein the Court held that if the opportunity was not given to the employee, gratuity which is the statutory right, cannot be denied to the employee. In the case at hand, in the order of dismissal there was no quantification of loss and until 2017, there was no notice of forfeiture which was given to Employee No.2. It was only after the employee went to the Controlling Authority that, as an afterthought, the notice of forfeiture was given. ***State of Kerala v. M. Padmanabhan Nair (1985) 1 SCC 429*** is relied upon to argue that gratuity is no longer any bounty to be distributed by the government to its employees on their retirement but has become a valuable right and property in their hands

and any culpable delay in the settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.

30. Finally, it is submitted by Mr. Sharma, ld. Counsel that the grant of interest is important in the payment of gratuity in case of delay of payment in gratuity by the employer as per section 7(3) and 7(3A) of the Act. The limitation period which is mentioned in the Rules does not apply to the employee and is only meant for the employer. The ld. Counsel further places reliance on the decision of the ***Delhi High Court in MCD v. Nand Kishore 2003 (67) DRJ 135*** to argue that the non-payment of gratuity is a continuing wrong. He also argues that since the Bank did not forfeit the gratuity for 4 years, it constitutes waiver of right to forfeit the gratuity on part of the Bank and now they are estopped from forfeiting the same. He submits that the limitation period would apply to the employer in this case, and that the Bank cannot be permitted to forfeit gratuity after a period of four years.

31. Finally, Mr. Sharma highlights the medical condition of the Employee No.2 and reliance is placed on his medical certificates. It is submitted that the employee is suffering from severe heart conditions and his wife also passed away in 2016. He has lot of expenditure on his medical condition and various other procedures to be performed. Under such circumstances, the gratuity amount is liable to be released to Employee No.2 along with interest.

32. In rebuttal, Mr. Rajat Arora, ld. Counsel, submits that the employees have taken three pleas before this Court. First, that the principles of natural justice have been violated and hence the order of forfeiture is bad. Second, that the quantification was not done in proper manner. Thirdly, that the claims are not barred by limitation. In response to the first plea, Mr. Arora submits

that non-giving of the notice would not vitiate forfeiture unless and until some prejudice is shown. In fact, the issuance of charge sheet itself is in the nature of a show cause notice so the action cannot be set aside on the ground that notice of forfeiture of the gratuity was not given. Reliance is placed upon the inter officer memos dated 29th September 1999 and 27th June 2002 to submit that the loss is specific in nature and the principles plus interest as can be read from the inter office memos would lead to the amount which is claimed as the loss caused to the Bank. Thus, there is also quantification of the loss caused to the Bank. He further submits that the proceedings for forfeiture are separate from the disciplinary enquiry. The quantification is also separate even if no notice is given by the Bank. In view of the judgment in ***State of UP v. Sudhir Kumar Singh and Ors. Civil Appeal No. 5136/2020*** decided on 16th October 2020, no prejudice is caused and, therefore, the forfeiture cannot be held to be bad in law.

33. On the question of limitation, Mr. Arora, ld. Counsel places reliance upon the operative portion of the order of the Controlling Authority awarding interest from 07th September, 1998 till the date of actual payment. It is his submission that as per Section 8 of the Act, the amount of interest cannot be more than the gratuity amount itself. Since the forfeiture took place in 2002 and the claim was filed in 2016, by the time the Controlling Authority passed the order, almost 14 years having gone by. Even with simple interest of 10%, the amount would have almost tripled. Thus, he submits that this is violative of Section 8 of the Act. Further, the ld. Counsel places reliance upon the judgment of the Bombay High Court in ***Chanda Khand Sahakari v. Darratraya Ramchandra Gaund [WPC No. 1362/2009 decided on 16th***

September 2015] to argue that the application for gratuity has to be made within a reasonable period.

34. Finally, he submits that in the case of Employee No.2, the question of violation of principle of natural justice does not arise as notice of forfeiture dated 24th March 2017 was given to the employee.

35. Initially, the show cause notice was given to Employee No.2 and the forfeiture notice also mentioned the actual loss of Rs.6,17,89,079/- to the Bank. However, the total forfeiture is only Rs.10 lakhs. Thus, the quantification is there in both the cases and the impugned orders are, accordingly, liable to be set aside. He submits that the judgment of ***Jaswant Singh Gill v. Bharat Cooking Coal (supra)*** has been overruled in the case of ***Mahanadi Coalfields v. Rambindranath Choubey AIR 2020 SC 2978***. It is his submission that under the Act, not all duties are put on the employer, the employee also has an obligation to claim the gratuity within time. Finally, he seeks to distinguish ***Union Bank of India v. Ajay Babu (supra)*** on the ground that the said judgment also relies on ***Jaswant Singh (supra)*** and relates to case of moral turpitude.

36. Mr. Arora, ld. Counsel further submits that Controlling Authority did not have any jurisdiction to deal with the present matter as the respondent was working in Gujarat. The Disciplinary Authority which has passed the order of dismissal was in Gujarat. The Appellate Authority was located in Mumbai. The Employee No.2 was last posted in Gurgaon and hence the Controlling Authority did not have jurisdiction to adjudicate the dispute. In response, Mr. Sharma, ld. Counsel submits that the cause of action has arisen in Delhi as all communications to Employee No.2 were through Delhi jurisdiction. In any

event, the website of the Union Bank also states that Gurgaon branch where Employee No.2 was posted falls within the regional office in Delhi.

37. In response to Mr. Arora's rejoinder arguments, Mr. Tripathi, ld. Counsel submits that ***Sudhir Kumar Singh (supra)*** is a judgment which lays down the general principle of natural justice. Under the Act there are specific judgments of various High Courts and the Supreme Court holding that forfeiture cannot be effect without giving notice and quantifying the loss. He seeks to distinguish the ***Mahanadi Coalfields (supra)*** on the ground that in the said case, the question was whether forfeiture was permissible during the pendency of the enquiry, which is clearly permissible. Thus, it is distinguishable from this case. He further submits that the decision of ***Chanda Khand Sahakari (supra)*** of the Bombay High Court is *per incurium* as, though it quotes the judgment in ***H.Jayarama Shetty (supra)***, it does not deal with the scheme of the Act as dealt with in the case of ***H. Jayaram Shetty (supra)***. Even in ***R.P. Dhanda v. Regional Manager, UCO Bank (2007) 6 All Mr 54*** which is relied upon in ***Chanda Khand (supra)***, the matter was remanded back by the Bombay High Court. Moreover, the Delhi High Court has taken a different view and has held that the claim of gratuity is a continuing claim and cannot be rejected on the ground of limitation. Finally, he places reliance on the judgment of the Kerala High Court in ***Azhagappa Puram Primary Agricultural Co-operative Bank v. Joint Commissioner of Labour (W.P.[MD] No. 5659/2013 decided on 28th January 2019)*** which reiterates the principle that notice and quantification are mandatory.

38. Mr. Sharma, ld. Counsel, seeks to submit in sur-rejoinder that the proposition in ***Jaswant Gill (supra)*** was that the Act prevails over the Rule and there is no automatic forfeiture. That is a general preposition. In the case

of Employee No.2, the disciplinary enquiry ended in 2013. The claim for gratuity was made in 2016. There was no forfeiture till then. The notice of forfeiture was for the first time issued only in 2017. Thus, the notice having been issued after the claim was filed, the same cannot be regarded as proper notice. ***Padmanabhan Nair (supra)*** judgment is reiterated to argue that gratuity and provident fund are not a bounty and thus interest has to be paid. He also clarifies that under Section 8(3) of the Act, the amount of compound interest cannot be higher than the gratuity amount. However, this has no application in respect of simple interest that is to be paid in terms of Section 7(3)(a) of the Act. He further submits that the delay in this case, in filing the claim between 2013-16 was only due to various medical conditions of the Workman and in view of the unfortunate demise of his wife, who then passed away in 2015.

Analysis and finding

39. There are two aspects to be considered in these cases:

- First, whether forfeiture of gratuity is permissible and, if so, in what manner is it to be effected.
- Secondly, whether long delay in approaching to Controlling Authority can result in rejection of the claim for gratuity.

40. Section 4 of the Act prescribes that gratuity would be payable to every employee on termination of his employment if the employee has rendered continuous service for not less than five years upon superannuation, retirement or resignation or due to death or disablement due to accident or disease. The section reads as under-

"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:*
> *[1] [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."*

41. Section 4(6)(a) of the Act, however, provides that the gratuity of an employee, whose services may have been terminated for the reasons as specified therein, can be forfeited to the extent of damage or loss so caused. The relevant provision reads 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*[17] *[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."*

42. Thus, any employer can forfeit the gratuity of an employee if the employee is terminated for any act or omission or negligence causing any damage or loss to the property belonging to the employer. The forfeiture can only be to the extent of the damage or loss caused, and not beyond that.

43. In both these petitions, the case of the Bank is that both the employees caused loss to the Bank and hence the gratuity can be forfeited. However, the case of the employees is that there are three pre-conditions which are imposed by law on the employer that need to be satisfied before gratuity of an employee can be forfeited *viz.*, proper notice of forfeiture has to be issued to the employee, the said notice has to contain the quantification of loss stated to be caused by the wilful omission or negligence of the employee and an opportunity to be heard to be given to the employee. It is their argument that the extent of loss cannot be presumed. In ***W.P.(C) 4486/2021,*** the Bank's case is that the loss has been computed in internal documents of the Bank i.e., in inter-office memos dated 29th September 1999 and 27th June, 2002. In ***W.P.(C) 4604/2021,*** the notice of forfeiture was issued by the Bank after the employee approached the Controlling Authority. Thus, at the time when the

forfeiture was, in effect, done by the Bank, there was no notice which was issued to the employee quantifying the said loss. The bank does not dispute this position.

44. What is the procedure for forfeiture of gratuity? This has been considered in various decisions placed by the Respondents. In ***Hindalco Industries Ltd. v Appellate Authority and Ors. (101) FLR 1063***, the Allahabad High Court has held that as per the provisions of Section 4(6)(a) of the Act, quantum of forfeiture has to be determined, and thus it requires an order, which can only be passed after giving an opportunity to the employee. In ***Canara Bank v. Appellate Authority W.P. No. 40600/2011 (L-PG)*** the Karnataka High Court has held that the decision for forfeiture of gratuity can only be taken after quantifying the amount of loss incurred and after affording an opportunity of hearing to the employee. In ***Union Bank of India v K.R. Ajwalia (supra)*** the Gujarat High Court has held that notice and hearing are essential to process of forfeiture of gratuity. In ***Manager, Western Coalfields Ltd. v. Prayag Modi 2018 (157) FLR 323***, the Madhya Pradesh High Court has held that gratuity of an employee can only be withheld as per the procedure prescribed in the Act. The employer does not have any unfettered discretion in withholding the gratuity as per his whims and fancies.

45. Similar view has also been taken in ***Jaswant Singh Gill v. Bharat Coking Coal Ltd. (supra), Union Bank of India and Ors. v. C.G. Ajay Babu (supra), Sujoy Kumar Roy v. United Bank of India (supra)*** and ***D.V. Kapoor v. Union of India (UOI) (supra)***.

46. Ld. Counsel for the Bank seeks to contend that ***Jaswant Singh Gill (supra)*** has been overruled in ***Chairman-cum-Managing Director, Mahanadi Coalfields Limited v. Rabindranath Choubey (supra)***. Insofar as

the ***Jaswant Singh Gill (supra)*** and ***Rabindranath Choubey (supra)*** judgments are concerned, the core question therein was as to whether the forfeiture of gratuity would be permissible after superannuation or not. The relevant observation in ***Rabindranath Choubey (supra)*** of the Court reads as under-

> *"10.27. In Jaswant Singh Gill v. Bharat Coking Coal Ltd. (2007) 1 SCC 663, it was held that the provisions of Section 4(6) of the Payment of Gratuity Act, 1972 would prevail over the non-statutory Bharat Coking Coal Ltd. – a subsidiary of Coal India Ltd. Rules 34.2 and 34.3 and provisions of Payment of Gratuity Act, 1972, were considered. It was held that even if the disciplinary inquiry was initiated before attaining the age of superannuation, if the employee attains the age of superannuation, the question of imposing a major penalty by removal or dismissal from service would not arise. Once the employee had retired and his services had not been extended for the purpose of imposing punishment, a major penalty could not be imposed. It was also held that the Rule framed by Coal India Ltd. are non-statutory rules, and in view of the provisions of the Payment of Gratuity Act, 1972, they cannot prevail. In the said case, the order of dismissal was passed after the age of superannuation. It was found that misconduct did not cover the grounds mentioned in Section 4(6)(a) for recovery of the loss, nor it was the case of misconduct in which gratuity could have been withheld wholly or partially in the exigencies as provided in Section 4(6)(b). We find it difficult to agree with the said decision as Rules hold the field and are not repugnant to provisions of the Payment of Gratuity Act, 1972. This Court held that Rules could not hold the field as they were not statutory; thus, the effect of the Rule providing of deeming*

> *legal fiction as if he had continued in the service notwithstanding crossing the age of superannuation was not considered. Apart from that, the validity of Rules 34.2 or 34.3 could not have been decided as it was not in question in the said case. The Controlling Authority and the Appellate Authority ordered the payment of gratuity. The main ground employed was that in the order passed by the departmental authority, the quantum of damage or loss caused was not indicated, and it was not the case covered by Section 4(6) (a) and 4(6)(b). A writ petition filed by the employer was dismissed. However, the Intra Court Appeal was allowed, and it was opined that the Controlling Authority could not have gone into the validity of the dismissal order and forfeiture of the gratuity since it was not an appellate authority of disciplinary authority imposing the punishment of dismissal. Thus, the jurisdictional scope in the Jaswant Singh Gill case (supra) was limited. We are unable to agree with the decision rendered in Jaswant Singh Gill case (supra) inter alia for the following reasons:*
>
> …
>
> ***Thus, we overrule the decision in Jaswant Singh Gill (supra).”***

47. In ***Chanda Khand Sahakari Shetkari Kharedi Vikri Sanstha v. Dattatraya Ramchandra Gaund and Ors. (supra),*** the Bombay High Court came to the conclusion that if the offence committed by the employee is one involving moral turpitude, then the issuance of show cause notice for forfeiture of gratuity can be dispensed with. The Court observed as under-

> *“What is required to be seen to test the case of respondent No. 1 on the provision of sub-section (6) of Section 4 of the said Act is to find out the ground mentioned in the order of termination/dismissal. If the order shows that the services have been*

> *terminated for any act which constitutes an offence involving moral turpitude, the gratuity payable to the employee can partially or wholly forfeited under Section 4(6)(b) (ii) of the said Act. The stand of the employer is that the gratuity has been wholly forfeited on account of termination of the services of respondent No. 1 on the ground of misappropriation of the amount. In such an event, it is not necessary to issue any show cause notice for forfeiting the gratuity, wholly or partially. Hence, the employer was justified in the action taken under Section 4(6)(b)(ii) of the said Act."*

48. In the present two petitions, it is worth noting that ld. Counsel for the Bank, during the course of hearing submitted that the Bank is not pressing the ground of forfeiture of gratuity of the employees on account of offence involving moral turpitude. Thus, insofar as the procedure to be followed for forfeiture is concerned, even if this Court does not take into consideration the judgment in ***Jaswant Singh Gill (supra)***, a mere reading of the provisions itself shows that the forfeiture can be only to the extent of the damage or loss so caused. Thus, the Bank would not be entitled to forfeit the entire gratuity amount without quantifying the extent of the damage or loss. This amount is not a 'quantified amount' under the provision. The same would have to be determined after giving the employee an opportunity as to whether the damage or loss was caused and whether the same has been correctly attributed to the correct employee or not. Section 4(6)(a) of the Act thus has two subjective conditions;

i. That there has to be damage or loss caused.

ii. That the same ought to have been caused due to an act, omission or negligence of the employee.

49. If both these conditions are not satisfied, the forfeiture would not be in accordance with law. It is nigh possible that the employee could argue that he was not responsible solely for taking the decision that is attributed to him. There may have to be apportionment of damage or loss. The damage or loss has to be connected with the act, omission or negligence of the employee. The entire damage or loss cannot be attributed to one employee. There cannot be duplication of forfeiture if more than one employee was involved. In view of these subjective conditions, a notice to the employee and a hearing would be required. The exception to this would be a case of moral turpitude as considered in the judgment in ***Chanda Khand Sahakari Shetkari Kharedi Vikri Sanstha (supra)*** which is not the case in these two petitions. In both these cases, the Bank has not set up a case of moral turpitude as the ground for the forfeiture of gratuity of the employees before this Court. Thus, the Court has to examine both the petitions under Section 4(6)(a) of the Act and not under Section 4(6)(b).

50. The stand of the Bank before the Court is that no prejudice is caused to the employees due to non-issuance of notice and denial of opportunity of being heard. Reliance is sought to be placed on the decision of the Supreme Court in ***State of U.P. v. Sudhir Kumar Singh AIR 2020 SC 5215*** to argue that breach of *audi alteram partem* cannot by itself, without more, lead to the conclusion that prejudice is thereby caused**.** However, this Court is of the opinion that this contention cannot be accepted inasmuch as payment of gratuity is the normal rule under law and forfeiture is the exception. In ***Union Bank of India v. K.R. Ajwalia (supra***) it was held that an opportunity of being heard before adverse orders are passed is not a 'useless formality' and denial

of the same would cause prejudice to the employee. The relevant observation from the judgment is as under:

> ***"16.*** *From the above guiding principles, it would be necessary to decide, in the facts of the present case, whether it will be a "useless formality" to insist that the respondent should have been given an opportunity of being heard before adverse order was passed against him as no prejudice is caused by not affording such an opportunity, as is contended by the learned advocate for the petitioner. In my opinion, such a view is not possible to be taken in the present case. As discussed earlier, the respondent was heard only at the stage of departmental inquiry where the entire focus was on the misconduct and what punishment is to be imposed on the respondent for his alleged misconduct. What was the role played by the respondent, who are the other persons involved which caused loss to the tune of Rs.10 lacs to the Bank, what were the posts held by such persons and considering all these and other relevant aspects of the matter, what would be the amount, if any, of the gratuity of the respondent which is required to be forfeited, are the questions required to be considered by the Competent Authority and such a decision cannot be arrived at without giving a fair opportunity to the respondent to be heard in this regard. Rule 3 of the Gratuity Rules itself suggests that the amount of gratuity to be withheld is to be decided solely by the Bank. By no stretch of imagination can it be argued that in every case of loss of property, there would be automatic and complete forfeiture of gratuity. The rule itself, in my opinion, can be read into giving sufficient discretion to the Competent Authority to forfeit in part or full amount of gratuity considering the facts and circumstances of a given case. In my view,*

therefore, requirement of hearing to the respondent would not be an empty formality which can be dispensed with."

51. In ***Hindalco Industries Ltd. v. Appellate Authority and Ors. 2004 (101) FLR 1063,*** the Allahabad High Court following ***Remington Rand of India Ltd. v. The Workmen AIR 1970 SC 1421*** decision of the Supreme Court in respect of Section 4(6)(a) & (b) observed as under:

"6. In the present case there is no averment that any express order was passed by the employer forfeiting petitioner's right to receive gratuity. In Remington Rand of India Ltd. v. The Workmen MANU/SC/0321/1969, the Supreme Court considered the qualifying period for payment of gratuity, and the consequences of payment of gratuity on the termination of services for misconduct. It was held that gratuity is paid to ensure good conduct throughout the period that the workman serves his employer is an accepted proposition. The clause as to misconduct covers the act which may vary in degree of gravity, nature and its impact on the discipline and the working of the concern. All these acts may not result in loss capable to being calculated in terms of money. There may be an action which may forthwith disentitle the workman from retaining his employment and justifying his dismissal. It appears that after this pronouncement, the Act was amended and that a provision was made under Section 4(6)(b) for forfeiture of gratuity either wholly or partially. The discretion given to the employer must be based upon the material and the reasons recorded, after serving principle of natural justice and these conditions postulate an order to be passed by the employer. The termination of services of an employee on the grounds contemplated under Section 4(6)(a) and (b), by itself does not entitle the

> *employer to forfeit gratuity payable to an employee. The right of an employer to terminate the services of an employee under the Certified Standing Orders, or Service Conditions on any such act given in Section 4(6)(a) and (b), of the Act of 1972, is circumscribed and restricted to holding a just and fair domestic enquiry serving principles of natural justice, which may be examined and justified in industrial adjudication, in which the proportionality punishment may be examined under Section 11A of the Industrial Disputes Act, 1947. The Industrial adjudicator may find the domestic enquiry and punishment to be just, fair and proper, but these findings by themselves do not serve the requirements of Section 4(6)(a) and (b) of the Payment of Gratuity Act, 1972.* ***The right to receive gratuity is a statutory right. It is not sub-servient to the common law rights of the employer to terminate the services of an employee. In order to forfeit the statutory right of gratuity, qualified by expression to the extent of damage or loss so caused in Sub-section (6) (b), the quantum of forfeiture has to be determined, and thus it requires an order, which can only be passed after giving opportunity to the employee.*** *When the forfeiture, even if by an express and reasoned order is challenged before the Controlling Authority under the Act, the employer must satisfy the authority in proceedings under Section 7(4) of the Act, with the justification of forfeiture."*

52. In ***Union Bank of India v. K.R. Ajwalia (supra)***, the Gujarat High Court held that an opportunity of being heard ought to be given before passing the order of forfeiture of gratuity. The observation of the Court reads as under:

> *"12. From the facts of the case narrated above, I am unable to agree with the contention of the learned advocate for the petitioner that the*

petitioner had substantially complied with the requirements of hearing and that no opportunity of hearing was required to be given to the respondent before passing the order of forfeiture of the gratuity. It is true that a chargesheet was served against the respondent in which the allegations with respect to misconduct were included. It is also true that in the chargesheet itself, the petitioner had mentioned that the act and omission of the respondent had caused loss of Rs.10 lacs to the Bank. This, however, by itself would not be a sufficient ground to come to the conclusion that the respondent did not deserve an opportunity of being heard before passing the order of forfeiture of gratuity. The chargesheet issued against the respondent was for the purpose of calling upon him why penal action should not be taken against him for the alleged gross misconduct committed by him. The entire scope and focus of the inquiry was different from one which would have to be initiated before passing any order forfeiting gratuity partially or in full. The respondent was never put to notice that his conduct would result into forfeiture of his gratuity. In that view of the matter, I am of the opinion that the respondent was not given a notice or hearing before passing the order of forfeiture of gratuity which was essential in the facts of the present case.

13. This brings me to the alternative contention of the learned advocate for the petitioner that it would be a "useless formality" since the respondent has not shown any prejudice in not being issued a notice before the order of forfeiture of gratuity was passed. In the decision reported in AIR 1994 SC 1074 (Managing Director, ECIL v. B. Karunakar), the Hon'ble Supreme Court while considering the effect of the decision of the Supreme Court in Mohd. Ramzan Khan's case holding that a delinquent officer is entitled to a copy of the Inquiry Officer's

> *report before the Disciplinary Authority takes a final decision thereon, came to the conclusion that in all cases where the Inquiry Officer's report was not furnished to the delinquent employee, Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report."*

53. In ***Canara Bank v. Appellate Authority, under the Payment of Gratuity Act and Ors. (Supra)*** the Karnataka High Court also held that the quantification of the amount of loss and affording of an opportunity to the employee are both pre condition for forfeiture of gratuity. The Court held as under:

> *"4. Having heard the learned for the petitioner, the fact situation is fairly covered by the opinion of the Division Bench of this court in* ***Vijaya Bank, Bangalore and Others Vs. Mohan Das Ramana Shetty*** *reported in* ***2008(6) Kar.L.J.679(DB)*** *that when a Bank employee is dismissed from service for allowing overdrawings without prior approval of the controlling authority, thereby causing loss to the Bank, the decision to forfeit gratuity can be taken only after quantifying the amount of loss and after affording opportunity to the employee to present his defence against the decision proposed and where no proceeding is initiated by the Bank for assessment of loss caused by employee, gratuity cannot be forfeited.*
>
> *5. In that view of the matter, no exception can be taken to the reasons, findings and conclusions arrived at by the Authorities under the Act, in the orders impugned, calling for interference."*

54. A perusal of the above judgments would show that issuing of notice wherein the loss caused to the Bank is clearly quantified is a *sine qua non* for forfeiture of gratuity. In the first case before this Court, the forfeiture of gratuity was not even communicated to Employee No.1. Though some justification is sought to be laid on the basis of the inter office memo, this is, at best, an internal document and cannot constitute notice to the employee as required to be given under section 4(6)(a) of the Act. In the second petition, it is the case of Employee No.2 that the notice for forfeiture was itself issued after the claim was filed by the said employee and the said position is not disputed by the Bank. Thus, in both the cases, the employees were kept in dark as to the forfeiture of their gratuity. In both these petitions, neither proper notice was issued nor was any hearing afforded on the aspect of forfeiture to the employees.

55. In a banking system, there may be various factual situations which may have resulted in termination of the employee. The misconduct alleged may be at an individual level or at the level of the team, for example, for sanctioning of a loan, only one employee of a bank may not be fully responsible. As per Section 4(6)(a) of the Act, the omission or negligence has to exist and forfeiture can be only to the extent of damage or loss caused to the employer. These are factors which are subjective in nature and would depend on the facts of each case. Gratuity being a statutory right, as held in ***Hindalco Industries v. Appellate Authority (supra),*** the standard for forfeiture of gratuity would be much higher. As held in ***H. Jayaram Shetty v. the Sangli Bank Ltd. 2005 (3) Bom CR 10,*** the obligation of the employer to pay the gratuity of their employees is an extremely high obligation. The view of the Court was:

> ***"11.*** *The rules which were framed in 1972 must be read in a manner which is consistent with the statutory provisions of Section 7 particularly after the amendments that were introduced by Amending Act 25 of 1984 (with effect from 1st April 1984) and by Amending Act 22 of 1987 (with effect from 1st October 1987).* ***The provisions of Section 7 emphasise that the obligation is that of the employer to determine and to make arrangements for the payment of gratuity and upon his failure to do so, to pay interest at the rate which is statutorily prescribed.*** *Even if the period that is prescribed in the Rules is taken into consideration, the Rules themselves lay down that the delay on the part of the employer, if any, can be condoned if sufficient cause is shown.* ***A breach of the employer to comply with his obligation under section 7 provides a recurring and continuous cause of action. The Act is a piece of social welfare legislation and the employer cannot be permitted by reason of his own default in complying with his obligation to defeat the just entitlement of the employee. Finally, it may be noted that the employer has to determine and pay gratuity whether or not an application is filed to him. The filing of an application before the employer is not a condition precedent****. Rule 7 makes procedural provisions for such an application. On receipt of an application under Rule 7, the employer has to issue a notice under Rule 8 either admitting the claim or to specify the reasons why he holds the claim inadmissible. It is thereafter that time is prescribed in Rule 10 for an application to the Controlling Authority. The making of an application under Rule 7 therefore invokes a chain of events in Rules 8 and 10. Once the making of an application to the employer is not mandatory under the provisions of Section 7(2) of the substantive provisions of the act, the limitation under the Rules which is triggered upon the filing of the application under Rule 7 can obviously not defeat the claim of the employee."*

56. Thus, payment of gratuity is the rule and not the exception. For the exception to be relied upon, the pre-condition of notice, quantification and

hearing would have to be followed and satisfied. The notice in the case of Employee No.2, which was given after the claim was filed, cannot be treated as proper notice and was, in any case, belated in nature. Thus, in both the cases before the Court, there has been no proper notice.

57. Mr. Arora, ld. Counsel, has relied upon ***State of U.P. v. Sudhir Kumar Singh (supra)*** to argue that natural justice is a flexible tool. While there can be no doubt about this proposition, the non-compliance of the natural justice in the case of forfeiture of gratuity would result in the employee being deprived of a statutory right without a hearing, resulting in enormous prejudice. In these cases, the Bank has not proceeded with the forfeiture of gratuity of employees under the ground of moral turpitude and has even failed to communicate the forfeiture under section 4(6)(a) of the Act to the employees. The inter-office memo is sought to be relied upon by the Bank only as a response to the claim filed by Employee No.1 and not as a notice of forfeiture of gratuity containing quantification of loss caused to the Bank. Under such circumstances, to hold that the employees would not deserve a hearing and not even a notice would be contrary to law and the settled legal precedence in this regard.

58. There can be no doubt that usually, notice ought to be given to the employee as has been held in ***Hindalco Industries Ltd.(supra), K.E.Ajwalia (supra)***, and ***Manager, Western Coalfields Ltd. v. Prayag Modi (supra)***.

59. Coming to the aspect of delay, this Court is of the opinion that delay by itself cannot be a ground for denial of payment of gratuity. However, on the aspect of interest, the matters deserve to be considered on facts. In ***W.P. (C) 4486/2021***, Employee No.1 himself filed the application before the Controlling Authority 14 years after the forfeiture took place in the Bank's

record. This is too long a period during which a delinquent employee has completely slept over his rights. In ***W.P. (C) 4604/2021,*** Employee No.2 filed the claim before the Controlling Authority after almost four years. The mis-appropriation and mis-utilisation of funds was on a huge scale due to which the Bank dismissed Employee No.2 from service and forfeited the gratuity. The sanction which was given by Employee No.2 was for 143 loans of more than Rs.4 crores. The total loss computed by the Bank is to the tune of Rs.6,17,89,079/- and the gratuity which have been forfeited is Rs.10,00,000.

60. In the present two cases, both the employees were held to be delinquent employees whose personal integrity and honesty was in question. The termination of these two employees has attained finality.

61. On a careful perusal of the submissions of ld. counsels and material on record, the factual and legal position that emerges is as under:

i. In case of both the employees, chargesheets were issued, inquiries were conducted and they were terminated.

ii. The Bank resorted to forfeiture of gratuity but without giving proper notice as contemplated under section 4(6)(a) of the Act.

iii. In the case of Employee No.1, the claim for gratuity was filed approximately after 16 years from the date of decision of the Appellate Authority confirming the dismissal. Thus, there was a delay of approximately 16 years by the employee in staking his claim to the gratuity amount.

iv. In the case of Employee No.2, the claim was filed within a reasonable period, however, the employee was a person of doubtful integrity and honesty as the charges against him have attained finality and he stands terminated.

v. In the case of Employee No.1, the only justification on record for forfeiting of gratuity is an inter-office memo. In case of Employee No.2, the notice of forfeiture was issued after Employee No.2 filed the claim.

vi. The settled legal position is that the three conditions of notice, quantification and hearing have to be complied with, prior to forfeiture of gratuity. This has clearly not been done by the Bank in both the cases.

62. In view of the above, this Court is of the opinion that forfeiture of gratuity by the Bank under section 4(6)(a) of the Act is clearly not justifiable. However, in the peculiar facts and circumstances of these cases, considering the delay in filing the claim of Employee No.1 and the factual background leading to the forfeiture in the case of Employee No.2, it is held that interest would not be liable to be paid by the Bank for the period from the date of termination till the date of application filed by each of the employees before the Controlling Authority. The said dates in case of each of the employees is as under:

A) **Employee No.1:**

Date of termination- 21st August, 1998.

Date of application before Controlling Authority- 15th April, 2016. Thus, no interest would be liable to be paid by the Bank for the aforesaid period between the date of termination and the date of application before the Controlling Authority.

B) **Employee No.2:**

Date of termination- 7th March, 2013.

Date of application before Controlling Authority- 20th December, 2016.

Thus, no interest would be liable to be paid by the Bank for the aforesaid period between the date of termination and the date of application before the Controlling Authority.

63. In ***W.P.(C) 4486/2021***, amount of Rs. 6,54,802/- is already deposited with the Appellate Authority vide Demand Draft No. 400459 drawn on Union Bank of India, Connaught Place Branch, New Delhi. The Appellate Authority is directed to release the amount payable in terms of the present judgement along with interest accrued, if any, to the Employee No.1. The Balance amount is directed to be refunded to the Bank within four weeks. If the amount is falling short, then the Bank shall pay the remaining amount to the Employee No.1 by 15th April 2022.

64. In ***W.P.(C) 4604/2021***, the Controlling Authority vide order dated 23rd January 2019 had directed to the Bank to pay Rs. 10,00,000/- along with simple interest @10% per annum with effect from 13th March 2013 to the date of actual payment. However, the Bank is stated to have deposited only an amount of Rs. 10,00,000/- with the Appellate Authority vide Demand Draft No. 4000368 drawn on Union Bank of India, Connaught Place Branch, New Delhi. The Appellate Authority is directed to release the said amount along with interest accrued, computed in terms of the present judgment in favour of Employee No.2 within two weeks. If there is any balance still left to be paid, the Bank will pay the same by 15th April, 2022. If there is any excess amount, the same shall be refunded to the Bank.

65. The petitions are accordingly disposed of in the above terms, along with all pending applications. No order as to costs.

PRATHIBA M. SINGH
JUDGE

MARCH 24, 2022/*dj/sk*