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KARNATAKA EMPLOYERS' ASSOCIATION

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BENGALURU - 560 004
Reg. No. TU 507 / 20-3-1962

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CIRCULAR No.57/2018

To
All Members of the Association

SUPREME COURT HOLDS FORFEITURE OF GRATUITY IS NOT AUTOMATIC ON DISMISSAL FROM SERVICE.

1. A bank employee was dismissed from service with effect from 3.6.2004 after the three charges levelled against him. viz., he failed to take steps to ensure and protect interest of the bank, not discharging his duties with utmost diligence, honesty, integrity and doing Acts of unbecoming of an officer employee. The bank after issuing the show cause notice as to why gratuity should not be forfeited on account of proved misconduct involving moral turpitude, considering his reply, forfeited the gratuity in accordance with section 4(6) of the Payment of Gratuity Act.
2. The employee challenged the orders of the bank before the High Court. The Single Judge of the High Court held that there was no finance loss to the bank and gratuity shall have to be pay. The Division Bench upheld the judgment of the Single Judge.
3. The bank filed Special Leave Petition before the Hon'ble Supreme Court. The Hon'ble Court in its order dated 14.8.2018 in Civil Appeal No. 8251 of 2018 in the case of Union Bank of India and others Vs C.G. Ajay Babu and Another held as under:

"Section 4 of the Act, to the extent relevant, reads as follows:

4 Payment of gratuity. -

- (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-
 - (a) on his superannuation, or
 - (b) on his retirement or resignation, or
 - (c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation: - For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

xxx xxx xxx xxx

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section:

(1), -(a) the gratuity of an employee, whose services have been terminated for any act, 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."

Under sub-Section (6)(a), also the gratuity can be forfeited to 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 sub-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, sub-Clause (a) and sub-Clause (b) of sub-Section (6) of Section 4 of the Act operate in different fields and in different

circumstances. Under sub-Clause (a), the forfeiture is to the extent of damage or loss caused on account of the misconduct of the employee whereas under sub-Clause (b), forfeiture is permissible either wholly or partially in totally different circumstances. Sub-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 Sub-Clause (ii) of sub-Section (6)(b) when the termination is on account any act which constitutes an offence involving moral turpitude committed during the course of employment.

'Offence' is defined, under The General Clause Act, 1897, to mean "any act or omission made punishable by any law for the time being in force".

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.**(Employer's added)**

In Jaswant Singh Gill v. Bharat Coking Coal Limited and others¹, it has been held by this Court that forfeiture of gratuity either wholly or partially is permissible under sub-Section (6)(b)(ii) only in the event that the termination is on account of riotous or disorderly conduct or any other act of violence or on account of an act constituting an offence involving moral turpitude when he is convicted. To quote paragraph-13:

"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 subsection (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.

In the present case, there is no conviction of the respondent for the misconduct which according to the Bank is an offence involving moral turpitude. Hence, there is no justification for the forfeiture of gratuity on the ground stated in the order dated 20.04.2004 that the "misconduct proved against you amounts to acts involving moral turpitude". At the risk of redundancy, we may state that the requirement of the statute is not the proof of misconduct of acts involving moral turpitude but the acts should constitute an offence involving moral turpitude and such offence should be duly established in a court of law.

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 (supra). Therefore, the appellant cannot take recourse to its own Rules, ignoring the Act, for denying gratuity.

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.

Thus, though for different reasons as well, we find no merit in the appeal and it is accordingly dismissed. No costs".

4. The members may follow the procedure laid down by the Supreme Court in the matter of forfeiture of Gratuity.

for KARNATAKA EMPLOYERS' ASSOCIATION

**sd/-
(B.C. PRABHAKAR)
PRESIDENT**

