

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SERVICE

WP(C) No.3491/2006

Order reserved on : 12.7.2006.

Date of Decision: JULY 25, 2006

B.R. Sharma son of Late Shri Chunni Lal
Sharma, r/o 125 SFS Flats,
Mall Appartment,
Mall Road, Delhi-110054

..... Petitioner

Through: Petitioner in person

versus

1.Syndicate Bank through its Assistant
General Manager
Syndicate Bank, Zonal Office, Sarojini House,
6, Bhagwan Dass Road, New Delhi

2.Syndicate Bank through its Chairman
& Managing Director,
Syndicate Bank,
Head Office, Manipal, Karnataka State

..... Respondent

Through Mr. Jagat Arora, Advocate

CORAM:

JUSTICE SHIV NARAYAN DHINGRA

SHIV NARAYAN DHINGRA, J

1. This writ petitioner, by this writ petition, has challenged the order of the Management forfeiting his gratuity.

2. The petitioner was working with the respondent bank in junior management cadre in the year 1994. On 12th October, 1994, he was charge-sheeted by the disciplinary authority of the bank for the following charges:

“while functioning as Assistant Manager at Kamla Nagar Branch, Delhi and being an office bearer of a Trade Union namely Syndicate Bank Officers' Federation, he came to Zonal Office, Delhi on 5.9.1994 with Sri A.K. Bajaj to discuss the issues relating to change of domicile and transfer cases of certain officers with the Deputy General Manager. In view of the repeated clarification given to him by Zonal Office during the

last four to five occasions, he was informed as to the inability to consider his request. That in spite of the same, he raised his voice and threatened that he would come next day and show his real strength and see how Zonal Management does not change the domicile and the transfer orders of the certain officers. That on 6.9.94 at around 5.00 PM he organized assembly of officers unauthorizably inside the premises of Zonal Office at the lounge near the cabin of Sri Prem Maini, the then DGM, Zonal Office, Delhi. He along with other officers indulged in unruly scene and exhibited indecent behaviours with the DGM in spite of informing several times about the inability of the Dy. General Manager to discuss once again with them the issues already discussed on several occasions. Sri B.R. Sharma, however, insisted that he should be allowed to meet the DGM though the DGM alongwith other AGMs was busy in discussing certain issues with certain valuable customers of the Bank.

Around 6.00 PM, he along with other officers demanded that the meeting should be held immediately. When the DGM sent the message expressing his inability to discuss the matter with him and asked him to submit representation if any with regard to the issues, Sri B.R. Sharma entered the cabin of the DGM and shouted at him at high pitch of voice, questioned the authority of DGM and challenged that the DGM will not be allowed to leave his cabin under any circumstances and accordingly he stood in the middle of the entrance to DGM's Cabin stretched his hands and did not allow the DGM to leave the cabin. Sensing threat to his life, the DGM called the police from Tilak Marg Police Station and when the police officials were unable to control the situation additional police force were called. That on arrival of more police force DGM came out from his cabin with police escort, however, he obstructed and did not allow the DGM to go. That only after the DGM has given a written complaint to the police authorities, he was allowed to go but however his supporters were squatting on the floor of the cabin of the DGM and continued shouting. When the DGM was leaving the office and approaching the ground floor and while proceeding to his car, he followed him along with his supporters shouting slogans, he came rushing towards the car with an intention to enter into the car and physically assault the DGM, which is highly objectionable and subversive of office discipline. However, the Police officials prevented Sri. B.R. Sharma from doing so and at last the DGM was allowed to go.”

3. Subsequent to issuance of charge sheet, departmental inquiry was ordered which went against the petitioner and the charges were proved. The petitioner was awarded punishment of compulsory retirement from service of the bank with immediate effect by the disciplinary authority. The petitioner preferred an appeal to the Appellate Authority and the Appellate Authority concurred with the disciplinary authority on the quantum of punishment.

4. The petitioner was given all terminal benefits i.e. provident fund contribution, pension, leave etc. However, gratuity of the petitioner was forfeited in terms of clause 46(1)(e) of the Syndicate Bank Officers Service Rules and Regulations which provided that gratuity shall be eligible to an officer employed if the services are terminated in any other way except by way of punishment after completion of ten years. Forfeiture of gratuity was also justified by the respondent under section 4(6)(b) of the Payment of Gratuity Act, 1972.

5. The petitioner filed a claim for gratuity before the competent authority under section 4(c) and section 7 of the Payment of Gratuity Act. The competent authority vide an order dated 15.11.01 held that the forfeiture of gratuity of the petitioner under the provisions of Service Rules and under section 4(6)(b) of the Act without affording an opportunity to the petitioner was unjustified and illegal and directed the payment of Gratuity to the petitioner along with simple interest @ 10%. Against this order, the respondent bank preferred an appeal under section 7 of the Payment of Gratuity Act before the Appellate Authority. The Appellate Authority also concurred with the decision of the competent authority and held that no opportunity was given of being heard to the petitioner and this was in violation of the principles of natural justice and upheld the order of competent authority dated 6.5.2002 and dismissed the appeal. Against this order of Appellate Authority, the respondent bank preferred a writ petition vide WP(C) No.3994/2002. This court held that :

“For the reasons above stated, the writ petition is disposed of while affirming the orders of the controlling and appellate authorities dated 15.11.2001 and 6.5.2002 respectively but with the specific direction to the petitioner bank to grant pre decisional hearing to the respondent before passing any order. If the order is favourable to the respondent the amount of gratuity should be paid to the respondent/employee within one month of passing of such order. (para 18).

6. After the disposal of the writ petition with above observations, the respondent bank issued a letter to the petitioner to appear before the competent authorities on 15.4.2005 for personal hearing (pre decisional hearing) at General Manager Office at Sarojini House, Bhagwan Das Road, New Delhi. Hearing was given to the petitioner where the petitioner presented his case and told that he was innocent and he had not done anything which disentitled him to the payment of gratuity. There was no disorderly or the riotous behaviour on his part in the Zonal Office on 6th September, 1994 . He had participated in the trade union activities with the other officers. He submitted that gratuity was paid to retired persons for the resettlement in life and he was entitled to gratuity keeping in view his long and dedicated service to the institution. He had worked with the bank for 24 years. After hearing the petitioner, the respondent authority Mr. Hari Kapoor passed an order dated 9.5.2005 for forfeiture of gratuity on the ground that the petitioner indulged in grave and serious misconduct which stood proved against him in a fullfledged departmental inquiry. The misconduct of the petitioner was of the nature of grave and unruly scene and indulging disorderly and indecent behaviour with the then DGM of the erstwhile zonal office. The misconduct was of disorderly and riotous nature and it was destructive of the discipline in the organization. The payment of gratuity was forfeited under section 4(6)(b) as well as in terms of Clause 46 and 1(e) of the Syndicate Bank Service Regulations, 1979.

7. The petitioner has challenged this order of the competent authorities of the bank stating that Mr. Hari Kapoor was not competent authorities or the disciplinary authorities. The hearing given to him was an empty formalities in compliance of the direction of the High Court. Nothing was asked from the petitioner and the petitioner was only asked to give a lecture. The decision of forfeiture of

gratuity was pre decided act. The authorities had passed an order without going through the record and without giving any reason and without application of mind. The order of Mr. Hari Kapoor was only a repetition of the order of the disciplinary authorities, passed in the departmental proceedings. The action of the petitioner of 6th September, 1994 was genuine trade union action and the petitioner was only one of the participants and the respondent had not taken any action against other employees who participated in the trade union activities.

8. The other ground taken is that the payment of gratuity is a social welfare legislation in terms of various judgments of different High Courts and Supreme Court and gratuity cannot be forfeited under any circumstances. The participation in trade union activities was the legitimate right of the petitioner and during such participation, some inconveniences was bound to be caused to the authorities/respondent and for that reason, petitioner cannot be deprived of the gratuity on the ground of indecent behaviour.

9. The respondent in counter stated that the right of the bank to forfeit the gratuity has been upheld by this court but since the personal hearing was not given to the petitioner, the bank was directed to give personal hearing and to pass a reasoned order. The bank, thereafter, gave personal hearing and a reasoned order was passed. It is further submitted that the petitioner has also filed a writ petition being writ petition No.5319/98 against his compulsory retirement. The said writ petition was pending disposal before this court and even in that writ petition, the petitioner has asked for setting aside the order of disciplinary authorities and to grant of consequential benefits of the restoration of pay, pension, leave etc. The relief sought by the petitioner in the writ petition covered payment of gratuity as well.

10. It is submitted by the respondent Bank that the gratuity of the petitioner was rightly forfeited in terms of section 4(6)(b) of the Payment of Gratuity Act on account of his riotous and disorderly conduct. The gratuity was also logically forfeited in terms of the Service Rules of the petitioner since he was compulsorily retired by way of punishment. It is submitted that the petitioner was not entitled to gratuity and petition was liable to be dismissed.

11. I have heard the petitioner who has taken up the profession of an advocate after his compulsory retirement from the bank and the counsel for the respondent.

12. The petitioner has relied upon 1990 4 SCC 314 D.V. Kapoor Vs. UOI. In this case the petitioner's pension, gratuity were denied on permanent basis as a measure of punishment after the disciplinary inquiry. Mr. Kapoor was working as an Assistant Grade in Indian High Commission of London. He was transferred to India but he did not join duty resulting in disciplinary proceedings. Pending the proceedings, he sought voluntary retirement and he was allowed to retired but put to notice that disciplinary proceedings would be initiated against him. After the conclusion of proceedings as a measure of punishment his pension and gratuity were permanently withheld. The Hon'ble Supreme Court held that the appellant was not charged nor was given an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law had been brought to the notice of

Supreme Court under which the President was empowered to withhold gratuity as well as after retirement pension as a measure of punishment. The Supreme Court, therefore, set aside the order of withholding gratuity and pension permanently. The law laid down in this case is not applicable to the facts of the present case. In the present case, gratuity has not been withheld as a measure of punishment but under the service rules as well as under the provisions of Payment of Gratuity Act. The other cases relied upon by the petitioner is AIR 1981 SC 852 Lingappa vs. Laxmi Textiles Mills. In this case, no question of forfeiture of gratuity was involved. The question raised by the petitioner was their right to claim gratuity on account of continuous service and Supreme Court held that the petitioners who had worked continuously in service and their services had come to an end by operation of liability because employee absented without obtaining leave, that would not be a ground for holding that employee was not entitled for gratuity on account of continuous service. Here also, the question of forfeiture of gratuity on the basis of riotous conduct was not before the Hon'ble Supreme Court.

13. The other judgments relied upon by the petitioner is 1994 1 SCC 9 B Singh vs. Darshan Engineering Works and others. In this case also, the employee had claimed gratuity under payment of Gratuity Act after his resignation which was declined on the ground that the employee had not reached the age of superannuation nor he had completed five years of service. These contentions were negated by controlling authority and it was held by controlling authority that the resignation was one of the modes of retirement of a person as retirement was defined under section 2(9) of the act to mean termination of an employee other than on superannuation. It was held that qualifying service of continuous five years was not necessary. The Supreme Court held that gratuity was a retirement benefit for long service and provisions of old age for the employees or his family. The Act was a social welfare measure introduced in the interest of general public to secure social and economic justice to the workmen. The Supreme Court held that provisions of Payment of Gratuity Act contained in section 4(1)(b) of the Act should be made applicable irrespective of the financial capacities of the employer to bear the burden. The Court did not consider the question of forfeiture of the gratuity on account of riotous conduct.

14. The petitioner has cited other judgments namely 1986(1) SLR 631 Madar Union Sanatorium and Hospital vs. M.B. Sathe and others; 1990() SCC 640 FR Jantantra Union and others; 1999 SCC 640; 76 (98) DLD 595 Patel Oil Mills and Relexo Rubber and Allied Industries.

None of these rulings are on the question of forfeiture of gratuity on riotous conduct of the employee.

15. In 1986 Labour IC 1976 Bharat Gold Mines Ltd. Vs. Regional Labour Commissioner, Bangalore, the Division Bench of Karnataka High Court had considered the question of forfeiture of gratuity where an employee was terminated from service on the charge of theft committed in the course of his employment and held as under :

“ Before concluding, it is necessary to observe that though complying with rules of natural justice was unnecessary, for forfeiting Gratuity under S.4(6)(b) of the Act as it stood. When the decision was taken by the appellant as it provided that the gratuity

shall stand wholly forfeited under circumstances specified in cls.(i) and (ii), the position has since changed in view of the amendment of S.4(6)(b)(ii) of the Act with effect from 1.7.1984. After the amendment, it reads thus:

“4(6) Notwithstanding anything contained in sub-sec.(1)-

xxx

xxx

xxx

(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."(Underline by us).

The change brought about is underlined. In view of this significant change it appears to us that an employer has to take an independent decision after the termination of service of an employee as to whether the Gratuity payable should at all be forfeited in cases which fall under sub-cl.(i) or (ii), and if so, to what extent. The decision must necessarily depend on the facts and circumstances of the case, such as, the length and past record of service, extent and magnitude of the offence and other relevant considerations. Therefore, it follows that the decision has to be taken after giving notice of the proposal to the employee concerned and after due consideration of the reply furnished, if any.”

(para 14)

16. In AIR (1970) SC 919 The Delhi Cloth and General Mills Co. Ltd. etc. vs. The Workmen and others etc., the Supreme Court has considered the situation under which a workman can be denied gratuity and observed as under :

“ A bare perusal of the Schedule shows that the expression “misconduct” covers a large area of human conduct. On the one hand are the habitual late attendance, habitual negligence and neglect of works: on the other hand are riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline, willful insubordination or disobedience. Misconduct falling under several of these latter heads of misconduct may involve no direct loss or damage to the employer , but would render the functioning of the establishment impossible or extremely hazardous. For instance, assault on the Manager of an establishment may not directly involve the employer in any loss or damage which could be equated in terms of money, but it would render the working of the establishment impossible. One may also envisage several acts of misconduct not directly involving the establishment in any loss, but which are destructive of discipline and cannot be tolerated. In none of the cases cited any detailed examination of what type of misconduct would or would not involve to the employer loss capable of being compensated in terms of money was made: it was broadly stated in the cases which have come before this Court that notwithstanding dismissal for misconduct a workman will be entitled to gratuity after deducting the loss occasioned to the employer. If the cases cited do not enunciate any broad principle we think that in the application of those cases as precedents a

distinction should be made between technical misconduct which leaves no trial of indiscipline, misconduct resulting in damage to the employer's property, which may be compensated by forfeiture of gratuity or part thereof, and serious misconduct which though not directly causing damage, such as acts of violence against the management or other employees or riotous or disorderly behaviour, in or near the place of employment is conducive to grave indiscipline. The first should involve no forfeiture: the second may involve forfeiture of an amount equal to the loss directly suffered by the employer in consequence of the misconduct and the third may entail forfeiture of gratuity due to the workmen. The precedents of this Court e.g., (1963) 2 Lab LJ 403 = (AIR 1964 SC 864), Ramington Rand of India Ltd. case, (1968) 2 Lab LJ 542 (SC) and Motipur Zamindari(P) Ltd's case, 1965-2 Lab LJ 139 (SC) do not compel us to hold that no misconduct however grave may be visited with forfeiture of gratuity. In our judgment, the rule set out by this Court in Wenger & Co.'s case, 1963-2 Lab LJ 403 = (AIR 1964 SC 864) and Motipur Zamindari (P) Ltd.'s case, 1965-2 Lab LJ 139 (SC) do not compel us to hold that no misconduct however grave may be visited with forfeiture of gratuity. In our judgment, the rule set out by this Court in Wenger & Co.'s case, 1963-2 Lab LJ 403 = (AIR 1964 SC 864) and Motipur Zamindari (P) Ltd.'s case 1965-2 Lab LJ 139 (SC) applies only to those cases where there has been by action willful or negligent any loss occasioned to the property of the employer and the misconduct does not involve acts of violence against the management or other employees, or riotous or disorderly behaviour in or near the place of employment. In these exceptional cases-the third class of cases â“ the employer may exercise the right to forfeit gratuity: to hold otherwise would be to put a premium upon conduct destructive of maintenance of discipline.”(para 35)

(emphasis added)

17. In 1973 2 SCC Management of Tournamulla Estate vs. Workmen (1973) 2 Supreme Court Cases 502 the workman was charge sheeted in respect of riotous and disorderly behaviour for having assaulted a tea maker inside the factory. The departmental inquiry was held in which the workman had fully participated. He was found guilty of misconduct and was dismissed from service. There was a scheme of gratuity enforced wherein it was provided that if a dispute arose regarding claim of gratuity of a workman who has been dismissed for misconduct, such a dispute shall be referred to Labour Court for decision. The Labour Court, however, did not go into the question of riotous conduct and referring to an argument that in all cases where services of employees were terminated for misconduct, gratuity was not forfeited, directed that gratuity be paid to the employees. Against this decision of Labour Court, management preferred an appeal before the Supreme Court. The Hon'ble Supreme Court held :

" In yet another case in Ramington Rand of India Ltd. v. The Workmen, (1970) 2 SCR 935: (1969) 3 SCC 913 one of the questions was whether a provision can be made in a gratuity scheme that if the misconduct is a gross one, involving violence, riotous behaviour, etc., the qualifying period should be limited to fifteen years of continuous service. The earlier decision in Delhi Cloth and General Mills Ltd. case (supra) was discussed and reference was made to it. The Court expressed agreement with the decision in the earlier case that matters which had impact on the discipline and the working of the concern, require a different treatment in the matter of forfeiture of gratuity. It is significant that in Section 4(6)(b) of the Payment of Gratuity Act, it has

been provided as follows:

“The gratuity payable to an employee shall be wholly forfeited: (i) if the service of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part,.....”.

Although the provisions of this statute would not govern the decision of the present case, the importance of the enactment lies in the fact that the principle which was laid down in the Delhi Cloth Mills case(Supra) with regard to forfeiture of gratuity in the event of commission of gross misconduct of the nature mentioned above, has been incorporated in the statute itself. Even otherwise, such a rule is conducive to industrial harmony and is in consonance with public policy.(para 4)

18. The argument of the petitioner is that since his conduct did not cause any financial loss to the management, his gratuity could not be forfeited and the gratuity can be forfeited only to the extent the management suffered financial loss. I consider this argument must fail. I am of the opinion that in view of section 4(6)(b) of Payment of Gratuity Act, gratuity can be forfeited even where there was no financial loss but the misconduct of the workman was grave and riotous in nature and one that promoted indiscipline in the organization. The charges against the petitioner are that on the alleged date i.e. 5th September, 1994, he went to the zonal office to discuss the issue relating to change of domicile and transfer of such officers with DGM and he was informed that the request of change of domicile and cancellation of transfer would not be considered as he has been told on several earlier occasions. On this, he raised his voice and threatened and told that he would come on next day to show his real strength. On next day, he came with several of his followers and organized an assembly of officers inside the premises of zonal office and then he and his associates indulged in unruly scenes, disorderly behaviour with DGM and demanded that meeting with DGM should be held immediately. DGM sent a message that he should submit written representation, if any, with regard to the issue. On this, the petitioner entered the cabin of DGM and shouted at him and questioned his authority and told DGM that he will not be allowed to leave his cabin under any circumstances and he stood in the middle of the door of the DGM's cabin. He did not allow DGM to leave the cabin. DGM had to call the police from Police Station Tilak Marg. Even police officers were unable to control the situation and additional police force had to be called and DGM could come out of his cabin only under police escort after additional police force came. When DGM was leaving the office and proceeding to his car, petitioner followed him with his supporters shouting slogans and came rushing to his car with the intention to enter into the car and physically assault DGM. However, police officers prevented the petitioner from doing so and DGM could leave the place thereafter only. All this misconduct has been proved in the domestic inquiry. The competent officers of the respondent, after the order of High Court, gave opportunity of a hearing to the petitioner. The petitioner had taken the stand that he was a trade unionist and this was his genuine trade union activities and in such trade union activities, some inconveniences always caused. The petitioner, however, did not specifically denied the sequence of events as mentioned and did not spell out what else he did except if he had not indulged in this indecent and riotous behaviour that police had to be called on the spot by the respondent bank.

19. Gratuity is not a fundamental right of the petitioner. It is only a statutory right and the petitioner is entitled to get gratuity only in accordance with the provisions of the statute. Section 4(6)(b) provides as under:-

(b) the gratuity payable to an employee may be wholly or partially forfeited-

(iii) 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

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."

20. It is evident that management had the right to withhold and forfeit gratuity either in full or partial in case the petitioner had indulged in riotous and disorderly act.

21. In light of the proved behaviour of the petitioner, no fault can be found in order of respondent of forfeiting full gratuity of the petitioner, which is also provided in Bank Rules.

22. In 2006 SCC (L&S) 133 Hombegowda Educational Trust and Another vs. State of Karnataka and others Supreme Court quoted Jack Chan,

"discipline is a form of civilly responsible behaviour which helps maintain social order and contributes to the preservation, if not advancement, of collective interests of society at large'.

Supreme Court further observed as under:-

"This Court has come a long way from its earlier viewpoints. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach to the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed how discipline at the workplace/industrial undertakings received a set back. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of Article 141 of the Constitution, as noticed in the decisions noticed supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to this Court was bound to follow the decisions of this Court which are applicable to the facts of the present case in question. The Tribunal can neither ignore the ratio laid down by this Court nor refuse to follow the same."(para 30)

23. I consider that the conduct of the respondent was squarely covered under section 4(6)(b) of the Act. The respondent had acted in most undisciplined, riotous and uncivilized manner. Even as a trade union leader he could not adopt such riotous behaviour to press his demand. There is no obligation on the part of the management to fulfill illegal demands of a trade union leader. Asking

management to change domicile or to cancel transfer of certain officers cannot be considered as legitimate trade union activities and in order to show force a trade union activist cannot enter into the office of management and threaten the manager and prevent him from leaving office. Such an act is a penal offence in IPC. The act of the petitioner clearly amounted to breach of discipline in the organization which is *san quo nan* for efficient working of the organization. Where an employees indulged into such activities, the employer right to forfeit his gratuity, is not contrary to the provisions of the Act.

I find no force in the petition of the petitioner. The petition is hereby dismissed.

Sd/-
SHIV NARAYAN DHINGRA, J