

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE

S.B.: HON'BLE MR. S. C. SHARMA, J

WRIT PETITION NO. 1155 / 2010

SHARADCHAND GOUD S/O SHADILAL GOUD  
Vs.

CHIEF EXECUTIVE OFFICER,  
DISTT. CO-OPERATIVE KENDRIYA BANK LTD.,  
UJJAIN  
\* \* \* \* \*

**ORDER**  
( 28/2/2011)

The petitioner before this Court has filed this present writ petition being aggrieved by the order dt. 29/10/2009, passed by the appellate Authority under the provisions of the Payment of Gratuity Act, 1972. He is also aggrieved by the order dt. 29/2/2008, passed by the competent authority under the Payment of Gratuity Act, 1972. The contention of the petitioner is that he was appointed on 29/10/1960 in the services of Distt. Co-operative Kendriya Bank Ltd., and has attained the age of superannuation on 30<sup>th</sup> June, 2002 as a Branch Manager. Petitioner has further stated that in the year 1999, a money decree was passed against one Kanhaiyalal s/o Laxminarayan and a recovery to the tune of Rs.500 per month was to be done from the salary of

Kanhaiyalal. It has been further stated that a total amount of Rs.62,011/- was outstanding against Kanhaiyalal. The petitioner has further stated that on the basis of instructions given by the then Branch Manager an amount of Rs.62011/- was transferred from the account of recovery officer ie., a/c No. 385 to the Savings Bank Account of Kanhaiyalal inspite of the fact that monthly recovery of Rs.500 was not done from the salary of Kanhaiyalal. Learned counsel for the petitioner has argued before this Court that he has transferred the amount as directed by the Branch Manager, who is a senior officer and therefore he was not at fault in the matter. He has also argued before this court that on the basis of some enquiry held behind his back an order was passed on 23/10/2002 directing the petitioner as well as the then Branch Manager Mr. Sujanmal Jain to deposit the amount in the account of recovery officer. Petitioner's grievance is that on the basis of order dt. 23/10/2002 which was an exparte order passed by the respondents without following the provisions of Jila Sahakari Bank Karmachari Sewa Niyam, 1982, no such order of recovery could have

been passed by the respondent Bank and therefore the action of the respondent Bank in recovering the amount of Rs.31006/- from the gratuity of the petitioner was illegal. The petitioner has further stated that being aggrieved by the action of the employer, an application was preferred under the provisions of the Payment of Gratuity Act, 1972 before the Competent Authority and the Competent Authority has justified the action of the management and thereafter an appeal was also preferred before the appellate authority and the appellate authority has also justified the action of the respondent Bank.

Sofar as recovery is concerned, a reply has been filed in the matter and the stand of the respondent Bank is that the petitioner was at fault in causing loss to the Bank to the tune of Rs.62011/- and as well as the Branch Manager, was at fault and both were responsible for causing loss to the Bank and therefore the amount was equally distributed between them and recovery has already been done in the matter. Learned counsel for the respondent Bank has also argued before this Court that the petitioner while submitting a reply

to the Bank on 13/11/2002 has admitted that the amount was transferred in the account of Kanhaiyalal on the basis of instructions received from the then Branch Manager and therefore the question of interference with the order dt. 23/10/2002 and the subsequent orders passed by the competent authority as well as by the appellate authority under the Payment of Gratuity Act, 1972, does not arise. He has submitted that the petition deserves to be dismissed.

Heard learned counsel for the parties at length and perused the record.

In the present case, a loss was admittedly caused to the Bank to the tune of Rs.62011/- as the amount was not deposited by one Kanhaiyalal with the Bank and the aforesaid amount was transferred from the account of recovery officer to the account of Kanhaiyalal. In the present case, it is also an admitted fact that the respondents while passing the order dt. 23/10/2002 have not granted any opportunity of hearing to the petitioner nor have followed the provisions of MP Jila Sahakari Kendriya Bank Karmachari Seva (Niyojan, Nibandhan Tatha Unki Karya

Sthithi) Niyam, 1982. The so-called reply which has been filed by the petitioner is in fact, the reply filed by the petitioner after the order of recovery was passed.

The reply filed along with the return is dt. 13/11/02. This itself establishes that the petitioner has thereafter protested against the recovery. This Court is of the considered opinion that the respondents could not have deducted the gratuity amount of Rs. 31006/- from the gratuity of the petitioner without affording him an opportunity of hearing and without following the prescribed procedure as provided under the service Rules of 1982.

Resultantly, the action of the respondents in recovering the gratuity amount, as it is violative of the principles of natural justice and fair play and also is violative of the Rules relating to the service conditions of the petitioner, is bad in law and is hereby quashed. The consequential orders passed by the controlling authority and the appellate authority under the Payment of Gratuity Act, 1972 are also quashed. The respondents are directed to release the amount so withheld within 60 days. However, a liberty is granted t o

the respondent Bank to proceed afresh against the petitioner under the provisions of the MP Jila Sahakari Kendriya Bank Karmachari Seva (Niyojan, Nibandhan Tatha Unki Karya Sthithi) Niyam, 1982 for recovering the amount in question in accordance with law.

With the aforesaid, this writ petition stands allowed.

No order as to costs.

(S. C. SHARMA)  
J U D G E

℞