

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No.499 of 2013

Central Bank of India

....Petitioner

Versus

The Regional Labour Commissioner (Central) Dehradun &
others

.....Respondents

Present:- Mr. Arvind Vashistha, Senior Advocate assisted by Mr. Imran Ali Khan,
Advocate, for the petitioner.
Mr. Sandeep Sharma, Advocate, for respondent no.3.

Hon'ble Sudhanshu Dhulia, J. (Oral)

This is the employer's writ petition challenging the order dated 05.07.2012 passed by the Regional Labour Commissioner (Central) Dehradun in P.G.A. Appeal D-36/05/2011 upholding the order dated 20.07.2011 passed by the Central Assistant Labour Commissioner, Dehradun, whereby a sum of Rs.2,39,948/- (Rupees Two Lakh Thirty Nine Thousand Nine Hundred Forty Eight Only) has been awarded to respondent no.3 as gratuity with an interest of 10% per annum.

2. The petitioner went in appeal before the Regional Labour Commissioner (Central) Dehradun under Section 7 of the Payment of Gratuity Act, 1972 where it was dismissed for non prosecution. The matter is now before this Court.

3. In short the facts of the case are that respondent no.3 was working on a Class IV post of "Daftari" in the Central Bank of India, at Meerut. While he was in service in the Central Bank of India, a departmental inquiry was constituted

against respondent no.3, *inter alia*, for the charges that he had opened a society of bank employees, and the charge was that the bank employees are depositing money with that society thus causing financial harm to the bank, as otherwise they would have deposited this amount with the bank. This charge stood proved against respondent no.3 and the services of respondent no.3 were terminated vide order dated 10.04.2002, after the respondent no.3 had already rendered 28 years of service in the Bank.

4. This Court has not been apprised that whether the order of the termination has been challenged by respondent no.3 at any appropriate forum.

5. Nevertheless, the gratuity of respondent no.3 was withheld by the Bank, which is the only subject matter of dispute here. Since the gratuity is a statutory right of an employee, which is liable to be given to him under sub-section (1) of Section 4 of the Payment of Gratuity Act, 1972, respondent no.3 moved an application for payment of gratuity, *inter alia*, before the Controlling Authority. The Controlling Authority after hearing both the parties came to the conclusion that the grounds for dismissal were not that respondent no.3 had caused any financial harm to the banking institution and therefore his gratuity cannot be withheld. The order though does not seem to have elaborated on this aspect at any great detail.

6. Even though the charge against respondent no.3 stands proved, yet even if it is assumed for the sake of argument that respondent no.3 by his conduct has caused financial harm to the employer, yet the employer must withhold only that much of amount from his gratuity, which

is equal to the loss caused. This is given under sub-section (6) of Section 4 of the Payment of Gratuity Act.

7. Sub-section (6) of Section 4 of the Payment of Gratuity Act, 1972 reads as under:-

“4. Payment of gratuity.- (1).....

(2).....

(3).....

(4).....

(5).....

(6) Notwithstanding anything contained in sub-section (1), -

(a) the gratuity of an employee, whose services have been terminated for any act, willful 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 employees 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.”

(Emphasis provided)

8. Admittedly, the department/bank has failed to quantify as to how much loss or the damage has been caused to the bank. There are vague pleadings to this effect and there is no finding.

9. Respondent no.3 is a Class IV employee, who is liable to receive his gratuity after the date of his superannuation or retirement. On vague assertions without

quantifying the loss, the gratuity of respondent no.3 could not have been withheld. The petitioner is hence not justified withholding the gratuity of the employee/respondent no.3 under sub-section (6) of Section 4 of the Payment of Gratuity Act and for this reason there is no ground to interfere with the order dated 05.07.2012.

10. Consequently, the writ petition fails and it is hereby dismissed.

11. This Court has been informed that by interim order dated 13.03.2013, an amount of Rs.2,39,948/- (Rupees Two Lakh Thirty Nine Thousand Nine Hundred Forty Eight Only) has been deposited before this Court which has been ordered to be deposited in the Nationalized Bank in the name of the Registrar General of this Court.

12. This Court directs the Registrar General of this Court to withdraw the said amount and give the entire amount, along with the accumulated interest to respondent no.3 – Shri Trilok Chand Sharma within a period of two weeks from the date of production of a certified copy of this order. It is, however, made clear that the remaining amount i.e. “interest” shall also be paid by the petitioner to respondent no.3 within a period of four weeks thereafter by the petitioner.

(Sudhanshu Dhulia, J.)

28.02.2020

Nitesh/