

ORDER SHEET

WPO 1733 of 2022
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

ASHIS KUMAR ROY
VS.
THE UCO BANK AND ORS.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 18th April, 2022

Mr. Soumya Majumder, Mr. Dibyendu Chatterjee, Ms. Piyali Paul,
Advocates for the petitioner.
Mr. Soumen Das, Advocate for respondent bank.

The Court : The petitioner while serving as an Assistant Manager in UCO Bank was served with a charge sheet on 23rd December, 2016. The allegation forming the basis of the charge sheet was also served along with the charge sheet. The principal allegation was misappropriation of bank's money. The petitioner was removed from his services by an order of the Disciplinary Authority dated 30th January, 2017. By the said order the Disciplinary Authority gave a finding that serial nos.1, 2 and 3 of the Articles of Charge had been proved against the petitioner while Article of Charge no.4 was not proved. The Disciplinary Authority nowhere in the final order had made any comment regarding the tentative loss that may have been suffered by the bank due to alleged defalcation of funds by the petitioner. The order of the Disciplinary Authority was challenged by the petitioner before the Appellate Authority by filing a statutory appeal. The Appellate Authority by an order dated 3rd May, 2018 had concurred with the

views taken by the Disciplinary Authority. Even in review, the order of the Appellate Authority remained unchanged. The petitioner has filed this writ petition challenging the orders of the Disciplinary Authority, Appellate Authority and the order passed in revision. As an interim order the petitioner is seeking a direction for disbursal of the gratuity amount to the petitioner.

On behalf of the bank it is strenuously argued that misappropriation of fund amounts to moral turpitude and as such the petitioner comes within the ambit of the provision of Section 4(6) of the Payment of Gratuity Act, 1972. The law with regard to Section 4(6) has been clearly explained in the judgment of the Hon'ble Supreme Court reported in (2018) 9 SCC 529 [Union Bank of India and Others Vs. C. G. Ajay Babu and Another]. In this case like the case in Ajay Babu (supra) there is no conviction of the respondent for the misconduct which according to the bank is an offence involving moral turpitude. The same issue fell for consideration before this Court in another matter being WPO 211 of 2021 (Suvasish Dasgupta Vs. UCO Bank and Others). In that case after considering the judgment of the Hon'ble Supreme Court as also the Division Bench judgment of this Court, the release of the gratuity amount by way of interim order was rejected. There is sharp factual differences between the matter in Suvasish Dasgupta (supra) and the present one in hand. In Suvasish Dasgupta (supra) the Disciplinary Authority good, bad, indifferent had quantified a tentative loss suffered due to the acts of the petitioner. In the instant case there is no quantification. The petitioner had been inflicted a major penalty and had been removed from the service. The period of suspension was also not

treated to be on duty and as such the petitioner was to receive only the subsistence allowance during the period of suspension which had been paid prior to the final order of the Disciplinary Authority.

In the aforesaid facts and circumstances, I find no justification in the respondent bank withholding the gratuity amount payable to the petitioner. Assuming without admitting the writ petition fails, then also in the absence of any quantification or finding to that effect in the orders of the Disciplinary Authority, the Appellate Authority and in the revision regarding loss suffered by the bank and in the absence of conviction the gratuity amount payable to the petitioner cannot be withheld. Even if the writ petition fails, the order of the Disciplinary Authority as upheld by the Appellate Authority and the Revisional Authority will continue to remain. If the ratio laid down in [(2020) 18 SCC 71] Mahanadi Coalfields Limited Vs. Rabindranath Chaobey is applied to the facts of the case it can be at the highest said that the disciplinary proceedings has not yet ended but in the absence of a challenge by the bank to the orders of the disciplinary proceeding the same at the best will be confirmed in the writ petition being dismissed. There is also a factual difference between the case in hand and that in Mahanadi Coalfields (supra). In Mahanadi Coalfields (supra) the employee concerned retired from the services during the pendency of the disciplinary proceedings and sought for release of his gratuity amount which is not so in the instant case. There will be no impact on the gratuity amount on the failure of the writ petition. Forfeiture of gratuity amount to recover loss in absence of the petitioner being convicted in a proceeding wherein the loss, if any, said to have been suffered by the bank has decided

against the petitioner is also impermissible as there is no moral turpitude involved. The orders passed in the disciplinary proceedings also do not permit the bank to withhold the amount of gratuity.

In the aforesaid facts and circumstances, I direct the respondent bank to release the principal gratuity amount to the petitioner by 31st May, 2022.

The issue of interest as claimed by the petitioner on the withheld gratuity money shall be decided at the final hearing of the writ petition.

So far as the challenge to the orders of the Disciplinary Authority, Appellate Authority and the Revisional Authority are concerned, the matter requires further scrutiny which is possible only after the respondents are given an opportunity to disclose their stand on affidavit.

Let affidavit-in-opposition be filed within eight weeks from date; reply thereto, if any, within three weeks thereafter. Liberty to mention after fifteen weeks.

(ARINDAM MUKHERJEE, J.)