IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF MAY, 2025

PRESENT

THE HON'BLE MR JUSTICE V KAMESWAR RAO

AND

THE HON'BLE MR JUSTICE T.M.NADAF

WA NO. 353/2024

BETWEEN:

KARNATAKA GRAMIN BANK,
HEAD OFFICE, 32, ANGANAKAL ROAD,
BELLARY – 583 103.
REP. BY ITS GENERAL MANAGER
SMT. BHAGYAREKHA.

…APPELLANT

(BY SRI.T.P.MUTHANNA, ADVOCATE)

AND

1 . THE APPELLATE AUTHORITY,
UNDER PAYMENT OF GRATUITY
ACT, 1972 AND DY CHIEF LABOUR
COMMISSIONER (CENTRAL),
SHRAM SADAN, 3RD CROSS,
3RD MAIN, TUMKUR ROAD,
YESHWANTHPUR, BENGALURU – 560 022.

2 . SHRI JAGADEESH S. VERNEKAR,
C/O GAJANA G PALANKAR,
VALMIKI ONI, 2ND CROSS,
HOSAYALLAPURA, DHARWAR – 580 001.

…RESPONDENTS

(BY SRI. THIMANNA BHAT, CGC FOR R1;
SRI. P.P.HEGDE, SR. COUNSEL FOR
SMT. YUKTA N., ADV. FOR R2)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961 PRAYING TO SET ASIDE THE ORDER DATED 11.01.2024 PASSED BY THE LEARNED SINGLE JUDGE IN WRIT PETITION No.15460/2023 (L-PG) AND ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 25.04.2025, COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT' THIS DAY, **V KAMESWAR RAO J**., DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR JUSTICE V KAMESWAR RAO
AND
HON'BLE MR JUSTICE T.M.NADAF

CAV JUDGMENT

(PER: THE HON'BLE MR JUSTICE V KAMESWAR RAO)

The present intra-court appeal has been filed by the Karnataka Gamin Bank challenging the order dated 11.01.2024 passed by the learned Single Judge in W.P.No.15460/2023, whereby the learned Single Judge has dismissed the petition filed by the appellant herein by stating in Paragraphs- 17, 18 & 19 as under:-

> *"17. The Apex Court in the case of C.G. Ajay Babu, stated supra, has held at paragraph Nos.17 and 18 as under:-*
>
> > *"17. 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.

18. In Jaswant Singh Gill v. Bharat Coking Coal Limited and others [(2007)1 SCC 663], 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, willful 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 damage or loss caused to Respondent 1 was more than the amount of gratuity payable to the appellant. Clause (b) of sub - section (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."*
>
> *18. The Apex Court has held that the forfeiture of the gratuity amount is permissible only if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, and has been convicted for the offence by a Court of competent jurisdiction. The Apex Court in the case of C.G. Ajay Babu, stated supra, held that the Act would prevail over the rules on the payment of gratuity framed by the employer and the Bank cannot take recourse on its own rules, ignoring the Act.*
>
> *19. In the instant case, the financial loss to the Bank has already been received by the Bank and therefore, in the said context, the petitioner's contention that the gratuity amount has to be forfeited in light of the punishment of termination from service is not sustainable. Accordingly, the point raised for consideration is answered in favour of the workman."*

2. The writ petition was filed by the appellant-Karnataka Gramin Bank challenging the order dated 31.05.2023 by the Appellate Authority i.e., Deputy Chief Labour Commissioner (Central) under the Payment of Gratuity Act, 1972 (in short, the Act of 1972), thereby the Appellate Authority has confirmed the order of the Regional Labour Commissioner/Controlling Authority and dismissed the appeal preferred by the appellant-Bank.

Vide its order, the Regional Labour Commissioner has allowed the application filed by the Respondent No.2 before the said authority under Section 4 of the Act of 1972, thereby directing the appellant–Bank to pay Rs.10.00 Lakhs (Rupees Ten Lakhs) to the Respondent No.2 with interest at the rate of 10% pa., from 03.03.2017 till the date of actual payment of gratuity.

3. The facts to be noted for the purpose of this judgment are the following:-

The Respondent No.2 joined the services of the Appellant-Bank as a Clerical Trainee. Because of certain misconduct committed by the Respondent No.2 to steal the bank funds to the tune of Rs.3,50,000/- from the safe-custody of the bank, the Respondent No.2 was issued a charge sheet for the said misconduct. The Enquiry Officer appointed, after holding an enquiry, held that the Respondent No.2 guilty of the charges. The Disciplinary Authority considering the report of the Enquiry Officer and other materials placed before him, imposed the punishment of dismissal on the Respondent

No.2, which shall ordinarily be a disqualification for future employment. The Respondent No.2 preferred a Departmental Appeal before the Appellate Authority. The Appellate Authority has modified the punishment of dismissal to removal from service, which shall not be a disqualification for future employment. It was in this background, the Respondent No.2 filed an application before the Controlling Authority and Regional Labour Commissioner (Central) under Section 4 of the Act of 1972. As stated above, the said application was allowed, whereby a direction was given to pay Rs.10.00 Lakhs to the Respondent No.2 with interest at the rate of 10% p.a. w.e.f. 03.03.2017 till the date of actual payment of gratuity.

4. The case of the appellant before the learned Single Judge was that the Appellate Authority had failed to appreciate that, as per Regulation 72(2)(e) of Pragmatic Krishan Gramin Bank (Officers and Employees) Service Regulations, 2013 (in short, 'Regulations 2013'), the Respondent No.2 is not entitled to gratuity as he is

removed from service by way of a punishment. It was the stand that, the removal of the Respondent No.2 from service by way of punishment for the misconduct of causing financial loss to the bank, the gratuity has to be forfeited. It was contended neither the Controlling Authority nor the Appellate Authority have taken into consideration the said aspects.

5. On the other hand, the Respondent No.1– Central Government would justify the order passed by the Controlling Authority and the Appellate Authority.

6. The case of the Respondent No.2 in support of the order passed by the Controlling Authority, as up-held by the Appellate Authority, was the appellant-bank has not followed the exemption prescribed under Section 4(6) of the Act of 1972. It was the case that, Respondent No.2 has not caused any loss to the bank nor there was a criminal case against him, nor the employee has been convicted by the Court of law for any offence of moral turpitude for the bank to forfeit the gratuity

amount under Section 4(6) of the Act of 1972 or under Regulation 72(2)(e) of the Regulations of 2013.

7. The learned Single Judge by referring to the judgment of Hon'ble Supreme Court in the case of ***Union Bank of India and Others Vs. C.G. Ajay Babu and another [2018(9) SCC 529]*** has dismissed the appeal.

8. The submission of the learned counsel for the appellant-Bank is primarily that, the learned Single Judge has failed to appreciate that, under the Regulations of 1973, more particularly Regulation 72(2)(e), the Respondent No.2 is not entitled for gratuity on his removal from service by way of punishment. The proviso to the said Regulation clearly states that the said Regulation is applicable only to employees and not for 'Group-A' Officer like the Respondent No.2. In fact, it is his submission that the learned Single Judge proceeded to decide the issue by treating the Respondent No.2 as a 'workman', which is erroneous as in terms of Regulation 3(1)(a) of the Regulations 2013, the Respondent No.2 was working as an Assistant Manager in the Officer

Cadre. In support of this submission, the learned counsel has referred to Page No.78 of the Paper Book, wherein under the heading "Group-A": 'Assistant Manager' is considered as an Officer. That apart, it was his submission that the conclusion of the learned Single Judge quoting Section 4(6) of the Act of 1972 that there shall be forfeiture of gratuity for dismissal on account of misconduct, willful omission or negligence, except in cases where such misconduct causes financial loss to the bank and the forfeiture would be to that extent only, is contrary to the Regulation 72(2)(e) of the Regulations of 2013, which have been framed under the Regional Rural Bank Act. 1978, which is a Special Act. According to him, it is a settled position of law that, the special law prevails over General Law ie., Payment of Gratuity Act 1972. In support this submission, the learned counsel has relied upon the judgment in the case of ***P.Rajan Sandhi Vs. Union of India and others (Civil Appeal No.4095/2006)*** decided by the Hon'ble Supreme Court. In substance, it is his plea that the Respondent No.2 is

not entitled to the Gratuity, in view of the position under the Regulations of 2013. He also highlighted the fact that, it is not a case of forfeiting gratuity of the Respondent No.2, but it is a case where Respondent No.2 was not eligible for payment of Gratuity under the Regulations of 2013, as he was removed from the service on account of punishment imposed for a misconduct. He also stated that, even the reliance placed by the learned Single Judge on the judgment of the Hon'ble Supreme Court in ***Union of India Vs. CG Ajay Babu and others*** (supra), wherein, according to the learned Single Judge, it is held that the Act would prevail over the Rules, on the payment of Gratuity, framed by the employer is also an erroneous view in as much as in the said case, the gratuity was denied to the employee based on the provisions of Bipartite settlement entered into between the Banks and Unions, which is not a Special Act, whereas in the present case, the gratuity has been denied to Respondent No.2 under the Regulations of 2013. It is also his submission that the conclusion of the

learned Single Judge is, as there was no financial loss caused to the Bank, the gratuity amount cannot be forfeited.

9. The learned counsel for the appellant has also relied upon the case of Supreme Court of India, ***Chairman-cum-Managing Director, Coalfields Limited Vs. Sri. Rabindranath Choubey (Civil Appeal No.9693/2013 Decided on 27.05.2020).***

10. Mr. P.P. Hegde, the learned Senior Counsel for the Respondent No.2 would justify the order passed by the learned Single Judge by stating that the Respondent No.2 has filed an application before the Controlling Authority under the Act of 1972 and not under the Regulations of 2013, on which reliance has been placed by the learned counsel for the appellant to contend that the Gratuity payable to the Officers of the Bank under the said Regulations. He submitted that the applicability of the Act of 1972 in the case of the Respondent No.2 cannot be denied. The reliance placed by the learned counsel for the appellant on the provisions of the

Regulations 2013, to state that the Act of 1972 has no applicability, is a misconceived argument in as much as even the Regulations of 2013, clearly stipulates that an officer/employee shall be eligible for payment of gratuity either as per the provisions of the Act of 1972 or as per Regulations 2, whichever is higher. According to him, the amount under the Act of 1972, is higher than the one payable under the Regulations, and as such the Respondent No.2 is entitled to the gratuity under the said provision. In fact, he has also stated that, even if regulations of 2013 sought to be relied upon, the same have been framed without the concurrence of the Central Government and there is no special exemption granted in case of the appellant-Bank to govern the payment of gratuity under the Regulations of 2013 and not under the Payment of Gratuity Act 1972. He has heavily relied upon the judgment of the Hon'ble Supreme Court in the case of ***C.G. Ajay Babu*** (supra) to state that, any provision under the Regulations framed by the employer is at variance with the provisions of the Payment of

Gratuity Act 1972, then, it is the payment of gratuity which shall prevail. He qualifies his submission by stating that the Payment of Gratuity Act, 1972 does not make any distinction between an employee or an Officer as sought to be made under the Regulations of 2013. If no such distinction is made under the Act of 1972 between an employee or an officer, then the petitioner must be treated as an employee to be eligible for payment of gratuity under the Act of 1972. Additionally he has also relied upon the judgment of the Hon'ble Supreme Court in the case of ***B.C.H. Electric Limited Vs. Pradeep Mehra [(2020) 15 SCC 262]*** to contend that, if the terms of the provisions of the Act are more beneficial to an employee, then the same shall be payable under the Act of 1972. He has also relied upon the judgment of Hon'ble Supreme Court in the case of ***Municipal Corporation of Delhi Vs. Dharma Prakash Sharma and Another [(1998) 7 SCC 221]*** to contend, the Act of 1972 being a special provision for payment of gratuity, unless there is a provision therein, which excludes its

applicability to an employee, who is otherwise governed by the provisions of the Pension Rules, it is not possible to hold that the Respondent No.2 is not entitled to the gratuity under the Payment of Gratuity Act. He has also relied upon the judgment of the Madhya Pradesh High Court in the case of ***President, Chairman Central M.P. Gramin Bank Vs.Smt. Abha Goyal [(2017) 03 M.P. CK 0032]***

11. That part, he has also relied upon ***Krishi Utpadan Mandi Samiti Vs. Appellate Authority and others [2016 SCC OnLine All 1740]*** to contend that, if statutory regulations applicable in the case of petitioner-Institution categorically provides for applicability of provisions of the Payment of Gratuity Act, then the same will apply.

ANALYSIS

12. Having heard the learned counsel for the parties and perused the record, the short issue that arises for consideration in this appeal is:-

"Whether the learned Single Judge is justified in dismissing the writ petition and thereby upholding the order of the Controlling Authority and the Appellate Authority directing the appellant herein to pay a sum of Rs.10.00 Lakhs to the Respondent No.2, who was removed from service for certain misconduct?"

13. The answer to the above issue lies in a very narrow compass i.e., on the construction of Regulation-72(2)(e) of the Regulations 2013, which we re-produce as under:-

"72. Gratuity:-

xxx xxx xxx *xxx*

(2) Every Officer or Employee shall be eligible for gratuity on,-

xxx xxx xxx xxx

(e) Termination of service in any other way except by way of punishment after completion of 10 years of service.

xx xxx xxx xxx

Provided that in respect of an employee there shall be no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only."

14. Though the learned Single Judge has proceeded in the judgment on the premise that Respondent No.2 is a workman, but the Respondent No.2 on the date of his removal was working as an Assistant Manager. In that sense, he was working in the Officer Cadre. Be it noted that there is not much of an issue in this regard.

15. Having said that, on perusal of Regulation-72, it is seen that an officer is eligible for gratuity only on termination of service in any other way, except by way of punishment. The case of the appellant is that, he is not eligible for gratuity.

16. The submission of Mr.Hegde is that the Regulations of 2013 cannot discriminate between an employee and an officer. He relied upon Regulation-2 of the Regulations of 2013 to contend that, an employee/ officer shall be eligible for payment of gratuity either as per the provisions of the Act of 1972 or sub-regulation (2), whichever is higher.

17. On the other hand, Sri. Muthanna, the learned counsel for the appellant had primarily relied upon the Regulation-72(2) of the Regulations of 2013, more specifically provisio clause to contend that, as Regulation 72(2) does not include/incorporate the officers and the exception carved-out for payment of gratuity on dismissal, when there is no financial loss, shall hold good only for employees. So, his argument was the Respondent No.2 being an officer, who has been removed from service by way of punishment, shall not be entitled to gratuity.

18. In other words, it is his submission that Respondent No.2 was removed while he was working as an Assistant Manager in the Officer Cadre, he shall not be eligible for gratuity on his removal. Mr. Hegde has placed heavy reliance on the judgment in the case of ***Union of India Vs. C.G. Ajay Babu (supra).***

19. We agree with the submission made by Mr. Hegde by holding that the issue which arises for consideration is no more *res integra* in view of the

judgment of the Hon'ble Supreme Court in ***C.G. Ajay Babu*** (Supra), which judgment has also been relied upon by the learned Single Judge in Paragraph-17 of the impugned order. In this regard, we re-produce the Paragraphs- 10 & 11, which read as under:-

> *10. Having heard the learned counsel for the petitioner, learned CGC for respondent No.1 and learned counsel for respondent No.2, the only point that would arise for consideration before this Court is:*
>
> > *"Whether the Controlling Authority and the Appellate Authority were justified in ordering the Payment of Gratuity to respondent No.2 in the present facts and circumstances of the case?"*
>
> *11. In the instant case, respondent No.2 was charged with the articles of charges for his misconduct to steal the bank funds to the tune of Rs.3,50,000/-. The said amount has been received back by the bank, which is not in dispute. The Enquiry Officer though held that the workman was guilty of the charges and passed an order of dismissal, which the Appellate Authority modified and held that the punishment of dismissal to removal from service shall not be a disqualification for future employment. It is also not in dispute that respondent*

No.2 in the instant case has not been convicted by any Court of Law for any offence of moral turpitude.

20. It is not the case of the appellant that the removal of Respondent No.2 was on the ground of conviction for an offence involving moral turpitude. Nor, the removal of Respondent No.2 is for loss caused to the appellant-Bank.

21. In view of the above discussion we are of the view that, no interference is called for with the impugned order of the learned Single Judge. The appeal being without any merit is **dismissed**. No costs.

Sd/-
(V KAMESWAR RAO)
JUDGE

Sd/-
(T.M.NADAF)
JUDGE

KGR*