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DELHI HIGH COURT ON FORFEITURE OF GRATUITY

A. Introduction

Delhi High Court (**HC**), in two *Union Bank of India* cases,¹ held that an employer can forfeit its employee's gratuity if he was terminated for any act or negligence causing damage or loss to the employer's property in terms of Section 4(6)(a) of the Payment of Gratuity Act, 1972 (**PGA**). However, the employer must afford opportunity to the employees to present their case.

B. Brief Facts

1. The Appellate Authority ordered payment of gratuity to two dismissed employees of Union Bank of India (**UBI**). DC Chaturvedi (**E-1**) was dismissed by UBI for misconduct after its Disciplinary Authority investigated into the alleged grant of unverified loans under fictitious names and concluded against E-1. Dismissal order was issued in 1998, and an inter-office memo forfeiting gratuity owed to E-1 was issued in 2002.
2. E-1 approached the Controlling Authority seeking gratuity in 2016. The delay was condoned and UBI was directed to pay gratuity with interest of 10%. On appeal by UBI, the Appellate Authority upheld the order.
3. Employee Rajinder Kumar Singhal (**E-2**) was charged with causing loss to UBI by sanctioning loans in violation of norms and requisite formalities. After examining the allegations, the Disciplinary Authority ordered his dismissal in 2013.
4. E-2 was served with a notice forfeiting gratuity in 2017, which was issued only after he applied to the Controlling Authority claiming gratuity. Order passed by the Controlling Authority directing payment of gratuity to E-2 was upheld by the Appellate Authority.
5. Against the unfavourable orders relating to E-1 and E-2 (collectively the "**Employees**") UBI appealed to the HC.

C. Order and Reasoning

The HC:

1. Held that:

*"[A]ny employer can forfeit the gratuity of an employee if the employee is terminated for any act or omission or negligence causing any damage or loss to the property belonging to the employer. The forfeiture can only be to the extent of the damage or loss caused, and not beyond that."*²

¹ *Union Bank of India and Ors. vs. D.C. Chaturvedi and Ors. and Union Bank of India and Ors. vs. Rajinder Kumar Singhal and Ors.* (24.03.2022 – MANU/DE/0941/2022).

² Para 42 of the Judgement.

2. Relied upon the cases of *Hindalco Industries Ltd.*,³ *Canara Bank*,⁴ *Rabindranath Choubey*⁵ and *Chanda Khand Sahakari Shetkari Kharedi Vikri Sanstha*⁶ to observe that Section 4(6)(a) has two conditions which must be satisfied by employer for forfeiture of gratuity and held:

*“The damage or loss has to be connected with the act, omission or negligence of the employee. The entire damage or loss cannot be attributed to one employee. There cannot be duplication of forfeiture if more than one employee was involved. In view of these subjective conditions, a notice to the employee and a hearing would be required.”*⁷

3. Observed that the Employees were not duly communicated regarding the forfeiture of their gratuity, were not afforded any opportunity to present their case and the damages were not quantified. It observed that *“payment of gratuity is the rule and not the exception,”*⁸ the exception being denial in a case of moral turpitude. Since UBI had not made a case for moral turpitude, it ruled that:

*“The settled legal position is that the three conditions of notice, quantification and hearing have to be complied with, prior to forfeiture of gratuity. This has clearly not been done by the Bank in both the cases.”*⁹

4. Ruled that though UBI has a right to forfeiture of gratuity under Section 4(6)(a), the appeal by UBI was dismissed on the ground that the procedure for forfeiture of gratuity was not followed. UBI was directed to pay gratuity to the Employees. However, taking notice of the delay by the Employees in claiming gratuity, interest was waived.

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³ *Hindalco Industries Ltd. v. Appellate Authority and Ors.* MANU/UP/0382/2004 : (101) FLR 1063.

⁴ *Canara Bank v. Appellate Authority* W.P. No. 40600/2011 (L-PG).

⁵ *Chairman-cum-Managing Director, Mabanadi Coalfields Limited vs. Rabindranath Choubey* (27.05.2020 - SC) : MANU/SC/0457/2020.

⁶ *Chanda Khand Sahakari Shetkari Kharedi Vikri Sanstha vs. Dattatraya Ramchandra Gaund and Ors.* (16.09.2015 - BOMHC) : MANU/MH/3188/2015.

⁷ Para 49 of the Judgement.

⁸ Para 56 of the Judgement.

⁹ Para 61 of the Judgement.