Western Coal Fields Limited vs Manohar Govinda Fulzele on 17 February, 2025

Author: Sudhanshu Dhulia

Bench: Sudhanshu Dhulia

2025 INSC 233

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2608 of 2025
(@ SPECIAL LEAVE PETITION (C) NO.10088 of 2020)

Western Coal Fields Ltd. …Appellant

versus

Manohar Govinda Fulzele …Respondent

WITH

Civil Appeal No.2609 of 2025
(@ Special Leave Petition (C) No.21957 of 2022)

Civil Appeal No.2610 of 2025
(@ Special Leave Petition (C) No.1907 of 2025)

Reason:

CA No.2608 OF 2025
(@SLP (C) NO.10088 of 2020)
JUDGMENT

K. VINOD CHANDRAN, J.

Leave granted.

2. The question raised in the above cases is the permissibility of forfeiture of gratuity, in the event of termination of service on misconduct, which can be categorised as an act constituting an offence involving moral turpitude; without there being any conviction in a criminal case or even a criminal proceeding having been initiated.

3. The appellant in one of the appeals is a Public Sector Undertaking1 on whose behalf learned Solicitor General Mr. Tushar Mehta appears. The other appeals are by the Maharashtra State Road Transport Corporation2 for whom Ms. Mayuri Raghuvanshi, learned Standing Counsel appears. Impugned judgments found the forfeiture of gratuity to be not permissible under the Payment of Gratuity Act, 1972 (the Act) relying on the 1 For brevity 'PSU' 2 For brevity 'MSRTC' CA No.2608 OF 2025 (@SLP (C) NO.10088 of 2020) decision of this Court in Union Bank of India and Ors. vs. C.G. Ajay Babu3. On behalf of the contesting respondent in the appeal filed by the PSU, Mr. Shivaji M. Jadhav appears to defend the reasoning in the judgment and none appears for the respondent in the appeals filed by the MSRTC; though served with notice.

4. Before we look into the facts of the separate cases, we have to dwell upon the law as declared in C.G. Ajay Babu3. C.G. Ajay Babu3 was a case in which a delinquent employee, while working as Branch Manager in a Bank was dismissed from service pursuant to allegations of misconduct being proved against him in a departmental proceeding. The misconducts alleged and proved were the failure to take steps to ensure and protect the interests of the Bank, failure to discharge duties with utmost devotion, diligence and honesty and for acts unbecoming of an Officer employee. Further show cause notice was issued threatening forfeiture of gratuity, on the ground that the misconducts proved, amounts to acts involving 3 (2018) 9 SCC 529 CA No.2608 OF 2025 (@SLP (C) NO.10088 of 2020) moral turpitude. The challenge made against the dismissal before the High Court failed, but the forfeiture was held to be bad. The forfeiture was upset, on the finding that, there was no allegation of financial loss caused to the bank; which was the only ground on which gratuity could be forfeited as per the Bipartite Settlement regulating the conduct and behaviour of the employees of the Bank; including disbursal of gratuity.

5. A Division Bench of this Court found that sub□section (5) of Section 4 of the Act is a non obstante clause which does not affect the right of an employee to receive better terms of gratuity, under any

award, agreement or contract with the employer. While sub-section (5) made inapplicable the other provisions of Section 4, sub-section (6); which deals with forfeiture of gratuity, despite being a non obstante provision made inapplicable only the provisions of sub-section (1); which created the statutory right for gratuity on an employee, limited for the purposes of forfeiture. It was held that, insofar as the delinquent employee having been in the service of a bank, which service is regulated by CA No.2608 OF 2025 (@SLP (C) NO.10088 of 2020) the Bipartite Settlement, which also contains provisions for payment of gratuity and its forfeiture, sub-section (6) of Section 4 of the Act is inapplicable to the employees of the bank. The Settlement providing for better terms of gratuity also provided for its forfeiture when the misconduct results in financial losses to the bank and only to the extent of the loss; while specifically prohibiting forfeiture of gratuity for dismissal on any other ground. The order of the High Court was upheld finding that the forfeiture; in the teeth of the provisions of the Bipartite Settlement, could not have been carried out by the bank.

6. Having held the forfeiture to be bad, the Bench also looked at the provision for forfeiture under Section 4(6) of the Act and specifically found that "the requirement of the statute is not the proof of misconduct of acts involving moral turpitude but the act should constitute an offence involving moral turpitude and such offence should be duly established in a Court of Law" (sic Para 19). The Court placed reliance on another judgment of this CA No.2608 OF 2025 (@SLP (C) NO.10088 of 2020) Court in Jaswant Singh Gill vs. Bharat Coking Coal Ltd.4.

7. Jaswant Singh Gill4, an employee of a PSU; the services in which were regulated by the Conduct, Discipline and Appeal Rules, 1978 5, retired during the pendency of disciplinary proceedings, with the gratuity payable withheld, due to the pending proceedings. On finalization of the disciplinary proceedings, the appellant was found guilty of misconduct relatable to the role played in causing shortages in stock and concealing it from the higher authorities, which was held to be a very serious misconduct warranting punishment of dismissal; which, however, was not imposed considering the fact that the employee had superannuated. The Disciplinary Authority hence imposed the punishment of forfeiture of the entire gratuity, which was challenged unsuccessfully before the High Court. This Court found that the provision in the CDA Rules to withhold the gratuity of an employee retiring, against whom disciplinary 4 (2007) 1 SCC 663 5 For brevity 'CDA Rules' CA No.2608 OF 2025 (@SLP (C) NO.10088 of 2020) proceedings are pending, and the provision to recover from the gratuity, the whole or part of any pecuniary loss caused to the company were contrary to the provisions under Section 4 of the Gratuity Act, which provisions of the Act prevail over the CDA Rules. It was held that though the CDA Rules provided for disciplinary proceeding to be continued after superannuation, the major penalty of dismissal could not have been imposed after superannuation. Looking at sub-section (6) of Section 4; which takes away the accrued, vested right under sub-section (1), its application was held to be possible only when the conditions incorporated therein are fulfilled. A scrupulous observation of the provisions of sub-section (6) would indicate that such forfeiture could be effected only in the event of termination for reason of wilful omission or negligence causing loss to the employer (clause (a)); or if the termination is on account of riotous or disorderly or any other act of violence (clause b(i)); or if the employee has been terminated for any act which constitutes an offence involving moral turpitude (clause b(ii), none of which were satisfied in that case. Jaswant Singh CA No.2608 OF 2025 (@SLP (C) NO.10088 of 2020) Gill4, according to us, did not find that forfeiture of gratuity under Section 4(6)(b)(ii) is only possible if

there is a conviction by a criminal court for an offence, which alone could result in the misconduct being treated as one constituting moral turpitude.

8. Further Jaswant Singh Gill4 was overruled by a three Judge Bench in Mahanadi Coalfields Ltd. vs. Rabindranath Choubey6 wherein it was held that even when an employee retires during the pendency of disciplinary proceedings, the services are deemed to be continued, for the purpose of continuation of the proceedings, as per rules. The delinquent employee since deemed to be in service, even a major penalty of termination could be imposed on the delinquent employee, who has superannuated during the pendency of the proceedings. We cannot but reiterate that, Jaswant Singh Gill4 had not considered the issue as to whether there could be a forfeiture of gratuity if the delinquent employee is found to have committed an offence involving moral 6 (2020) 18 SCC 71 CA No.2608 OF 2025 (@SLP (C) NO.10088 of 2020) turpitude; even when there is no conviction entered by a Criminal Court on the very same offence.

9. With all the respect at our command, the interpretation in C.G. Ajay Babu3 does not come out of the statutory provision; Section 4(6)(b)(ii) of the Act. Normally we would have referred the matter for consideration by a Larger Bench, but, as we noticed, the statutory provision does not make it a requirement that the misconduct alleged & proved in a departmental enquiry should not only constitute an offence involving moral turpitude, but also should be duly established in a Court of Law. The words "duly established in a Court of Law" cannot be supplied to the provision. Moreover, as we observed; the interpretation of sub□clause (b)(ii) of sub□section (6) of Section 4 was uncalled for in C.G. Ajay Babu3 since the provisions of the Section 4, including sub□section (6) was found to be inapplicable to the employer Bank and its employee, by virtue of sub□section (5) of Section 4. The interpretation, hence, with due respect was an obiter making a reference unnecessary.

CA No.2608 OF 2025 (@SLP (C) NO.10088 of 2020)

10. As has been argued by the learned Solicitor General and the learned Counsel appearing for MSRTC, sub□clause (ii) of Section 4(6)(b) enables forfeiture of gratuity, wholly or partially, if the delinquent employee is terminated for any act which constitutes an offence involving moral turpitude, if the offence is committed in the course of his employment. An ‘Offence’ as defined in the General Clauses Act, means ‘any act or omission made punishable by any law for the time being’ and does not call for a conviction; which definitely can only be on the basis of evidence led in a criminal proceeding. The standard of proof required in a criminal proceeding is quite different from that required in a disciplinary proceeding; the former being regulated by a higher standard of ‘proof beyond reasonable doubt’ while the latter governed by ‘preponderance of probabilities’. The provision of forfeiture of gratuity under the Act does not speak of a conviction in a criminal proceeding, for an offence involving moral turpitude. On the contrary, the Act provides for such forfeiture; in cases where the delinquent employee is terminated for a misconduct, CA No.2608 OF 2025 (@SLP (C) NO.10088 of 2020) which constitutes an offence involving moral turpitude. Hence, the only requirement is for the Disciplinary Authority or the Appointing Authority to decide as to whether the misconduct could, in normal circumstances, constitute an offence involving moral turpitude, with a further discretion conferred on the authority forfeiting gratuity, to decide whether the forfeiture should be of the whole or only a part of the gratuity payable, which would depend on

the gravity of the misconduct. Necessarily, there should be a notice issued to the terminated employee, who should be allowed to represent both on the question of the nature of the misconduct; whether it constitutes an offence involving moral turpitude, and the extent to which such forfeiture can be made. There is a notice issued and consideration made in the instant appeals; the efficacy of which, has to be considered by us separately .

11. As far as, the PSU is concerned, we find that the appellant was proceeded against for the misconduct of producing a fraudulent 'date of birth certificate' to obtain appointment. The learned CA No.2608 OF 2025 (@SLP (C) NO.10088 of 2020) Counsel for the respondent argued that he has served almost 22 years in the PSU and that gratuity is the fruits of his service; which was otherwise unblemished, and is also a statutory right as per the Act, which cannot be denied to him on termination. The learned ASG, however, points out the appellant would not have obtained the appointment if his actual date of birth had been disclosed at the time of appointment. The appellant, in fact was born in 1953, as proved at the enquiry, while the date of birth submitted for his appointment was of the year 1960. The very substratum of the appointment having been removed, the appellant cannot plead for any leniency and the terminated employee deserves no sympathy asserts the Learned ASG, who also relies on the decision of this Court in Devendra Kumar vs. State of Uttaranchal7 to contend that a suppression of material information at the time of selection or appointment would constitute an offence involving moral turpitude.

12. Devendra Kumar7 was a case where the services of the delinquent employee were 7 (2013) 9 SCC 363 CA No.2608 OF 2025 (@SLP (C) NO.10088 of 2020) terminated for reason of suppressing material information regarding pending criminal cases against him, at the time of appointment. This Court held that when an appointment is obtained by employing fraud; the question is not whether the applicant is suitable for the post but whether the appointment was obtained by supressing material information. It was held that even if the offence alleged in the case pending against the applicant would not involve moral turpitude, suppressing such information would amount to moral turpitude.

13. In the present case it has been proved that the petitioner supressed his actual date of birth. The failure of the employer to initiate a criminal proceeding on the fraud employed by way of the the fabricated/forged certificate produced for the purpose of employment, does not militate against the forfeiture. Obviously, as coming out from the provision, no conviction in a criminal proceeding is necessitated, if the misconduct alleged & proved constitutes an offence involving moral turpitude. The very same reasoning applies in the appeals by the MSRTC were the delinquent CA No.2608 OF 2025 (@SLP (C) NO.10088 of 2020) employees, conductors in the stage carriages operated by the MSRTC were found to have indulged in misappropriation of fares collected from passengers. Misappropriation definitely is an act constituting an offence involving moral turpitude.

14. Now we come to the question of whether the forfeiture of gratuity of the terminated employees should be only partly or wholly. Insofar as the PSU is concerned, the appointment itself was invalid for reason of suppression of the actual date of birth and production of a forged certificate. We extract paragraph 25 from Devendra Kumar7 Judgment:

> "25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. Sublato fundamento cadit opus — a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case the legal maxim nullus commodum capere CA No.2608 OF 2025 (@SLP (C) NO.10088 of 2020) potest de injuria sua propria applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide Union of India v. Major General Madan Lal Yadav [(1996) 4 SCC 127 : 1996 SCC (Cri) 592 : AIR 1996 SC 1340] and Lily Thomas v. Union of India [(2000) 6 SCC 224 : 2000 SCC (Cri) 1056] .) Nor can a person claim any right arising out of his own wrongdoing (jus ex injuria non oritur)."

15. The appointment itself being illegal, there is no question of the terminated employee seeking fruits of his employment by way of gratuity. We uphold the decision of the PSU forfeiting his entire gratuity. However, in the case of conductors (Civil Appeal No._____ @SLP (C) No.21957 of 2022), we see that the act alleged and proved is of misappropriation of meagre amounts. It is trite that even if minimal amounts are misappropriated it would constitute a misconduct warranting termination, as held by this Court. However, on the question of forfeiture of gratuity, we are of the CA No.2608 OF 2025 (@SLP (C) NO.10088 of 2020) opinion that the Appointing Authority should have taken a more sympathetic approach. We do not propose to send back the matter for fresh consideration but direct the Appointing Authority to limit the forfeiture to 25% of the gratuity payable and release the balance amounts to the respondent employees.

16. We allow the appeals with the above modification in so far as the extent of gratuity forfeited in two appeals. Parties to bear their own costs.

17. Pending application(s), if any, shall stand disposed of.

....., J.

[SUDHANSHU DHULIA] ....., J.

[K. VINOD CHANDRAN] NEW DELHI;

FEBRUARY 17, 2025.

CA No.2608 OF 2025 (@SLP (C) NO.10088 of 2020)