**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**Letters Patent Appeal No.566 of 2012** (O&M)
**DATE OF DECISION: March 07, 2013**

UCO Bank and others

.....Appellants

versus

Anju Mathur

.....Respondent

**CORAM:- HON'BLE MR.JUSTICE A.K. SIKRI, CHIEF JUSTICE**
**HON'BLE MR. JUSTICE RAKESH KUMAR JAIN, JUDGE**
**HON'BLE MR. JUSTICE JITENDRA CHAUHAN, JUDGE**

Present: Mr.Sanjiv Gupta (KKR), Advocate for the appellants

Mr.Ashok Gupta, Advocate for respondent

**A.K. SIKRI, CHIEF JUSTICE**:

1. Order dated 7.11.2012, though a brief order, is sufficient to tell a tale manifesting raison d'etre for reference of this case to a larger Bench. We reproduce the said order, which reads as under :-

> "Two Division Bench judgments of this Court are produced by the counsel for the respective parties, which apparently hold contrary views insofar as the payment of gratuity on the imposition of penalty of compulsory retirement is concerned. These are; (i) LPA No.191 of 2006 titled as **UCO Bank and others** vs. **Ashwani Kumar Sharma** decided on 01.02.2010 and (ii) CWP No.16451 of 2004 titled as **L.N. Gupta** Vs. **UCO Bank and others** decided on 07.09.2007. The matter is, thus, referred to the Full Bench for resolving the conflict.
>
> Insofar as the contribution towards Provident Fund and Leave Encashment is concerned, learned counsel for the Bank makes a statement at the Bar that if it is not released so far, same shall be released within 10 days along with interest, as given by the learned Single Judge."

It is clear from the above that the matter pertains to the payment of gratuity, namely, whether it is admissible when the punishment of

compulsory retirement is given after holding a departmental enquiry against delinquent employee. Though the aforesaid order also records that insofar as payment of Provident Fund and leave encashment is concerned, the counsel for the Bank had made a statement that it would be released within 10 days, we would like to point out that thereafter an application was moved by the counsel for the appellant Bank pointing out that the statement for payment towards leave encashment was made mistakenly as, according to the Bank, even leave encashment and employer's contribution of Provident fund is not admissible to an employee who has been given this punishment. On this application, order was passed by the Division Bench on 7.2.2013 permitting the appellants to withdraw the statement of the counsel. At that time, counsel for both the sides had also agreed that issue regarding provident fund and leave encashment may also be decided by the Full Bench. These are, thus, the issues on which the present Full Bench heard the matter.

2. Before we take note of the arguments that were advanced by the counsel for the parties on the aforesaid issues, it would be apposite to reproduce the factual matrix of the dispute, in brief.

3. Shorn of unnecessary details, the facts which are relevant for our purposes are that the respondent herein, who was working as Scale III Officer with the appellant-Bank, at the relevant time i.e. in the year 2007, was served with the charge-sheet dated 24.2.2007. The articles of charges fastened upon her alleged that in number of accounts the respondent had given advances and shown undue favour to various parties in violation of the guidelines of the head office while sanctioning those advances. The respondent submitted her reply which was not found

satisfactory and disciplinary authority chose to hold regular departmental enquiry. An enquiry officer was appointed, who conducted the enquiry. After the conclusion of enquiry, enquiry report was submitted holding that charges stood proved. After eliciting reply from the respondent to the findings recorded by the Enquiry Officer, the disciplinary authority i.e. Deputy General Manager passed order dated 15.10.2007 imposing the punishment of compulsory retirement with immediate effect against the findings of charge No.1. With regard to Charge No.2, punishment imposed was to bring down respondent from the position of MMG Scale III to MMG Scale II at the first stage in the time scale of pay i.e. `13820/- from the pay scale which she was drawing at that time i.e. `19920/- + two stagnation increments of `620/- each in MMG Scale III. The respondent preferred departmental appeal against that order which was, however, dismissed by the appellate authority on 30.7.2008. Insofar as departmental proceedings are concerned, the respondent did not agitate the matter any further. Meaning thereby, the penalty imposed upon the respondent attained finality.

4. Instead, the respondent applied for settlement of gratuity dues, provident fund dues and also demanded release of leave encashment vide separate applications dated 15.7.2008. In response, the respondent received the cheque dated 6.9.2008 in the sum of `7,85,259.56 paise towards full and final settlement of provident fund dues. However, this amount represented only her share of the provident fund and the employer's share was not released to her.

5. Insofar as payment of gratuity is concerned, the respondent was served with show cause notice dated 18.9.2008 proposing to forfeit the gratuity and opportunity was given to the respondent to show cause

as to why the same be not forfeited. This show cause notice was in the following terms:

> "Sub:- Forfeiture of Gratuity.
>
> While functioning as senior Manager at our Ambala Cantonment Branch, you have committed certain irregularities. For your above acts, bank was exposed to serious financial risks and so you were compulsorily retired from Bank's services on 25.10.2007.
>
> In view of the above, please show cause within 10 days from the receipt of the letter, as to why your gratuity will not be forfeited if we do not hear anything from you within the stipulated time, it will be construed that you have nothing to say on the matter."

6. The respondent submitted her reply dated 11.10.2008 taking up the position that the said show cause was without jurisdiction; the punishment of compulsory retirement had already been imposed upon her and in those orders gratuity was not forfeited. She also contended that in any case forfeiture of gratuity amounted to double jeopardy. Another plea raised was that the charges of irregularities levelled against her did not involve any kind of fraud. It was a case of mere lapses and irregularities pertaining to advancing of loan and as such no moral turpitude was involved either. Thus, gratuity could not be withheld or forfeited. These arguments, however, did not impress the competent authority i.e. Assistant General Manager of the appellant-Bank and thus, he passed order dated 12.11.2008 informing the respondent that her claim for payment of gratuity was not admissible. Specific and sole reason which was assigned in the said communication reads as under:

> "Reasons
> "You were compulsorily retired from the service of the Bank for your acts which involved loss of more than Rs.4.00 Cr. for the Bank."

Even the claim for encashment of leave which was lying to her credit was rejected vide letter dated 13.8.2008 sent to the respondent under the signatures of Chief Manager, UCO Bank, Patiala stating that the respondent was not eligible for leave encashment since she had been compulsorily retired from the Bank's service by way of punishment.

7. Thus, all the three benefits were denied to the respondent by the bank which provoked the respondent to approach this Court in the form of petition under Article 226 of the Constitution of India, claiming these benefits along with interest @ 18% p.a. from the date the respondent was compulsorily retired from service.

8. Before the learned Single Judge, the respondent herein relied upon the Division Bench judgment of this Court dated 1.2.2010 in **UCO Bank and others vs. Ashwani Kumar Sharma** (LPA-191-2006). The appellant Bank, on the other hand, referred to the judgment in the case of **L.N.Gupta** *vs.* **UCO Bank and others** (CWP-16451-2004, decided on 7.9.2007). Interestingly, both these judgments pertain to the appellant Bank i.e. UCO Bank itself. The learned Single Judge, however, distinguished the judgment in the case of **L.N.Gupta** *(supra)* observing that in that case the concerned employee was found guilty involving moral turpitude, whereas, in the present case the respondent was not only compulsorily retired but her pay scale as well as increments were reduced as well. Therefore, refusing to pay gratuity would result in double jeopardy. The learned Single Judge has also stated that in the instant case, no loss has been calculated. According to the learned Single Judge, therefore, it is the judgment of the Division Bench in **Ashwani Kumar Sharma** *(supra)* which would apply as the said judgment was rendered

after discussing Regulations 38 and 46 of the UCO Bank (Officers') Service Regulations, 1979 (hereinafter referred to as the "Officers' Regulations") and holding that Regulation 46 did not have any application to a case of compulsory retirement. The learned Single Judge, thus, chose to follow the judgment in **Ashwani Kumar Sharma** *(supra)* holding that it is that judgment which was applicable to the facts of the present case and that of **L.N.Gupta** *(supra)* was distinguishable.

9. It is clear from the above that as per learned single Judge, present case is covered by the judgment in **Ashwani Kumar Sharma** (supra) and **L.N. Gupta's** case *(supra)* is distinguishable. The counsel for the Bank, however, argued hat decisions in the two cases are conflicting and **L.N.Gupta** *(supra)* states the correct position in law which should be applied in the instant case as well. In order to resolve this controversy, we would like to discuss the two judgments in some detail.

10. In the case of **Ashwani Kumar Sharma** (supra), the facts were that the employee therein was served with a charge-sheet which resulted in imposing the penalty of compulsory retirement. This led to cut in pension by 1/3rd, forfeiture of gratuity and leave encashment amount. He filed writ petition claiming these benefits. The bank contested the claim of gratuity and leave encashment (with which we are concerned) by submitting that in view of the provisions of the Officers' Regulations and the Disciplinary and Appeal Regulations, 1976, these benefits were not payable. The gratuity was forfeited under Regulation 46 and leave encashment under Regulation 38 of the Officers' Regulations. These Regulations read as under:-

"46(1) Every Officer, shall be eligible for gratuity on:-

> a) retirement
> b) death
> c) Disablement rendering him unfit for further service as certified by a medical officer approved by the Bank;
> d) resignation after completing ten years of continuous service; or
> e) termination of service in any other way except by way of punishment after completion of 10 years of service."
>
> "38. Lapse of Leave. Save as provided below, all the leave to the credit of an officer shall lapse on resignation, retirement, death, discharge, dismissal or termination;
>
> Provided that where an officer retires from the bank's service he shall be eligible to be paid a sum equivalent to the emoluments of any period, not exceeding 240 days, of privilege leave that he had accumulated.
>
> Provided further that where an officer dies while in service, there shall be payable to his legal representatives, a sum equivalent to the emoluments for the period, not exceeding 240 days, of privilege leave to his credit as on the date of his death."

It is clear from the reading of Clause (e) of Regulation 46(1) that gratuity is payable on termination of service after completion of 10 years of service, but it would not be paid when termination has come about by way of punishment. Holding that this clause would not apply in the case of compulsory retirement, the entire discussion, which is contained only in Para-8 of the judgment, reads as under:

> "8. A perusal of above shows that Clause (e) of Regulation 46 above which has been relied upon by learned counsel for the appellants cannot apply to the case of compulsory retirement. Similarly, First Proviso to Regulation 38 clearly shows that on retirement, an officer is entitled to leave encashment. There is no provision for withholding gratuity and leave encashment in the case of compulsory retirement."

From the above, it is clear that gratuity was held payable as it was a case of "retirement" and the employee in that case had retired after rendering 28 years of service.

11. Coming to the judgment in the case of **L.N. Gupta** *(supra)*, in that case, Shri Gupta was charge-sheeted for certain acts and after holding the enquiry he was also inflicted with the penalty of compulsory retirement from service on June 21, 1999 and by this time, he had rendered more than 27 years of service. This entailed 1/3rd cut in pension, forfeiture of gratuity and the employer's contribution of provident fund was also withheld. It is clear from the above that almost on same set of facts, the bank had taken the decision and in the writ petition filed by Shri Gupta, it was defended on the same grounds. When the Division Bench gave its judgment on 7.9.2007, the Single Bench judgment in **Ashwani Kumar Sharma** (supra) was available and appeal there-against was pending which was decided by the Division Bench, as noted above, only on 1.2.2010. In **L.N. Gupta** (supra), the Division Bench took note of Single Bench judgment in **Ashwani Kumar Sharma** (supra) and another judgment in **O.P. Garg vs. UCO Bank and others, CWP-888-2005 decided on 31.7.2007**, and decided the matter in the following manner:

> "What the petitioner failed to appreciate is that the order which was passed on April 21, 2004 was on the basis of the directions of this Court and after giving the petitioner full opportunity of hearing. No order of compulsory retirement leads to automatic reduction of pension or complete denial of gratuity and provident fund. A cut in pension can only be imposed after the punishing authority has applied its mind on the nature of misconduct. Similarly, denial of gratuity and leave encashment can also be effected but not without conscious application of mind.
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> In Ashwani Kumar Sharma Versus UCO Bank and others 2006 (4) Services Cases Today, 171, this Court had considered the matter in detail and come to the conclusion that a cut in pension could be imposed but before that the concerned employee deserved to be heard. Similarly, gratuity could also be withheld after a hearing. In the present case the petitioner was heard on April 16/21, 2004 and his claim for full pension was rejected. His claim for gratuity was also declined. Lastly, he was also held to be not entitled to leave encashment.

> This Court in CWP 888 of 2005 entitled O.P. Garg Versus UCO Bank and others decided on 31.7.2007 had held that retirement from service, whether voluntarily or compulsorily, does not lead to denial of leave encashment and had granted this relief. Even in Ashwani Kumar Sharma's case (supra) denial of gratuity and leave encashment had been set aside because there had been violation of principles of natural justice and the petitioner in that case had been denied an opportunity of hearing.
>
> In the present case, we are of the view that the cut in pension has been made after hearing the petitioner. Furthermore, denial of gratuity has also been done on the ground of mis-conduct of the petitioner involving mortal turpitude and the petitioner has been retired as a measure of punishment. Regulation 46(1) (e) permitted this course of action.
>
> Therefore, we are of the view that the cut in pension and denial of gratuity was justified but denial of leave encashment was unjustified. Under regulation 38 every retiring employee was entitled to leave encashment and we have held so in O.P. Garg' case (supra)."

The aforesaid reading makes it clear that the judgment in **Ashwani Kumar Sharma** *(supra)* of the Single Bench was distinguished on the ground that in that case, gratuity was withheld without affording opportunity, whereas, in **L.N. Gupta** (supra), opportunity of hearing was given. Insofar as leave encashment is concerned, the Division Bench simply followed **O.P. Garg** (supra). The Division Bench did not interpret Regulations 38 and 46 of the Officers' Regulations. However, at the same time, the results of the judgments of the Division Benches in **L.N. Gupta** (supra) and **Ashwani Kumar Sharma** (supra) are diametrically opposite. Therefore, it becomes necessary to resolve the controversy by applying the relevant regulations and giving appropriate interpretations to these regulations.

**RE: FORFEITURE OF GRATUITY**:

12. Two aspects arise for consideration, namely, - (a) whether gratuity can be withheld/forfeited under Regulation 46(1)(e) if the

termination of service is by way of punishment of compulsory retirement; and (b) if it can be forfeited, then under what circumstances and whether it would be necessary to give proper hearing to the delinquent employee before forfeiting the gratuity.

13. Regulation 46 of the Officers' Regulations makes every officer eligible for gratuity in certain circumstances which include retirement, death, disablement, resignation and termination. However, Clause(e) states that if the termination of service is occasioned by way of punishment, then the officer will not be entitled to gratuity. The Division Bench in **Ashwani Kumar Sharma** (supra) held that this clause cannot apply to the case of compulsory retirement. That is the only reason given, but without any elaboration. We are afraid, we cannot accept this to be a justified reason, as it leads to wrong interpretation of Clause (e) of Regulation 46 of the Officers' Regulations.

14. We would like to emphasise that compulsory retirement is of two types. There can be an administrative order retiring an employee compulsorily from service when the employer finds that the employee has become deadwood. However, the compulsory retirement is also provided as one of the modes of punishment in the Disciplinary and Appeal Regulations, 1976 framed by the Bank. Whenever compulsory retirement is effected by way of penalty which is imposed after holding a regular enquiry, then the compulsory retirement leads to termination by way of punishment. Termination of service can result by various modes. It amounts to cessation of employment whereupon the employer-employee relation comes to an end. The purport of Regulation 46(1)(e) is very clear. Whenever it is a case of termination by any other mode than by way of punishment, gratuity is payable, but not when termination is

occasioned by way of penalty on account of misconduct committed by an employee established in the regular departmental enquiry against such delinquent employee.

15. We are, therefore, of the opinion that Regulation 46(1) of the Officers' Regulations would not apply when termination is occasioned by way of compulsory retirement by way of punishment on account of misconduct proved against such an employee after regular departmental enquiry. To that extent, the judgment of Division Bench in Ashwani Kumar Sharma (supra) does not lay down correct law and is hereby overruled.

16. The next question is as to whether in all cases where the penalty of compulsory retirement is imposed, the gratuity is to be forfeited. Answer to this is to be found in Section 4(6) of the Payment of Gratuity Act, 1972. This sub-section reads as under:-

> "(6) Notwithstanding anything contained in sub-section(1)
>
> (a) the gratuity of an employee, whose services have been terminated for any act, wilful 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,
>
> (c) 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
>
> (d) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provide that such offense is committed by him in the course of his employment."

This sub-section gives the instances when the gratuity can be forfeited and the forfeiture can be whole or partial. We are concerned herein with Clauses (a) and (d). The gratuity can be forfeited if there is damage or

loss suffered by the employer because of wilful omission or negligence of the employee which act led to his termination. In that case, the forfeiture has to be to the extent of damage or loss caused. The gratuity can also be forfeited if the misconduct by the delinquent employee constitutes an offence involving moral turpitude and when such an offence is committed by him in the course of his employment.

17. The Karnataka High Court in the case of **M/s Bharath Gold Mines Ltd. v. The Regional Labour Commissioner (Central), Bangalore & Ors., reported in 1986 Lab.I.C. 1976** has held that before an employer takes steps to forfeit the entire gratuity, the employer has to take an independent decision after the termination of the service of an employee as to whether the gratuity payable should at all be forfeited and that decision must depend on the facts and circumstances of the case. Likewise, Bombay High Court in the case of **Smt.Kamla Rameshchandra Sharma v. Maharashtra Rajya Wakhar Mahamandal, Pune, reported in 2009 (121) FLR 87 (DB)** took the view that the penalty for recovery from pay of the whole or part of the pecuniary loss caused to the Corporation must be the actual pecuniary loss occasioned, by the misconduct of the employee. In that case the learned Bench noted that the penalty imposed on the delinquent refers to future events, which may or may not result in causing of loss to the Corporation and in that case the loss had not been quantified.

18. In the case of **Shri Ramchandra S. Joshi v. Bank of Baroda, (Writ Petition No.636 of 2002) decided on 5th April, 2010**, the Division Bench of Bombay High Court also noted in detail the interpretation of the expression “moral turpitude” given by the Courts, as

appearing in Section 4(6)(d). We would like to reproduce the following discussion therefrom:-

> "10. As we have noted earlier, the Payment of Gratuity act itself provides the circumstances under which an employer can forfeit gratuity which can be to the extent of the damage or loss suffered. Apart from that under Section 4(6)(d), gratuity can also be forfeited if services of such employees have been terminated for any act which constitutes an offence involving moral turpitude. As to what constitutes 'moral turpitude', we may gainfully reproduce from paragraphs 7 and 8 of the judgment of the Division Bench of the Karnataka High Court in *M/s. Bharath Gold Mines Ltd.* (supra), which has considered same definitions.
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> > "7. Sri B.V. Acharya, learned counsel invited our attention to the relevant passage in Words and Phrases, Permanent Edition, Vol.27A at page 186. They read:
> > "'Moral turpitude' is anything done contrary to justice, honesty, modesty or good morals. In re Williams. 167 P. 1149, 1152, 64 CKL 316.
> > xxx xxx xxx xxx
> > 'Moral Turpitude' includes all acts done contrary to justice, honesty, modesty or good morals. Neibling v. Terry, 117 SW 2d 502 503 352 Mo.396, 152 A.L.R. 249"
> >
> > (Underlined by us)
> >
> > Learned counsel submitted that the Court should decide as to whether an offence involved moral turpitude or not, in the light of the meaning given to those words as above.
> >
> > 8. From the above passage, it is clear that anything done contrary to justice, honesty, modesty or good morals involves moral turpitude. Dishonesty is one of the essential ingredients of the offence of theft. If there is no dishonesty in removing or taking a property belonging to another, it constitutes no offence of theft. Therefore, it is clear that when a person is found guilty of the charge of theft, it means, he has acted dishonestly and from this it follows that he has committed an offence involving moral turpitude."

> 11. In the case of The Management of Tournamulla Estate v/s Workmen, AIR 1973 SC 2344, before the enactment of the Gratuity Act, the Supreme Court noted that in Delhi Cloth & General Mills Co. Ltd. v/s Workmen, AIR 1970 SC 919, noted the object of having a gratuity scheme which is to provide a retiring benefit to workmen who have rendered long and unblemished service to the employer and thereby contributed to the prosperity of the employer, and therefore, it was not correct to say that no misconduct, however grave, may not be visited with forfeiture of gratuity. Various kind of misconducts were thereafter noted, which were (1) technical misconduct which leaves no trail of indiscipline, (2) misconduct resulting in damage to the employer's property which might be compensated by forfeiture of gratuity or part thereof, and (3) serious misconduct such as acts of violence against the management or other employees or riotous or disorderly behaviour in or near the place of employment, which, though not directly causing damage, is conducive to grave indiscipline. The Court observed that the first should involve no forfeiture, the second may involve forfeiture of the amount equal to the loss directly suffered by the employer in consequences of the misconduct and the third will entail forfeiture of gratuity due to the workman. Thus, it would be clear that even before the Gratuity Act has come into force, the Supreme Court had noted that gratuity could be forfeited. Object of paying gratuity has been sufficiently set out in the judgment of the Supreme Court in the case of U. P. State Sugar Corporation Ltd. & Ors. v Kamal Swaroop Tondon, *2008 II CLR 563*, where the Court observed as under:
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> > "It is well-settled that retiral benefits are earned by an 14 employee for long and meritorious services rendered by him/her. They are not paid to the employee gratuitously or merely as a matter of boon. It is paid to him/her for his/her dedicated and devoted work."
>
> Reference was made to several judgments dealing with gratuity and the circumstances under which the gratuity could be forfeited."

19. In the present case, admittedly, after inflicting the punishment of compulsory retirement upon the respondent herein, a specific show cause notice was given before taking the decision to forfeit her gratuity. Thus, an independent decision is taken fulfilling this procedural requirement which is mandatory as held in **M/s Bharath**

**Gold Mines Ltd. (supra).** But the next question is as to whether it satisfies the tests on which judicial review of such an order can be undertaken.

20. We have already reproduced the language of show cause notice dated 18.9.2008. It states that the "respondent had committed certain irregularities and because of those acts, bank was exposed to serious financial risks." While forfeiting the gratuity, the reason given was that acts of the respondent "involved loss of more than Rs.4.00 cr. for the bank." The contention of the learned counsel for the respondent was that in the show cause notice, no specific amount of alleged loss was quantified, which was mandatory requirement as per the judgment of the Bombay High Court in **Smt.Kamla Rameshchandra Sharma (supra).** Such a show cause notice was illegal as the loss had to be quantified. It was submitted that mention of this figure in the final order would be of no avail when the respondent was not given any opportunity to show cause against the same. Further, though the figure of `4 crores is mentioned in the final order, how this figure is arrived at is not disclosed by the competent authority. Learned counsel for the respondent also argued that no such figure was mentioned in the charge-sheet. Even in the enquiry report submitted by the Enquiry Officer where the charges were proved, there was no finding of any loss which the appellant-Bank was exposed to because of the irregularities committed by the respondent in various accounts.

21. Learned counsel for the appellants, on the other hand, submitted that it was a case where irregularities were committed in

various accounts by granting loans of different amounts which was clearly stated in the charge-sheet.

22. After considering these arguments, we find that argument of the learned counsel for the respondent has to prevail. We have gone through charge-sheet as well as enquiry report. No doubt, in the charge-sheet as many as 24 accounts are mentioned where the respondent had given loans or other financial accommodation either beyond her powers or without obtaining proper securities. That would show that certain accounts were overdrawn. Even the operation of these accounts was not satisfactory. However, whether the appellant-Bank ultimately suffered loss and what was the actual loss is not reflected. No doubt, the irregularities committed by the respondent may have exposed the Bank to such losses. However, that is entirely different from loss having been actually suffered by the bank. Even if some accounts became bad and the Bank had to file suits for recovery concerning those accounts against the defaulting parties, that would not automatically lead to the conclusion that the loss/damage has been suffered. It is possible that Bank is able to recover full money in those proceedings. Whether that happened in fact or not and whether loss is actually suffered or not is not discernible from either the charge-sheet or the enquiry report.

23. It is for this reason that it was incumbent upon the appellant-Bank to mention specifically about the actual loss having been suffered, if it suffered, in the show cause notice itself with particulars of that loss in order to enable the respondent to meet the same. That has not been done even in the final order. Though the figure of `4 crores is given, in the final order, even that is not substantiated by giving

particulars thereof. We are, therefore, of the opinion that the show cause notice or the final orders passed, forfeiting the gratuity, do not meet the legal requirements and have to be set aside.

24. The upshot of the aforesaid discussion would that though we disagree with the reasons given by the learned single Judge allowing the writ petition and also that **Ashwani Kumar Sharma** (supra) does not lay down correct law, insofar as present case is concerned, still the impugned order forfeiting the gratuity has to be set aside for the reasons given above. At the same time, since it is a procedural defect, liberty is given to the Bank to serve proper show cause notice indicating actual loss, if any, with particulars of the said loss and pass final orders after giving due opportunity of being heard to the respondent.

**RE: WHETHER THERE CAN BE FORFEITURE OF LEAVE ENCASHMENT AMOUNT OF A PERSON WHO HAS BEEN GIVEN THE PUNISHMENT OF COMPULSORY RETIREMENT:**

25. At the outset, we are forced to remark that reasons given in **Ashwani Kumar Sharma** (supra) are not legally correct, as the compulsory retirement by way of punishment is also treated as ordinary termination of service on which we have already given our decision hereinabove.

26. We have also reproduced Regulation 38 of the Officers Regulations, which deals with leave encashment. This regulation states that leave shall lapse in certain circumstances. Proviso thereto, however, provides an explanation and makes a provision for leave encashment in those cases where an officer “retires” from service. The question is as to whether this retirement would mean retirement on attaining the age of superannuation or retirement caused by other modes as well, including

compulsory retirement. It cannot be disputed that compulsory retirement occasioned otherwise than by way of penalty would be covered by the proviso and leave encashment would be admissible as in that eventuality also, the officer "retires" from service. However, unlike Regulation 46 of the Officers' Regulations, the cases where the retirement comes by way of penalty of compulsory retirement, are not excluded. Therefore, when an officer "retires" from service, in whatever manner, he is eligible for leave encashment. In the case of **O.P. Garg** (supra), this issue was specifically dealt with by this Court in the following manner:

> "The petitioner in the present case had been wrongly denied encashment of leave through a careless mis-interpretation of Regulation 38 and without considering its proviso. From the Regulation 38 it would be revealed that all leave lapses on resignation, retirement, death, discharge, dismissal or termination. What this means is that on the happening of any of the above events an officer cannot insist that he should be permitted to continue in service to the extent of leave which still stood to his credit. Since leave lapses, the concerned officer must leave service. Funnily leave of an officer who dies while in service also lapse. It seems the framers of regulation probably thought that a dead person may continue on leave till the expiry of the leave to his credit, unless a regulation was framed.
>
> Be that as it may, it is the proviso to Regulation 38 which applies to the petitioner's case and has been actually discussed in Ashwani Kumar Sharma's case (supra). As regards payment of gratuity made to the petitioner of Rs. 2,17,351/- on August 16, 2001, learned counsel submitted that these amounts had been paid without interest and referred to the order Annexure P/7 dated December 29, 2003 regarding payment of simple interest @ 10% for the period July 27, 1999 to August 15, 2001 on the aforesaid gratuity amount. Although interest was not paid to the petitioner at the time of release of the principal amount of gratuity on August 16, 2001, a sum of Rs. 20325/- was the second installment received by the petitioner on November 17, 2004 but the second installment was paid without interest. Therefore, the petitioner is entitled to 10% interest on this amount from the due date (July 17, 1999) till the actual payment made on November 27, 2004.
>
> In view of the above discussion, this petition is allowed. The petitioner shall be entitled to payment of emoluments for the period of privilege leave that he had

> earned (leave encashment) alongwith interest @ 10% from July 26, 1999 till date of payment."

27. We agree with the aforesaid reasons. We are, therefore, of the view that respondent would be entitled to leave encashment.

**RE: FORFEITURE OF EMPLOYER'S SHARE OF PROVIDENT FUND**:

28. Rules 17 and 18 of the UCO Bank Employees' Provident Fund Rules are to the following effect:

> "17. Any contributor who is dismissed for insubordination, misconduct fraud or any other cause of a like nature or retires from the Bank in consequency thereof shall only be entitled to repayment of the amount of his own contributions with the interest accrued thereon at the rate and in manner aforesaid. The Trustees shall be the sole judges of the sufficiency of the cause of the dismissal or retirement of any contributor in any of the foregoing cases.
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> 18. If a contributor is dismissed for fraud or misconduct the Bank shall be entitled to recover from the contributions made by the Bank to the individual account of the contributor and the interest (simple and compound) credited in respect of such contributions any loss or damage resulting to the Bank from the cause entailing such dismissal. The Board shall be entitled to declare the amount of loss or damage so resulting and their declaration in that behalf shall be final and conclusive and the amount so declared shall be paid to the Bank.

As is clear from the reading of Rule 17, it would apply when an employee (contributor) is either dismissed or he is retired from service and such dismissal/retirement is caused as a result of insubordination, misconduct, fraud or any other cause of a like nature. In such a case, the contributor is entitled to repayment of the amount of his own contribution only along with interest accrued thereon. However, the decision has to be that of Trustees of the Provident Fund Trust who are treated as sole judges of the sufficiency of the cause of dismissal or retirement of any contributor. In the present case, no doubt the respondent is given the punishment of compulsory retirement after holding an enquiry, however, there is no

decision of the Board of Trustees and the decision is taken by the Bank. It is the Board of Trustees which is supposed to take such a decision as provided in Rule 17 of the Provident Fund Rules.

29. As far as Rule 18 is concerned, the Bank is given the right to recover from the contribution made by the Bank, i.e., employer's share, in case of any loss or damage resulting to the Bank. Here also it is the Board, i.e., Board of Directors which is entitled to declare the amount of loss or damage so resulting. In the instant case, there is no declaration by the Board of Directors. Furthermore, this Rule applies only when the contributor is "dismissed" for fraud or misconduct. This Rule does not apply when he is "retired" from the Bank even by imposing the penalty of "compulsory retirement". Whereas, Rule 17 mentions the punishment of dismissal and also includes the retirement, the element of retirement i.e. penalty of compulsory retirement as a consequence of fraud or misconduct is conspicuously absent in Rule 18. It is, thus, clear that Rule 18 would not apply in the present case where the punishment imposed is not that of dismissal but that of compulsory retirement. Therefore the appellant-bank cannot forfeit the employer's contribution in the instant case. The action of the appellant-bank in forfeiting the employer's share is not correct and is, therefore, set aside. However, liberty is given to the Trustees of the Fund to proceed in the matter in accordance with Rule 17 of the UCO Bank Employees' Provident Fund Rules.

30. The appeal is disposed of in the aforesaid terms. It goes without saying that in case the decision on gratuity and employer's share of provident fund taken by the respective authorities goes against the

respondent herein, she will have right to challenge the said decision in appropriate proceedings in accordance with law.

**( A.K. SIKRI )**
**CHIEF JUSTICE**

**(RAKESH KUMAR JAIN)**
**JUDGE**

March 07, 2013
pc

**(JITENDRA CHAUHAN)**
**JUDGE**