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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 12th September, 2024***

\+ LPA 907/2024 and CAV 443/2024, CM APPL. 52155-52157/2024

PUNJAB NATIONAL BANK .....Appellant
Through: Mr. Rajat Arora, Advocate.

versus

SH NIRAJ GUPTA AND ANR. .....Respondents
Through: Mr. N.C. Gupta, Advocate for R1.
Mr. Farman Ali, SPC with Ms.Usha Jamnal and Mr. Krishan Kumar, Advocates for R2.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T ***(oral)***

1. The present appeal under Clause X of Letters Patent has been filed seeking setting aside of judgment dated 09.07.2024 passed by the learned Single Judge in W.P.(C) No. 7247/2022.

2. Notice issued.

3. Learned counsel appearing on behalf of the respondents No.1 & 2 respectively, accept notice.

4. With the consent of learned counsel for the parties, the present appeal is taken up for final hearing and disposal.

5. The facts of the case are that respondent No. 1, while working in the year 2015 as Deputy General Manager with the appellant-Punjab National Bank ('Bank') and was on deputation as MD and CEO of Punjab National Bank International Ltd. ('PNBIL'), a subsidiary of appellant Bank which is incorporated under the laws of United Kingdom.

6. Subsequently, on 13.08.2015, a complaint was filed by one Ms. Neeta Teggi, the customer service associate, assigned as a Secretary to respondent No. 1 employee. Pursuant to the filing of complaint, a preliminary Investigation with regard to the complaint made by Ms. Teggi is conducted by the PNBIL at their level at London, UK. On 19.09.2015, a decision was taken to recall and repatriate the Respondent No.1 to India. Thereafter, on 24.09.2015, respondent No. 1 is placed under suspension by the Executive Director of the appellant Bank.

7. On 28.09.2015, the appellant constituted an Internal Complaint Committee (ICC) in terms of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 which submitted its findings on 19.10.2015, thereby, holding the respondent guilty of the allegations of sexual harassment.

8. Thereafter on 07.11.2015, a charge sheet was issued against the respondent No. 1 by the appellant wherein it was alleged against him that his actions were unbecoming of an officer of the bank and constitute misconduct in terms of Conduct Regulations of the Bank.

9. Taking into consideration the findings of report dated 19.03.2016 submitted by the Enquiry Officer, the Disciplinary Authority vide order dated 30.03.2016 imposed the punishment of '*Dismissal which shall ordinarily be a disqualification for future employment'* in terms of

Regulation 4(j) of the PNB Officer Employees (Discipline & Appeal) Regulations, 1977.

10. The respondent No. 1 preferred an appeal against the aforementioned order dated 30.03.2016, which was rejected by the appellate authority vide dated 28.06.2016, against which the respondent No. 1 filed a review petition.

11. During the pendency of review petition filed, a Show Cause Notice dated 23.12.2016 was issued to the respondent No. 1 to explain as to why on account of his acts amounting to moral turpitude, his gratuity be not forfeited.

12. The respondent No. 1 employee filed reply dated 04.01.2017, however, finding his reply unsatisfactory, the appellant vide order dated 15.02.2017 directed forfeiture of his gratuity, being violative of Section 4(6)(a) of the Act. Subsequently, the review petition of the respondent No. 1 employee was rejected by the Reviewing Authority of the appellant Bank *vide* its order dated 6.02.2017. Vide order dated 15.02.2017, the gratuity dues were forfeited and his representation dated 22.02.2017 was also turned down by the appellant.

13. Being aggrieved, the respondent No.1 preferred Writ Petition (Civil) No. 6726/2017 before this Court thereby, challenging the punishment imposed upon him by the Disciplinary Authority *vide* order dated 30.03.2016.

14. During pendency of the aforesaid writ petition, the respondent No. 1 moved an application dated 25.09.2018, before the learned Controlling Authority, Delhi seeking payment of his gratuity.

15. The Controlling Authority *vide* order dated 15.01. 2021 allowed the

above-said application thereby, directing the appellant- Bank to pay to the respondent No. 1-employee his gratuity amounting to Rs.10 Lakhs along with interest@ 10% w.e.f. 301h March, 2016.

16. The appellant -bank preferred an Appeal under Section 7(7) of the Act before the Appellate Authority, however, deposited a sum of Rs.15 Lakhs with the Appellate Authority, as determined by the Controlling Authority. The learned Appellate Authority *vide* order dated 7.04. 2022 dismissed the appeal preferred by the appellant-Bank thereby, holding that since the essential conditions as stipulated under Section 4(6)(b)(ii) of the Act are not proved against the respondent No. 1-employee by a Court of competent jurisdiction, the action of the appellant- Bank to forfeit the gratuity payable to him, was not justified and is unlawful. Thereby, the learned Appellate Authority upheld the order passed by the learned Controlling Authority and directed to take an appropriate action in terms of Rule 18(7) and 18(8) of the Act.

17. Pursuant to the above, the respondent No.2 i.e., The Regional Labour Commissioner (Central) passed an order dated 26.04.2022 whereby, the gratuity deposited by the Deputy Chief Labour Commissioner (Central), New Delhi under the Head of Account "8443- Civil Deposits-Personal Deposits" *vide* Challan No.04 dated 7.04.2022 amounting to Rs.15 Lakhs was directed to be released in favour of the respondent No. 1-employee.

18. Being aggrieved, the appellant preferred the writ petition being W.P.(C) No. 7247/2022 before the learned Single Bench of this Court, seeking quashing of order dated 26.04.2022. In the meantime, the amount deposited with the learned Appellate Authority was released to the respondent No.1.

19. The case of the appellant before the learned Single Judge was that the learned Authorities below have erred in law by failing to consider the settled position of law with regard to forfeiture of gratuity thus, wrongfully holding that the act alleged against the respondent No. 1 employee does not amount to 'moral turpitude'. The appellant pleaded that the findings of the learned Controlling as well as Appellate Authority that the act alleged against the respondent No. 1 employee does not amount to 'an offence' involving moral turpitude are perverse and are liable to be set aside, as the allegation levelled against him have been duly proved by the ICC as well as the departmental authorities hence, the act squarely falls under the ambit of moral turpitude.

20. The stand of the respondent No. 1 before the learned Single Judge was that the impugned order had been passed after taking into consideration the settled position of law and the entire evidence on record and his case does not fall within the ambit of action, which may lead to forfeiture of his gratuity. The respondent No. 1 pleaded before the learned Single Bench that the contention of appellant that his conduct amounts to moral turpitude is not substantiated as no criminal proceedings were ever initiated against him either by the Bank or by the complainant and to bring his case within the ambit of moral turpitude, a criminal complaint is necessary, which has to be dealt by a Court of competent jurisdiction as prescribed under Section 4(6)(b)(ii) of the Act.

21. The learned Single Bench, in the light of submissions made by both the sides, vide order dated 09.07.2023 held that the order of forfeiture of gratuity payable to the respondent No. 1 employee was pre-mature as the said respondent was not convicted by the Court of competent jurisdiction as per Section 4(6)(b)(ii) of the Act.

22. In the present petition, the aforesaid order dated 09.07.2023 is assailed on nine grounds, however, at the time of hearing, learned counsel for the appellant confined relief only to three grounds i.e. A, B and C, which are reproduced as under:-

> *"A. Because the Ld. Single Bench has erred in concluding that for an offence of moral turpitude there must be conviction from criminal court of competent jurisdiction qua the same. It is respectfully submitted that an act by itself may constitute an act of moral turpitude however, there may not be criminal conviction for the same. The Hon'ble Single Bench ought to have considered the fact that what could have been a matter of moral turpitude more grave than a case of proved sexual harassment by the defendant. The act complained of and proved involved depravity of moral behavior of the gravest form. It is the prime responsibility and authority of the employer/court to adjudicate upon the same. The said adjudication cannot, necessarily, be done only by a Criminal Court. That in the present case, the complaint of the complainant Ms. Neeta Teggi, the customer care Executive who was assigned as a Secretary to the respondent was enquired into by constituting an Internal Complaints Committee (ICC), which is a statutory body created under POSH Act. The ICC had given its findings that the charge against the respondent were proved and consequently the departmental action was taken against the respondent the appellant Bank. The forfeiture of gratuity was preceded by the notice to the respondent and after taking his defence into consideration. Thus, the action of the appellant in forfeiting the gratuity was justified and the Ld. Single Judge should have allowed the Writ Petition filed by the appellant.*

B. That any criminal act causes alarm in society and so any conviction under the criminal law amounts to moral turpitude. The learned Single Bench has failed to appreciate that, by applying the principles of ejusdem generis, the proved charges of grave sexual harassment by ICC and Disciplinary Authority cannot be less grave in causing alarm at the work place in particular and society in general and so ought to have considered to be matter of proved sexual harassment as matter of grave moral turpitude and so a fir case for forfeiture of gratuity.

C. Because the Ld. Single Judge has laid too much emphasis on the conviction by a criminal court. It is respectfully submitted that an act in itself may constitute an act of moral turpitude without there being any criminality or any criminal conviction. The definition of moral turpitude cannot be subject to only in case of criminal conviction. An act in itself may constitute moral turpitude. In the present case the complaint by the complainant. (Ms. Neeta Teggi) would itself show the conduct and morals of the respondent herein."

23. Since the relief sought in the present appeal is confined to the issue as to whether the conduct of respondent No. 1 falls within the act of moral turpitude, this Court heard learned counsel for the parties on this limited aspect. Having heard learned counsel for the parties and on perusal of impugned judgment as well as other material placed on record, we find that the learned Single Bench has taken note of the core issue before it was to consider as to whether the action of the Bank to forefeet the gratuity was in

conformity with the provisions of Section 4(6)(b) of the Act, as the employee was dismissed under Regulation 4(j) of Punjab National Bank Officer Employees' (Discipline & Appeal) Regulations, 1977. The learned Single Bench also observed that the provision under Regulation 4(j) does not mandate that termination of an employee would amount to forfeiture of the gratuity of the accused employee. The learned Single Bench further observed that in order for an employer to invoke the provisions contained under Section 4(6)(b)(ii) of the Act for forfeiture of gratuity of an employee, the conditions that must be satisfied are (i) the terminated employee must be convicted for an offence punishable by law for the time being in force and (ii) the said offence must be an offence involving moral turpitude.

24. On this aspect the learned Single Bench in the impugned judgment has held as under:-

> *"69. Section 4(6)(b) of the Act provides for two instances wherein the employer is entitled to forfeit the gratuity payable to a terminated employee. Secondly, Section (4)(6)(b)(i) of the Act provides for instances of forfeiture of gratuity in whole or in part wherein, the termination is on account of riotous or disorderly conduct or any other act of violence committed on part of the employee.*
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> *70. Thirdly, Section (4)(6)(b)(ii) of the Act provides for forfeiture of gratuity in whole or part in instances wherein, the termination of the employee is on account of any act/misconduct committed by him during the course of employment and the same constitutes an offence involving moral turpitude."*

25. It is not in dispute that in the present case, no FIR was registered against the respondent and the allegations levelled against him were never

proved before the Court of Law. As per Section 4(6) of the Act, payment of gratuity has to be denied to an employee only if his dismissal is on account of an act, wilful omission or negligence committed by the employee and the same causes any damage or any loss, destruction of property belonging to the employer.

26. In view of facts and circumstances of the present case, in our considered opinion, the judgment dated 09.07.2024 in W.P.(C) No.7247/2022 passed by the learned Single Bench does not suffer from infirmity, therefore no interference is required by this Court.

27. With aforesaid observations, the present appeal and pending applications are accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

SEPTEMBER 12, 2024
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