IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8487 OF 2023

Prabhat Kumar Singh ***...Petitioner***

V/s.

Accu Pack Engineering Pvt. Ltd. ***...Respondent***

WITH

WRIT PETITION NO. 10018 OF 2023

Shrikant B. Chinchkar ***...Petitioner***

V/s.

Accu Pack Engineering Pvt. Ltd. ***...Respondent***

WITH

WRIT PETITION NO. 10131 OF 2023

Nilesh Afre ***...Petitioner***

V/s.

Accu Pack Engineering Pvt. Ltd. ***...Respondent***

WITH

WRIT PETITION NO. 10231 OF 2023

Anil Sahadeo Kadam ***...Petitioner***

V/s.

Accu Pack Engineering Pvt. Ltd. ***...Respondent***

Mr. Tarun Kumar Sinha *for the Petitioner.*

Mr. Vijay P. Vaidya *with Mr. Mahendra Agvekar and Ms. Shraddha Chavan i/b. for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 20 March 2025.

Judgment pronounced on: 2 April 2025.

Judgment:

1) The issue involved in the present Petitions is whether Petitioners, who have pocketed commission by floating fictitious firm in the names of their wives while procuring spare parts at exorbitant rates, are entitled to gratuity after termination of their services?

2) Petitioners have filed these Petitions challenging the judgments and orders dated 24 March 2023 passed by the Appellate Authority under the Payment of Gratuity Act and In-charge Member, Industrial Court, Thane, allowing the appeals preferred by Respondent-employer and setting aside orders dated 18 April 2022 passed by the Controlling Authority under the Payment of Gratuity Act and Judge, First Labour Court, Thane. The Controlling Authority had allowed applications preferred by the Petitioners and had held that they are entitled to gratuity from the Respondent-employer together with interest @10% per annum from the dates of their resignations. The Appellate Authority has held that Petitioners are not entitled to gratuity and accordingly Petitioners have filed the present Petitions challenging the orders passed by the Appellate Authority.

3) Briefly stated, facts of the case are that Respondent is engaged in the business of manufacturing and selling machinery, equipment and accessories primarily for pharmaceutical industries. It has set up manufacturing facilities where the parts and equipment are manufactured. Manufacturing of some of the parts are also undertaken from outside sources. Petitioners were employed with the Respondent-employer in following capacities:

Prabhat Kumar Singh	Senior Manager, Production, Planning and Control.
Anil Sahadeo Kadam	Manager, Purchase Department
Nilesh Afre	Manager, Production Department
Shrikant B. Chinchkar	Senior Executive, Purchase Department

4) It is the case of Respondent-employer that a partnership firm was floated by the wives of the four Petitioners in the name of M/s. Meck Kraft Industries and in absence of any manufacturing facilities of the said Firm, Petitioners procured the goods manufactured by M/s. Samurai Engineering through M/s. Meck Kraft Industries and earned huge profits without any investment. It was alleged that components manufactured by M/s. Samurai Engineering were procured by Petitioners through the Firm of their wives at 200% to 300% costs and thereby caused huge financial loss to the employer. Petitioners tendered the resignations on various dates as under:

Name of the Petitioner	**Date of tendering resignations**

Prabhat Kumar Singh	3 October 2018
Anil Sahadeo Kadam	20 September 2018
Nilesh Afre	17 September 2018
Shrikant B. Chinchkar	17 September 2018

5) The employer issued communication dated 11 October 2018 to the Petitioners accusing them of indulging in activities against the interest of Respondent-company and expressed desire to hold enquiry. Petitioners were directed to proceed on leave until further orders. Petitioners were thereafter issued letters dated 5 November 2018 alleging that they caused losses to the Respondent-company to the tune of Rs.50 lakhs and asked them to show cause as to why the gratuity should not be forfeited to the extent of the amount of losses caused. By orders dated 14 November 2018, Respondent-company terminated their services. Since no reply was received to the show cause notices, the gratuity was forfeited in addition to liberty for recovery of the amount of losses caused to the company. Simultaneously, Respondent-company lodged FIR against Petitioners and their wives on 20 September 2018 with Rabale MIDC Police Station.

6) Petitioners did not question their terminations. However, they filed applications before the Controlling Authority for payment of gratuity. The applications were resisted by the Respondent-company by filing written statements. In the meantime, investigations were conducted by the police and final report was filed on 23 November 2019 opining that the Firm of wives of the Petitioners (M/s. Meck Kraft Industries) had received amount of Rs.11,90,244/- from the Respondent and

amount of Rs.3,01,400/- was still due and payable from the Respondent -company for supply of goods manufactured by M/s. Samurai Engineering. The police however, recommended filing of summary report for closure by opining that the dispute was of civil nature.

7) The Controlling Authority allowed the applications preferred by the Petitioners and directed payment of following amount of gratuity to the Petitioners alongwith interest @ 10% per annum from the dates of resignation till full realisation of the entire amount. The amount of gratuity directed to be paid by the Controlling Authority by its order dated 18 April 2022 are as under:

Name of the Petitioner	**Amount of gratuity**
Prabhat Kumar Singh	3,79,817/-
Anil Sahadeo Kadam	2,99,538/-
Nilesh Afre	3,74,867/-
Shrikant B. Chinchkar	2,06,630/-

8) The Respondent-company challenged the orders passed by the Controlling Authority on 19 April 2022 by filing appeals before the Appellate Authority. The Appellate Authority has allowed the appeals preferred by the Respondent -company and by its judgment and orders dated 24 March 2023, set aside orders passed by the Controlling Authority. Petitioners are aggrieved by orders passed by the Appellate Authority and have accordingly filed the present Petitions.

9) Mr. Sinha, the learned counsel appearing for the Petitioners would submit that the Appellate Authority has erred in setting aside well considered orders passed by the Controlling Authority. That Respondent did not conduct any enquiry nor held Petitioners responsible for cause of any loss to it. That Petitioners have actually resigned from the services of Respondent and that therefore there was no occasion for conduct of any enquiry or passing of orders of termination. That only proceedings initiated by Respondent against the Petitioners is criminal prosecution by filing FIR. That upon investigations, Police did not find any material to subject Petitioners for prosecution and accordingly filed summary report closing the proceedings. That thus no finding is recorded in any proceedings about any action of the Petitioners resulting in loss to the Respondent-company. That Respondent cannot be permitted to unilaterally conclude that a loss is caused to it. That loss must be established in criminal prosecution. That Petitioners are not convicted of any offence and therefore there is no warrant for forfeiture of their gratuity. That whole story of cause of loss to the Respondent-company was based on surmises and conjectures. Police investigations ultimately bore out the fact that the Firm-Meck Kraft Industries has received an amount of Rs.11,90,244/- and that an amount of Rs.3,01,400/- was in fact due and payable to the said Firm. That against the receipt of amount of Rs.11,90,244/- the Firm has supplied parts to the Respondent-company and there is no complaint that there was any defect in the said parts or the same were not genuine. That therefore it

cannot be concluded that any losses are suffered by the Respondent on account of procurement of the parts through the Firm-Meck Kraft Industries. The whole claim of cause of loss of Rs.50,00,000/- is ultimately found to be totally baseless. That the show cause notice was premised on baseless claim of cause of loss of Rs. 50,00,000/- and therefore order of forfeiture of gratuity based on such fallacious claim was clearly unsustainable. He would submit that payment of gratuity is in respect of services rendered by Petitioners and it is their fundamental right, which cannot be denied. That Respondent was otherwise procuring the goods manufactured by M/s. Samurai Engineering and in absence of any allegation that Petitioners procured dubious goods, presumption of loss to the Respondent-employer cannot be inferred in the facts and circumstances of the present cases. In support of his contentions, Mr. Sinha would rely upon following judgments:

(i) *Sharad Baburao Pote Vs. Maharashtra State Road Transport Corporation.*[1]
(ii) *Central Warehousing Corporation Vs. G.C.Bhat and Anr.* [2]
(iii) *Mr. Vinod s/. Vinayak Jinturkar Vs. State of Maharashtra*[3]
(iv) *Union Bank of India and Ors. Vs. C.G. Ajay Babu & Anr.*[4]
(v) *MSRTC Vs. Maruti Ramchandra Mastud*[5]
(vi) *Western Coal Fields Ltd. Vs. Presiding Officer, Appellate Authority under PGA 172, Nagpur*[6]

1 Writ Petition No.889 of 2022, decided on 19 September 2024 (Aurangabad Bench)
2 Writ Petition No.102635 of 2024, decided on 10 January 2025 (Karnataka High Court, Dharwad Bench)
3 2011 I CLR 104
4 2018 III CLR 325
5 2011(6) BomC.R. 577
6 2020 II CLR 38

10) The Petitions are opposed by Mr. Vaidya, the learned counsel appearing for the Respondent-company, who would submit that cause of loss to the Respondent-company is specifically admitted in evidence by the Petitioners. That it was permissible for Respondent-employer to prove before the Controlling Authority that it actually suffered losses. He would take me through evidence and particularly the admissions given by the Petitioners before the Controlling Authority. He would submit that the Appellate Authority has rightly considered the said allegations for recording a finding of fact of cause of loss to the Respondent-employer. He would submit that Petitioners have defrauded the Respondent-employer by forming a fictitious partnership in the names of their wives for the purpose of securing commission towards procurement of parts needed for manufacturing process by the Respondent. That Petitioners were associated with purchase and procurement activities of the Respondent and misused their position for causing wrongful gain to themselves and corresponding wrongful loss to employer. The Controlling Authority has erroneously considered the case of Petitioners under the provisions of Sections 4(6)(b)(ii) of the Payment of Gratuity Act, 1972 (**Gratuity Act)**, when in fact, the case was governed by provisions of Section 4(6) (a) of the Gratuity Act. In support of his contentions, Mr. Vaidya, would rely upon judgment of Karnataka High Court in ***Karnataka State Road Transport Corporation Vs. The Deputy Labor Commissioner and the Appellate Authority, Under the***

Payment of Gratuity Act and Ors.[7] He would pray for dismissal of the Petitions.

11) Rival contentions of the parties now fall for my consideration.

12) Petitioners do not seriously dispute the position that partnership firm by name M/s. Meck Kraft Industries was formed by their wives as partners. They also do not dispute the position that some of the parts required for manufacturing process by the Respondent-Company were procured through the said Firm- M/s. Meck Kraft Industries. It is also not a disputed position that the Firm-M/s. Meck Kraft Industries did not have its own manufacturing facility. The Firm did not itself manufacture those parts and sourced them from M/s. Samurai Engineering. It is the case of the Respondent-employer that the parts procured from M/s. Samurai Engineering were sold to the Respondent at exorbitant costs. This fact is admitted by Petitioner-Prabhat Kumar Singh in his cross-examination. He has admitted that *"It is correct to say that whatsoever requirements of opponent M/s. Make Craft Industry purchase spare part from M/s. Samurai Engineering and exorbitant prize of the said spare part sale to the opponent company. Now I am shown the copy of tax invoice filed below Exh.C-5, serial no.3, page no.11. The purchase item viz.F12, 11 Forming Dying from Samurai Engineering purchased by M/s. Make Craft Industries of Rs.3,600/- and it was supplied to the opponent company under*

[7] 2011 SCC OnLine Kar 3548

the invoice of M/s. Make Craft Industries of Rs.6,900/-. It is correct to say that said Fraudulent transactions continue since 2017."

13) Respondent-company has placed on record various invoices of purchase and spare parts from M/s. Samurai Engineering and sale thereof by M/s. Meck Kraft Industries to the Respondent-company virtually by doubling or tripling the price. Petitioners were associated with purchase and procurement activities of Respondent-employer. Petitioner - Anil Sahadeo Kadam was a Purchase Manager. Petitioners misused their position by forming fictitious Firm in the names of their wives and sold various spare parts to the Respondent -company at exorbitant costs and thereby pocketed the difference. In the evidence led before the Controlling Authority, the aforesaid activities of the Petitioners are conclusively proved. I am therefore not in agreement with Mr. Sinha that the cause of loss to the Respondent-employer has not been established. It was open for Respondent to prove before the Controlling Authority that it actually suffered losses on account of acts of the Petitioners. In this regard reliance is placed by Mr. Vaidya on judgment of ***Karnataka State Road Transport Corporation*** (supra), in which it is held that for forfeiture of gratuity under Section 4(6)(a) of the Gratuity Act, cause of loss was required to be proved before the Controlling Authority. In the present case, show cause notices for proposed action of forfeiture of gratuity were issued to the Petitioners. However Petitioners failed to respond to those notices and thus did not dispute the allegation

of cause of loss to the employer by their acts. Additionally, the employer proved before the Controlling Authority that it did suffer loss on account of actions of Petitioners. Petitioners in fact virtually admitted their guilt as well as the factum of cause of loss to the employer by their actions.

14) The Controlling Authority had totally misdirected itself in considering the present case under provisions of Sections 4(6)(b)(ii) of the Gratuity Act. As a matter of fact, present case is governed by the provisions of Section 4(6)(a) of the Gratuity Act. It would be apposite to reproduce Section 4 of the Gratuity Act, which provides thus:

> **4. Payment of gratuity**
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> (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,
>
> (a)on his superannuation, or
>
> (b)on his retirement or resignation, or
>
> (c)on his death or disablement due to accident or disease:
>
> **PROVIDED** that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:
>
> **PROVIDED FURTHER** that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.
>
> *Explanation*: For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.
>
> (2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of

fifteen days' wages based on the rate of wages last drawn by the employee concerned:

PROVIDED that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

PROVIDED FURTHER that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year the employer shall pay the gratuity at the rate of seven days' wages for each season.

Explanation .-In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

(3) The amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1),-

(a) the gratuity of an employee, whose services have been terminated for any act, willful 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

(i)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

(ii)if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

15) Thus, the gratuity was not forfeited on the ground of termination of services for an act constituting an offence involving moral turpitude. The forfeiture was owing to termination of services for willful omission or negligence causing damage or loss to the employer. The Controlling Authority has grossly erred in relying on judgment of the Apex Court in ***C.G. Ajay Babu*** (supra). The judgment of the Apex Court deals with sub-section 6(b)(ii) of Section 4 of the Gratuity Act where gratuity was sought to be forfeited owing to termination for an act which constituted offence involving moral turpitude. For the same reason, reliance by Mr. Sinha on judgment of this Court in ***Sharat Baburao Pote*** (supra) is again misplaced where gratuity was forfeited under sub-clause (ii) of sub-section 6(b) of Section 4.

16) In fact, in ***Western Coal Fields Ltd. Vs. Manohar Govinda Fuzlele***[8], the Hon'ble Apex Court has held that conviction for offence involving moral turpitude in criminal prosecution is not necessary for forfeiture of gratuity under Section 4(6)(b)(ii) of the Gratuity Act. It is held as under:

> 9. **With all the respect at our command, the interpretation in *C.G. Ajay Babu* 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 Babu*** since the provisions of the Section 4, including sub-section (6) was found to be inapplicable to the employer Bank and its employee,

[8] 2025 SCC Online 345

by virtue of sub-section (5) of Section 4. **The interpretation, hence, with due respect was an obiter making a reference unnecessary.**

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, 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 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 v. 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 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 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 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.
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> *(emphasis added)*

Thus, in its recent judgment in ***Western Coal Fields Ltd. Vs. Manohar Govinda Fuzlele*** the Apex Court has held that the interpretation in ***C.G. Ajay Babu*** does not come out of the statutory provision under Section 4(6)(b)(ii) of the Act. In the present case, if the employer was to hold domestic enquiry and proved the charges, forfeiture of gratuity could have been effected even under Section 4(6)(b)(ii) as well since the conduct of Petitioners undoubtedly involves moral turpitude. But since domestic inquiry is not held, I am not inclined to uphold the order of forfeiture of gratuity on the ground of commission of acts involving moral turpitude. However, the employer has proved before the Controlling Authority that loss has been caused to it because of acts of the Petitioners and therefore forfeiture of gratuity is clearly sustainable on that count.

17) After considering the overall conspectus of the case I am of the view that the Respondent-employer has sufficiently proved before the Controlling Authority that Petitioners caused

loss to the Respondent-employer through supply of spare parts at exorbitant costs through the partnership firm in the names of their wives. It would be relevant to reproduce the findings recorded by the Appellate Authority in this regard in paragraphs 17 to 19 as under:

> 17. If these admissions of the applicant are considered, then the opponent company proved that the applicant and other three executives of the company had been entrusted to purchase the part and components required by the opponent company. Samurai Engineering is one of the approved suppliers of the company. The applicant and three persons purchased the part and components from Samurai Engineering. and sold the same to the opponent company at costs of 200% to 300% higher costs. So the applicant and three other persons earned 200% to 300% profit on the parts purchased from them from outside and selling the same to the opponent company. These four persons being employees of the opponent company were duty bound to protect the interests of the employer and to see that employer should be benefited. From March- 2017 to September-2018, this practice was followed by the applicant and other three executives. The opponent company has produced 20 odd invoices on record showing the purchase made by the applicant and other three executives had purchased the parts and components and sold it to the opponent company in the name of Meck Kraft Industries.
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> 18. The applicant admitted that all these four ladies partners of Meck Kraft Industries have no knowledge about these parts and components. This company did not engage any expert engineer for its work. This means that the applicant and other executives were running the business of Meck Kraft Industries in the name of their respective wives. They purchased the parts and components from Samurai Engineering and were selling to their own employer earning 200% to 300% profit. Without investing a single rupee, they were getting 200% to 300% profit on the goods purchased from Samurai Engineering by selling the same to the opponent company. This amounts to misconduct. So this amounts to an act causing any damage or loss of the property belonging to the employer. Had the applicant and three other executives purchased the components from Samurai Engineering for the employer, then 200% to 300% costs of the employer would have been saved. So the act of the applicant clearly comes within the language of section 4(6((a).
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> 19. It is the contention of the applicant that loss caused to the employer is not proved by the opponent company. Considering the admissions of the applicant, the loss caused to the opponent company is substantial. Some 20 odd invoices are purchased by the opponent company on record. There may be many more such

> invoices. activities of the applicant were going on from March-2017 to September-2018 i.e. for about 18 months. The applicant is having access to all the documents of Meck Kraft Industries. So all the invoices of selling of part and components by Meck Kraft Industries to the opponent company are within the knowledge of the applicant and other three executives. So, they know the profit earned by them in the name of Meck Kraft Industries. The applicant concealed this fact from the Court and is not approaching the Court with clean hands. The report was lodged by the opponent company with police. The police filed summary after investigating the report. In the summary filed by the police, "police has mentioned that the accused were purchasing the material from other company and selling the same to the complainant company. They took amount of Rs.11,90,244/- from the complainant company and they are yet to receive amount of Rs.3,01,400/-". So the police in the investigation has stated that the applicant and others have taken amount of Rs.11,90,244/- from the employer. So from the police report which is produced by the applicant on record it is clear that the application and other three persons caused wrongful loss to the employer and wrongful gain to themselves and their family members. So the dishonest intention on the part of the applicant is clearly established by the opponent company.

18) The Appellate Authority has rightly concluded that there was loss roughly to the tune of Rs.12,00,000/- to the Respondent-employer on account of acts of the Petitioners. The total amount of gratuity to all the four Petitioners is roughly to the tune of Rs.12,60,850/-, which more or less matches with the figure of losses suffered by Respondent-employer.

19) In my view, therefore, the Appellate Authority has rightly reversed the erroneous orders passed by the Controlling Authority, which had committed a fundamental error in presuming that forfeiture of gratuity was under provisions of Section 4(6)(b)(ii) of the Gratuity Act. Forfeiture of gratuity in the present cases is under Section 4(6)(a) of the Gratuity Act.

20) Mr. Sinha has relied upon judgment of Karnataka High Court in ***Central Warehousing Corporation*** (supra) in which it is held that action for recovery of misappropriated amount must be initiated for forfeiting the amount of gratuity. The judgment has been rendered in the facts of that case. Clause (a) of sub-section (6) of Section 4 of the Gratuity Act specifically permits the employer to forfeit the gratuity to the extent of loss suffered by the employer. Cause of loss can be established by the leading evidence. I am therefore of the view that mere failure to initiate proceedings for recovery of losses cannot be a ground for setting aside order of forfeiture of gratuity once cause of loss is proved before the Controlling Authority. Judgment of Division Bench of this Court in ***Vinod Vinayak Jinturkar*** (supra) is relied upon in support of contention that right to receive gratuity, being a statutory right, cannot be subservient to the common law rights of employer to terminate the services of employee. In that case, the Division Bench held that in absence of specific finding in an enquiry about cause of loss of definite amount, gratuity of the employee cannot be forfeited. In the case before the Division Bench, no charge was framed nor any departmental enquiry was held nor findings were recorded about cause of loss to the employer. In the present case cause of loss to the employer has been proved by leading evidence before the Controlling Authority.

21) Mr. Sinha has relied upon ***Maharashtra State Road Transport Corporation*** (supra). However, in that case, no evidence was led by Petitioner-MSRTC before the Controlling Authority for the deficit that had occurred on account of acts of

Respondent therein. In the present case specific evidence is led to prove cause of loss to the Respondent -employer.

22) Lastly, Mr. Sinha has relied upon judgment of co-ordinate Bench of this Court in ***Western Coal Fields Ltd.*** (supra), in which the employee therein was subjected to charge of submitting false information about date of birth. The gratuity was sought to be forfeited under Section 4(6)(b)(ii) of the Gratuity Act and therefore the judgment has no application to the present cases.

23) The present case involves admission of involvement of Petitioners in the dishonest acts. Petitioners had in fact attempted to resign from the services of Respondent-company by tendering their resignations after their activities got exposed. They did not bother to give reply to the show cause notices for forfeiture of the gratuity. They did not contend that no financial loss was suffered by the employer. In my view therefore, the order passed by the Appellate Authority in upholding the forfeiture of gratuity in respect of the Petitioners does not warrant any interference in exercise of extraordinary jurisdiction of this Court. Petitioners have filed the present Petitions under Article 227 of the Constitution of India. The jurisdiction is supervisory and corrective in nature. This Court would refuse to exercise the jurisdiction where it finds that grant of relief in Petitioners' favour would virtually put a premium on illegalities committed by them. Petitioners have admittedly committed activity of pocketing monies while purchasing spare parts through the

partnership firm of their wives at exorbitant rates. The facts of the present case do not warrant interference by this Court in exercise of extraordinary jurisdiction under Article 227 of the Constitution of India.

24) I therefore do not find any error in the impugned orders passed by the Appellate Authority. Petitions are devoid of merit and the same are accordingly dismissed without any orders as to costs.

[SANDEEP V. MARNE, J.]