

*Editorial*

## CONFEDERATION BEACONS

**I**n our editorial for February 2021 issue, we observed "The 12th Triennial General Council had sounded the bugles of an incoming epic battle where 3.5 lakh determined soldiers of financial army are ready in a combative mood to protect their dignity, rights, privileges by ensuring that the proponents of so called reforms would not pierce through the roofs of public sector banking. No sacrifice is enough in ensuring the welfare oriented public sector character of Indian banking which is the only guarantee of keeping the wheels of the economy going without exposing it to an economic system concordant with a banana republic."

Our apprehension was unfortunately confirmed by Hon'ble Union Finance Minister, when she accused PSBs of being laggards and in her quest for efficient banks, announced her decision to privatize 2 PSBs, one public sector general insurance company along with IDBI Bank within the coming fiscal itself. We are all aware that if winter comes, the spring cannot be far behind. If they can privatize 2 PSBs by amending legislation like the banking Companies (Acquisition & Transfer of Undertaking) Act, 1970 and 1980 as well as the SBI Act, 1955, it is only a question of time when the entire space is privatized for the cronies.

A decisive war cry is announced by UFBU. Bankers will strike back hard on 15th and 16th March, 2021. The counter offensive need to be scaled up and the wall of barricade should clearly tell the power that be that enough is enough and the sellers of national assets will not be allowed to touch the banking sector and in other words, the victory march of the movement of resistance will start from the doorstep of financial sector. Common Bond is confident that the movement will reinvent its language of resistance and ensure for the country which is ravaged by the worst pandemic of the century that rebuilding will be done with public sector banking in particular and state sector in general continues to retain its position of commanding high. Gear-up for the struggle. Let it be a spring of sacrifice, determination and victory.



**A JUG FILLS DROP BY DROP**

### FAREWELL

Comrade Sunil Kumar, President AIBOC, has demitted office on his attaining superannuation from Bank of India on 31<sup>st</sup> January, 2021, after 37 years of illustrious and immaculate service career. Common Bond recalls his valuable contribution as a member of the Editorial Board and trust that it will continue to get his inspirational patronage.

### WELCOME

Common Bond welcomes Com T. Murali Soundararajan, General Secretary, Indian Overseas Bank Officers' Association, as the President of AIBOC. It trusts that it will be impacted by his stellar guidance and contribution as a member of the Editorial Board.

OBSERVE 2 DAYS STRIKE ON 15<sup>TH</sup> AND 16<sup>TH</sup> MARCH, 2021 AND OBSERVE ALL PROGRAMMES ANNOUNCED BY UFBU AND AIBOC

## 12TH TRIENNIAL, A RIOT OF COLOUR, YOUTHFUL EXUBERANCE, SOLIDARITY AND OATH FOR INTENSIFIED STRUGGLE CONCLUDED IN KOLKATA



It can happen only in Kolkata! When the whole country is literally tethered by the ramifications of the deadly pandemic, the jubilancy and passion for trade unionism was vivid and conspicuous at Kolkata, the 'City of Joy', where our fraternity cherishes the legacy of struggles for the working class in the country. Nearly a thousand officers across the length and breadth of the country descended at Com S R Sengupta Nagar (Kolkata) and thronged Com A K Jana Mancha (EZCC), to attend the 12th Triennial General Council of AIBOC.

2. The open session of the General Council was preceded by a vibrant procession. The Grand Street near the venue at Sec-III, Salt Lake wore a festive look as nearly 2000 officers hit the streets, accompanied by a bike rally ahead holding

colourful placards showcasing the concerns and demands of AIBOC. Despite exuberance and fervour, our comrades maintained discipline and observed 'social distancing' throughout the rally. "AIBOC March On" – reverberated thorough out the entire span alluring the attention of all. Paying rich tributes to the doyens, the city was rechristened as Com S.R. Sen Gupta Nagar and the venue as Com A K Jana Mancha, Com Sunil Kumar, President and the undersigned requested the veteran comrades K D Kheda, Com Amar Pal, Com Harvinder Singh, Com D T Franco, Com Dilip Saha, Com Debasis Ghosh and other senior leaders to join in hoisting the AIBOC flag. The flag was hoisted amidst thunderous slogans of hundreds of delegates. The leaders thereafter offered floral tributes to the INA Martyr's column. Hundreds of red and white gas balloons were released which had the AIBOC logo.



**IN THE SKY THERE IS NO DISTINCTION OF EAST AND WEST**



## INAUGURAL SESSION

3. The programme started with an audio-visual presentation on the journey of the 8th Joint Note projecting the activities of AIBOC during the triennial. The video encapsulated the pious social responsibility displayed by the AIBOC and its affiliates all over the country at times of crisis – floods, cyclones, Covid, health care and how the financial army confronted the odds while discharging their responsibility in keeping the wheels of the Indian economy in motion. It was followed by a mellifluous musical rendition performed by 'Srijan', the cultural wing of SBI Officers' Association, an affiliate of the State unit, which was a collage of patriotic and revolutionary songs. The anchors of the program, Com Jyothi KP and Com Saurabh Upadhyay proceeded to the call the dignitaries on stage starting with 'Joint Convenors' of the reception committee Com Shubhajyoti Chattopadhyay, President and Com Sanjay Das, Secretary, AIBOC West Bengal State Unit welcomed the leaders on stage. Instead of flower bouquets, the organisers had arranged 'saplings' to be offered to all the dignitaries as a part of the 'Go Green' initiative. After lighting of the ceremonial lamp, the dignitaries paid floral tributes and respects to Netaji Subhas Chandra Bose on the occasion of 125th Birth Anniversary of the great patriot. Floral tributes were also offered to the portraits of Com S R Sengupta and Com A K Jana. The dais for the inaugural session was graced by the presence of 'Guests of Honour' Dr. Prasenjit Bose, eminent Economist; Shri Nagarajan S – General Secretary (AIBOA); Shri Prem Kumar Makker, General Secretary (INBOC);



Shri Viraj V Tikekar, General Secretary (NOBO) and Shri Suprita Sarkar, General Secretary (AIBPARC).

Com S Roy Choudhury, Com Dilip Saha – Advisors; Com Sanjay Manjrekar, Com Murali Soundararajan T, Com Deepak Kumar Sharma, Com Rupam Roy - Sr Vice Presidents; Com Shubhajyoti Chattopadhyay, President and Com Sanjay Das, Secretary of AIBOC WB State Unit and Com Sunil Kumar, President AIBOC and the undersigned, the General Secretary of the Confederation were also seated on the dais.

4. Chief Guest and Inaugurator of the Triennial General Council Shri Raj Kiran Rai G, Chairman of the IBA, joined the inaugural session through the virtual platform since he could not make it to Kolkata due to sudden flight cancellation at the last moment. During his inaugural address, he paid tribute to Netaji Subhas Chandra Bose and then touched upon various issues confronting the banking industry like digital transformation in the country, role in nurturing human capital, disruptive technology, amalgamation of banks retaining the best of the systems, employees getting best of the benefits, relentless struggle and contribution of bankers during the COVID times even, at their own peril. He congratulated the leaders for their maturity, prudence and perseverance in successfully concluding the wage revision at the times of a dire crisis like COVID. He praised the yeoman service extended by the bankers. He extolled the involvement and dedication of trade unions and commented that the trade unions were the safety net for the youngsters, and the trade unions infuse and impart huge confidence in them. He was also happy that the integration at trade union level is also well taken care of. He lauded and appreciated the contribution of Com Sunil Kumar and the undersigned for their prudence and patience that paved way for the successful wage revision. He also praised the Associations for taking up uniform staff accountability policy and informed the gathering that the report of committee in that regard was expected shortly. He

**THERE HAS TO BE EVIL SO THAT GOOD CAN PROVE ITS PURITY ABOVE IT**

opined that the same will instill tremendous confidence in the young generation officers in delivering their duties as a banker especially in the credit portfolio. He wished the conference a grand success.

5. Com Sunil Kumar, President, accorded a warm welcome to all the guests, yesteryear leaders and the delegates, who had assembled from the length and breadth of the country. He briefed the gathering on the programs and informed that the next two days' business session would actively deliberate on the road map ahead. He expressed his gratitude and contentment that four officers' organisations, who were instrumental in clinching the historic 8th Joint Note again congregated on the same platform and, in the days to come, would definitely succeed in consolidating the platform. He summoned the cadre to be ready to throng the street, to protest against the vicious policy attacks on bankers, as the social media campaign alone would never yield results.

6. The undersigned during his welcome address started his deliberation with an opening note, that AIBOC manifested the intent to encourage the women and the youth, who were metaphorically nominated as the anchors of the program. He

enunciated the journey of trade unions for the 8th Joint Note, Morchas, social responsibilities, organisational activities undertaken during the triennial, and thanked the delegates who were a part of the conference, hailing from Aizawl to Ahmedabad and from Kashmir to Kanyakumari. He stressed upon the need for the unity of officers' organisations as banking was an 'Officer-driven industry'. He recalled how a rock-solid unity was forged among the four officers' organisations, the other three being AIBOA, INBOC, and NOBO. Recognising and lauding the role played by them and their strong bonding during the recent wage revision, they had been invited as the "Guests of honour" to felicitate them for the contribution in clinching the benefit to the officers' fraternity on completion of the signing of the 8th Joint Note. He said that this formidable combination would demonstrate the unity of our organisations to the whole country. He also recollected the successful conduct of the Global Banking Trade Union Convention, Women and Youth Conventions convened by AIBOC, which were unique. He reminisced the contribution of the yesteryear leaders who built the edifice of AIBOC through their sacrifice, blood, toil and sweat. He acknowledged the colossal contribution of all former Presidents and General Secretaries, who



**OVERCOME ANGER BY LOVE, EVIL BY GOOD**

were present in the auditorium viz. Com K D Kheda, Amar Pal, P K Sarkar, Harvinder Singh, D T Franco, Dilip Saha and Debasis Ghosh. He also placed before the august gathering, the involvement and contribution of the Presidents and General Secretaries of various affiliates, some of who have since been merged. He placed on record the appreciation for the role played by Shri Alok Kumar Choudhary, Deputy Managing Director, State Bank of India, who was the Chairman of the working group for officers' in the wage revision. He said that the organisers of the Triennial General Council also encouraged the shunning of plastics and informed the house that the welcome kits for the delegates were made from Jute and Khadi, which had once been the premier industry in the State. The items were prepared by an NGO, "Calcutta Social Project", who engaged downtrodden, oppressed, estranged women and slum dwellers to work to make them financially independent. Subsequently, the chief functionaries of Calcutta Social Project Shri Arjun Dutta and Smt Barsha Mukherjee were felicitated.

He expressed his sincere gratitude to the State Committee, extending his warm regards to Com Shubhajyoti Chattopadhyay and Com Sanjay Das and their vibrant Team for their dedicated and untiring effort in conducting the Triennial. He reminded the delegates of the present turbulence, and proclaimed that a new course had to be chartered for our existence. He also conveyed that farmers had demonstrated the entire nation how to make the government blink in the face of democratic resistance. He concluded that resistance has to be put up against the ill-conceived reforms democratically and diplomatically involving the common man to save the public sector banks.

#### **ADDRESS BY GUESTS OF HONOUR**

7. Shri Nagarajan S, General Secretary, AIBOA: In his address, he touched upon how the wage revision was concluded, the hurdles faced and

deliberated on how the officer's organisations surmounted them. He also touched upon the ill effects of digitalisation, Artificial Intelligence, recession, unemployment, wilful corporate defaulters, write-off, impact on wage revision and also on the denial of benefits. He lauded the role played by the AIBOC leadership, in particular that of Com Sunil Kumar and the undersigned in the wage revision. He unequivocally stated that AIBOA will continue supporting and a strong-willed and focused fight need to be put up to thwart future challenges.

8. Shri Prem Kumar Makker, General Secretary, INBOC: In his address stated that he was proud to participate in the session and the Conference which coincided with the 125th birth anniversary of Netaji Subhas Chandra Bose being held in Kolkata, the cradle of trade union movement in the country. He appreciated the role of AIBOC and also lauded the perseverance of Com Sunil Kumar and the undersigned to arrive at the finest settlement even under the present circumstances. He touched upon the ill effects of privatisation and appreciated the present alignment of four officers' organisations. He felicitated Com Sunil Kumar, President, who was attaining superannuation at the end of the month.

9. Shri Viraj V Tikekar, NOBO: In his address appreciated the synergy of four officers' organisations. Drawing inspiration from the quotes of Rabindranath Tagore, Netaji, Swami Vivekananda, he stated that we needed to get into action and come out of the comfort zone. He appreciated the AIBOC's vision and mission. He also expressed his views that AIBOC could deliberate in getting associated with a Central Trade Union.

10. Dr Prasenjit Bose, Economic researcher and social worker: In his thought-provoking address touched upon various aspects of banking, economic, recession, and the way the PSBs supported the nation in coming out of the economic rundown. He expressed a note of dissent on the views expressed by IBA Chairman, in his address. He said that the share of PSB has been coming down, and it is staging a managed affair of the government to send

**THREE THINGS CANNOT BE LONG HIDDEN: THE SUN, THE MOON AND THE TRUTH**



PSBs to oblivion. He cautioned that the NPA was expected to rise to 16% by September 2021 which was due to the "Riskless Capitalism". He praised the PSBs and said that today's infrastructure development what our country achieved, from Airports to Roads to Ports was the contribution of PSBs. Capitalists were availing credit from PSBs, but were diverting the funds, siphoning off from the system ultimately contributing to the burgeoning NPAs. Insolvency and Bankruptcy Code / NCLT introduced by the Government had not been helpful as it was focused more on write off of bad debts rather than concentrating in its recovery. No details were available as to know who were the corporates being favoured in the 'haircut' exercises. He said that the trade unions, customers and the common man must join hands to protect the system and save the economy.

11. Com Suprita Sarkar, General Secretary, AIBPARC: In his address recollected the constitution of AIBOC and said that it had always been a right path and choice for the officers' community. He lauded the wage revision led by AIBOC under the present circumstances, for all cadres up to TEGS VII and also for the upgradation of family pension. He also praised AIBOC for the integration of Associations post-merger of PSBs. He also urged upon the leadership to strive to achieve pension updation. He assured that AIBPARC will stand by AIBOC and wished the conference be an astounding success.

#### **FELICITATION OF YESTERYEAR LEADERS**

12. Continuing the legacy of felicitating the past Presidents and General Secretaries of AIBOC, Com K D Kheda, Com Amar Pal, Com P K Sarkar, Com Harvinder Singh, Com DT Franco, Com Dilip Saha, Com Debasis Ghosh, were called on stage and felicitated by Com Sunil Kumar and the undersigned amidst rousing applause which resonated throughout the auditorium.

Former Presidents and General Secretaries of affiliates, who had superannuated after the last

Triennial at Jaipur were also felicitated to acknowledge their contribution as well as to their affiliate in strengthening AIBOC. The leaders felicitated were Com G Subramanyam, Com Ramkumar Sabapathy, Com Ravinder Gupta, Com Sambit Misra (AISBOF), Com Madhusudana B N (FBOIOA), Com Rajendran K and Com Jyotirmoy Roy (AIIBOA), Com SK Bhattacharya, Com Makhija (AIRRBOF), Com Rajendra Bhavsar (AIDBOF), Com Prakash Karotia (SBOA), Com N Pradeep Kumar (AIABOF).

#### **BOOK RELEASE – COMPENDIUM OF JOINT NOTES**

13. On behalf of All India Allahabad Bank Officers' Association (AIABOA), Com Biswa Ranjan Ray, President and Com Anand Rao P, General Secretary were invited on stage to join the dignitaries in releasing a Compendium of Joint Notes signed till date. The entire house appreciated the commendable effort of AIABOA.

14. AIBOC President, while delivering his concluding note recollected the contribution of all the yesteryear leaders, efforts of the State Unit, views of the guests of honour and called upon Com Murali Soundararajan to propose the 'Vote of Thanks'.

Com Murali Soundararajan thanked Shri Raj Kiran Rai G, Chairman, IBA in his absentia, lauded the excellent address of Dr. Prasenjit Bose along with the other guests and appreciated the effort of the Joint convenors of the reception committee. He also complimented the efforts of AIBOC, WB State Unit for the immaculate precision in organising the conference during critical time of pandemic.

#### **BUSINESS SESSION – 24TH AND 25TH JANUARY**

15. President, Com Sunil Kumar welcomed the gathering, and requested the undersigned to present the Report and Statement of Accounts. He also praised the AIBOC Secretariat for the

**BETTER THAN A HUNDRED YEARS OF IDLENESS IS ONE DAY SPENT IN DETERMINATION**

flawless arrangements and also for issuing the photo-ID card for all delegates, guests which will be memorabilia of the 12th Triennial. He called upon the house to discuss and restrict the deliberations to the General Secretary's Report and Statement of Accounts.

16. The undersigned while placing the report expressed regret for some factual errors due to oversight. A paragraph was also incorporated on the contribution of Com Dilip Saha, former President, and an annexure on the functioning of AIUBOF and Kerala State Committee.

17. House responded to the Report of the General Secretary with applause, slogans and appreciations. More than 50 delegates deliberated on their viewpoints/suggestions. The extract of the deliberations shall be summed up under the following points.

- ★ Women empowerment; Leave Encashment - Maternity Leave - Sabbatical Leave; Day care; Encouraging more participation of women in trade union movement - Child Care Leave – constraints faced by women donning Multiple Roles
- ★ Regulatory working hours to balanced working hours, 5 Day Banking, 1995 Pension Regulations – 2nd Option - VRS/ Resignees not made eligible.
- ★ Media Cell- Revamping and widening of activities.
- ★ Formation of an exclusive IT cell.
- ★ New Pension Scheme–consequences and need of more efforts to scrap NPS.
- ★ Uniform to be demanded to officers to identify financial army.
- ★ COVID – corona warriors; assault and humiliation of bankers.

- ★ Uniform staff accountability policy for all PSBs.
- ★ Menace of Cross Selling and its impact on NPA.
- ★ Recruitment of award staff.
- ★ Digitalisation and possible job loss.
- ★ Communication in regional languages to educate common man.
- ★ Charge sheets based on non-performance.
- ★ MIFI – Movement for India's Financial Independence – efforts to continue the awareness on need of Financial Independence amongst the public.
- ★ Need to defeat the threat of Bank wise wage settlement.
- ★ Appointment of Non-Workmen Director in Banks' Boards.
- ★ Financial Resolution and Deposit Insurance Bill
- ★ Apprentice recruitment to be stopped
- ★ Threat of Disinvestment
- ★ Stop conducting of Lok Adalat on Second and Fourth Saturday
- ★ RRB OSR – threatening on parameter-based performance.
- ★ Sponsored bank association should give representation to office bearers of RRB in their EC.
- ★ Demand for merger of Special Pay
- ★ Upholding the dignity of Officers.

**YOU WILL NOT BE PUNISHED FOR YOUR ANGER, YOU WILL BE PUNISHED BY YOUR ANGER**

- ★ Outsourcing and appointment of consultants.
- ★ Consultants issuing circular in banks
- ★ Disciplinary action taken during COVID time
- ★ AIBOC to rethink on continuing with the UFBU
- ★ Tax benefits on Gratuity/Leave Encashment on the lines of Government
- ★ To induct youth and women in key posts
- ★ Central record keeping system in AIBOC - Identity card for all members
- ★ Staff accountability policy
- ★ OSR revision
- ★ Self-leasing
- ★ Stagnation increments
- ★ Threat of Cyber crime
- ★ AIBOC to continue to be apolitical
- ★ Medical expenditure reimbursement

18. General Secretary replied to the deliberations/ views/points raised. He said that most of the issues raised have been threadbare discussed in the General Secretary's Report. He detailed/clarified the issues like women empowerment, encouraging youth and women in trade union, aspects connected with 8th Joint Note, issues had been flagged and forwarded to IBA, strengthening of the social media team. He also shared his views on the Cadre development programmes, action initiated on cross selling/third party products, Uniform Accounting Policy/effects of punishment etc. He said that each of the view/suggestion had been noted. He also

said that any other suggestions could also be emailed to AIBOC secretariat, which would be beneficial to refine the future course of action.

19. The house approved the General Secretary's Report and the Statement of Accounts with huge applause and slogans. House also adopted the amendments to the By-Laws proposed to the Constitution of AIBOC and the Resolutions.

#### **ELECTIONS OF THE OFFICE BEARERS FOR THE NEXT TERM 2021-2023**

20. Shri Harvinder Singh and Shri Sunil Bansal were nominated as Returning Officers and was assisted by two young delegates. In the election process held to elect the office bearers for the term 2021-23, the house unanimously elected Com T Murali Soundararajan as the President and Com Soumya Datta as the General Secretary. The affiliates were advised to submit their nominations to different posts as per the amendments of the by-laws approved.

#### **COM SUNIL KUMAR, PRESIDENT – FELICITATED**

21. Com Sunil Kumar, who will be demitting office on superannuation on 31.01.2021 was accorded an emotional felicitation. He was felicitated by the President-elect and the undersigned. The undersigned profusely acclaimed his contribution to the trade union movement in general and AIBOC in particular. He time and again recollected the stellar role played by him during the times of crisis and during the wage revision. The entire house gave a standing ovation to Com Sunil Kumar. While acknowledging the felicitation Com Sunil Kumar said that he had tried to do his best and will continue to strengthen AIBOC and render his wholehearted support to the undersigned.

The 12th Triennial General Council of All India Bank Officers Confederation culminated with a vote of thanks extended by Com Murali Soundararajan followed by rendition of the National Anthem.

**THE FOOL WHO KNOWS HE IS A FOOL IS MUCH WISER THAN THE FOOL WHO THINKS HE IS WISE**



## CIRCULARS

**03 dated 19th January 2021:** Text of the joint circular from Four Officers' Organisations, i.e., AIBOC, AIBOA, INBOC and NOBO dated 18.01.2021 on Meeting with IBA – Committee on Staff Accountability.

**04 dated 25th January, 2021:** Circular on Minutes of the 12th Triennial General Council held at Com S R Sengupta Nagar (Kolkata), Com A K Jana Mancha (EZCC, Salt Lake) from 23rd to 25th January, 2021.

**05 dated 29th January, 2021:** Text of the Joint communique dated 29.01.2021 from the Four Officers' Organisations, i.e., AIBOC, AIBOA, INBOC and to the Hon'ble Minister of Finance and Corporate Affairs, Government of India, New Delhi on opposition to privatization of PSU banks .

**06 dated 29th January, 2021:** Circular on revision on D.A. payable from 1st February, 2021 to 30th April, 2021.

**07 dated 31st January, 2021:** Text of the joint circular from Four Officers' Organisations, i.e., AIBOC, AIBOA, INBOC and NOBO dated 31.01.2021 on release of stagnation increment to workforce retired between 01.11.2012 and 30.04.2015.

**08 dated 31st January, 2021:** Circular on Comrade Sunil Kumar, President AIBOC, demitting office on attaining superannuation from bank service.

**09 dated 01st February, 2021:** Circular on Com T. Murali Soundararajan taking over as the President of AIBOC for the term 2021 – 2023.

**10 dated 01st February, 2021:** Text of the joint press release from Four Officers' Organisations, i.e., AIBOC, AIBOA, INBOC and NOBO dated 01.02.2021 opposing budgetary proposals of Union Budget 2021 on privatisation of public sector banks.

**11 dated 03rd February, 2021:** Text of the Joint circular dated 03.02.2021 from the Four Officers' Organisations, i.e., AIBOC, AIBOA, INBOC and NOBO urging upon all our affiliates and state units to be in readiness for all out struggle against the move of the government.

**12 dated 09th February, 2021:** Text of UFBU Circular No. 2021/01 dated 09.02.2021 calling for strike in banking industry on 15th and 16th March, 2021, along with protest action programme.

## JUDICIAL VERDICT

**[2020 (166) FLR 171]**

**(KARNATAKA HIGH COURT)**

**RAVI MALIMATH and ASHOK S. KINAGI, JJ.**

**W.A.No.515 of 2012 (L-PG)**

**November 20, 2019**

**Between**

**CANARA BANK, rep.by its ASST.GENERAL MANAGER, BENGALURU**

**And**

**APPELLATE AUTHORITY UNDER PAYMENT OF GRATUITY ACT and others**

*Payment of Gratuity Act, 1972-Section 4 (6)-Dismissal-Labour Court (CGIT) converted the order of dismissal to compulsory retirement from the date of original punishment-Other pensionary benefits were settled however, eligible gratuity was not paid-As the respondent No.3 was found guilty of*

**EVERY HUMAN BEING IS THE AUTHOR OF HIS OWN HEALTH OR DISEASE**

*fraudulent withdrawal of ₹ 18.47 lakh the Controlling Authority allowed the application of respondent No.3 filed under Act, 1972-Appellate Authority also rejected the appeal of the appellant-Learned Single Judge dismissed the writ petition of appellant-hence, the instant appeal-Held, enquiry had not clarified the loss except giving general assessment-Disciplinary Authority nor the Labour Court (CGIT) had made any reference of forfeiture of gratuity-Even in the dismissal there no reference as such-Petitioner had not initiated any proceeding for the loss covered by respondent No.3-Hence, petitioner had no right to forfeit the gratuity-No merit in the appeal-dismissed. [Paras 8 to 11]*

## JUDGMENT

**RAVI MALIMATH and ASHOK S.KINAGI, JJ.-**  
Aggrieved by the order dated 24.11.2011 passed by the learned Single Judge in W.P.No.40600 of 2011 in rejecting the petition the petitioner-Bank has preferred the writ appeal.

Parties are referred to as they are arrayed in the writ petition.

2. Brief facts are as follows:

Respondent No.3 was an employee of the petitioner-Bank and he was dismissed from service on 8.7.2000. The order of dismissal was questioned before the Central government Industrial Tribunal-*cum*-Labour Court (for short 'CGIT') in CR No. 33 of 2002. The CGIT has passed an order on 10.2.2006 converting the order of dismissal of the petitioner into compulsory retirement from the date of original punishment. Thereafter respondent No.3 made a representation on 17.10.2006 requesting for settlement of eligible gratuity. The petitioner did not respond to the said representation made by respondent No.3 Respondent No.3 got issued a legal notice calling upon the petitioner-Bank to settle the eligible gratuity. The petitioner in reply clarified that the

same was settled on 19.2.2002. The contention of respondent No.3 is that eligible gratuity was not paid. The other pensionary benefits were settled.

3. Respondent No.3 was drawing wages of ₹ 13,990/- as on the date of compulsory retirement. He had rendered total service of about 21 years 8 months and is eligible for ₹ 1,25,250/-. When the petitioner denied payment of eligible gratuity, respondent No.3 filed an application on 3.7.2007 before the Controlling Authority under the provisions of Payment of Gratuity act, 1972. The proceeding initiated by respondent No.3 for determination was opposed by the petitioner by filing statement of objection *inter alia* contending that respondent No.3 was dismissed from service of the Bank for guilty in a fraudulent withdrawal of a sum of ₹ 18.47 Lakh from the party's savings bank account out of the non-expenditure/non-realisation collection item. It was further contended that CGIT upheld the findings of the enquiry conducted by the bank and modified the punishment to one of compulsory retirement.

4. Respondent No.3 causing financial loss to a tune of ₹ 18.47 lakh was proved in the enquiry. Gratuity amount was forfeited and adjusted to the loss caused by the bank. The Controlling Authority by order dated 25.7.2008 allowed the application filed by respondent No.3. The petitioner aggrieved by the order dated 25.1.2008 passed by the Controlling Authority preferred Appeal No.3 of 2008-B2 before the Appellate Authority under the Payment of Gratuity act, 1992 and Regional Labour Commissioner (Central) Bengaluru. The Appellate Authority affirmed the order of the Controlling Authority and consequently dismissed the appeal filed by the petitioner *vide* order dated 10.8.2011. The petitioner aggrieved by the order dated 10.8.2011 passed in Appeal No.03/2008-B2 by the Appellate Authority and Original Labour Commissioner (Central) Bengaluru filed Writ Petition No.40600 of 2011 before this Court.

**HE WHO SEEKS HAPPINESS BY HURTING WILL NEVER FIND IT**

5.The learned Single Judge dismissed the writ petition by order dated 24.11.2011. The petitioner aggrieved by the order passed in writ petition has filed this appeal.

Heard arguments of the learned Counsel for the parties.

6.Respondent No.3 was issued a charge for involving in a fraudulent withdrawal of ₹ 18.50 lakh. Enquiry was initiated against respondent No.3. The Inquiry officer gave a report. Based on the report, Respondent No.3 was dismissed from service. The order of dismissal was challenged before CGIT, Bengaluru. The CGIT modified the order of dismissal into compulsory retirement and not made any reference on the forfeiture of gratuity or causing aspersion as a person on the conduct or character of respondent No.3.

7. So far as compulsory retirement is concerned it has become definite and clear. In this regard, we place reliance on the judgment of the Hon'ble Apex Court in *State of Gujarat v.Umedbhai M.Patel*.

*"11. The law relating to compulsory retirement has now crystallized into a definite principle which could be broadly summarized thus:*

- (i) Whenever the services of a public servant are no longer useful to the general administration the officer can be compulsorily retired for the sake of public interest.
- (ii) Ordinarily the order of compulsory retirement is not to be treated as a punishment coming under article 311 of the Constitution.
- (iii) For better administration it is necessary to chop off dead wood but the order of compulsory retirement can be passed after having due regard to the entire service record of the officer.

(iv) Any adverse entries made in the confidential record shall be taken note of and be given due weightage in passing such order.

(v) Even uncommunicated entries in the confidential record can also be taken into consideration.

(vi) The order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable.

(vii) If the officer was given a promotion despite adverse entries made in the confidential record that is a fact in favour of the officer.

(viii) Compulsory retirement shall not be imposed as a punitive measure.

From the above judgment it is clear that the order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehavior.

8. In the instant case the Enquiry Authority while giving a finding has not clarified the loss except giving general assessment stating that charges clearly establish the involvement of respondent No.3 in the fraudulent withdrawal of ₹18.50 lakh. The Disciplinary Authority nor the CGIT has made any reference of forfeiture of gratuity and even in the dismissal order also it has not made a reference. Further the petitioner has not initiated any proceedings for the assessment of loss caused by respondent No.3. The petitioner has no right to forfeit the gratuity. Thus the action of petitioner in forfeiting the gratuity is arbitrary.

9. The division Bench of this Court in Vijaya Bank, Bengaluru and others v. Mohan Das Ramana Shetty, has held that when a Bank employee is dismissed from service for allowing overdrawings without prior approval of the Controlling Authority

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**COMMON BOND ENGLISH MONTHLY-R.N.I.NO:36648/82-TOTAL NO.OF PAGES 12 MARCH - 2021**

**REGN. NO. KRNA/BGE - 1122/2020-2022 PUBLISHED ON 25-02-2021**

**POSTED AT BANGALORE PSO, MYSORE ROAD, BANGALORE - 560 026 / ON 2ND OF EVERY MONTH**

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thereby causing loss to the Bank the decision to forfeit gratuity can be taken only after quantifying the amount of loss and after affording opportunity to the employee to present his defence against the decision proposed and where no proceedings is initiated by the Bank for assessment of loss caused by an employee, gratuity cannot be forfeited.

10. As observed above deliberately the petitioner has not initiated proceedings for recovery of assessment of loss caused by respondent No.3. When the proceedings are not initiated, the petitioner has no right to forfeit. The petitioner before the proposal to forfeit of gratuity, no notice was issued and opportunity was not given to the respondent No.3 to present his defence against the decision proposed. Thus it amounts to violation of principles of natural justice. The authority was justified in directing the petitioner-Bank to pay a sum of ₹ 1,39,508/- with simple interest drawn at 10% p.a.on ₹ 1,39,508/- on 15.7.95 till the date of payment

within 90 days from the date of receipt of the order.

11. The Appellate Authority after assessment' of material record affirmed the order of the Controlling Authority. The learned Single Judge, after considering the order of the Controlling Authority, Appellate Authority and material placed on record and also the citations of the Apex Court was justified in dismissing the writ petition. The petitioner has not made out any ground to interfere with the impugned order. In view of the aforesaid reasons, we do not find any grounds to interfere with the impugned order. Hence, we proceed to pass the following:

**ORDER**

The Writ appeal is dismissed.

***Appeal Dismissed.***

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**RATES OF SUBSCRIPTION: ANNUAL: ₹ 30/-**

**Drafts Should be Drawn**

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Printed & Published/Edited by Shri Soumya Datta on behalf of AIBOC. at State Bank Building, St.Mark's Road Bangalore- 560 001.  
Printed by Shri. Ranga Reddy, at L. V. Graphics 3968, 7th Cross, 2nd Main, Gayathri Nagar, Bangalore - 560 021.