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*Editorial*

## 75 YEARS AND BEYOND

**T**he nation had completed its year-long celebration of the 75th year of independence and stepped into the 76th year since that momentous midnight of 14th August, 1947, when India awoke to freedom while the rest of the world was sleeping to redeem its tryst with destiny. Editorial Board extends its greetings to all our readers, their families, and the entire Confederation family on this epoch-making event. We are sure that the country will rededicate itself to an inclusive, multi-cultural, multi-lingual, multi-religious India, committed to freedom of expression, ideals of secularism, and ensuring the commanding role of the state in nation building. For the bankers, we celebrated while paying our glowing tributes to the martyrs and the freedom fighters who had sacrificed their youth to ensure the emergence of the morning of 15th August, 1947 by taking a pledge to protect the economic sovereignty of the country by taking our mass movement #BankBachaoDeshBachao forward.

We have championed the state sector's role in building the nation's economy. We need to recapitulate the historical background for assigning commanding roles to the public sector in reshaping a colonial economy devastated as it was by a partition that affected the then industrialized province of Bengal. Incidentally, in the Lahore congress in 1930, it was explicitly decided to have a national planning board to guide the road of industrialization and inclusive economic development for a free India. Subsequently, mainly with the initiative of Netaji Subhas Chandra Bose, a national planning

commission was formed in colonial India with Dr. Meghnad Saha, the eminent nuclear physicist, and social worker. Surprisingly, the emerging capitalist class of India met in Bombay and drew up a plan for the economic revival of the country post-independence in 1945 and suggested that the state should take the responsibility of setting up the capital goods industry, leaving the other sectors to the private entrepreneurs. This was known as the 'Bombay Plan'. So when the industrial policy resolution was adopted in 1956, Imperial Bank was nationalized in 1955, followed by the setting up of Life Insurance Corporation of India in the same decade coupled with the adoption of the second five-year plan, a brainchild of Prof. P. C. Mahalanobis with the blessings of Pandit Nehru, the dreams of the freedom fighters as reflected in the formation of National Planning Board or the Lahore resolution was getting a shape.

We are all aware of the events which led to the nationalization of commercial banks in 1969 and 1980, the nationalization of coal mines in 1972, the emergence of a robust public sector, and state intervention to protect the ailing private sector either by way of take-over or by providing restructured bank finance from public sector banks to keep them floating. From the beginning of the 90s, we came to know that the public sector, including public sector banks, are all inefficient and a drag on the national exchequer. Before we proceed, we would like to share a small statistical table about the profitability of the public sector during the period 1990-91 to 2020-21.

**A JUG FILLS DROP BY DROP**

(Rupees in '000 crore)

YEAR	NON-FINANCE	FINANCE	This table shows the consistent contribution of the public sector to the national economy, exchequer, and its role in capital formation, putting a nail on a popular canard that the public sector is inefficient and responsible for the ills affecting the national economy.
1990-91	2.3	0.5	
1995-96	8.7	3.2	
2000-01	16.2	9.5	
2005-06	66.1	20.9	
2010-11	84.6	61.4	
2015-16	81.3	29.3	
2020-21	130.1	72.4	

We must appreciate that our fight for protecting the public sector in general and the banking sector, in particular, is intimately linked with upholding the very social fabric on which the values of this country were built and evolved over the years. We are quoting from a remarkable speech by a class - 4 students, Mehnaz Kappan from Mallapuram District of Kerala, whose father Siddique Kappan, a journalist, who had been put behind bars and denied all the rights allowed to a citizen, which defines the background we need to ensure for our victory in the struggle against privatisation. "Today, everyone can choose what to speak, what to eat, what religion to follow. There is freedom of expression. Every Indian has the right to oppose the idea he may not like. The dignity of the great Indian nation must not be surrendered before anyone. But even today, smokes of unrest can be seen, the consequence of which is the attack in the name of religion, colour, and politics. These should be uprooted by remaining united. We should wipe out even the reflection of any unrest. We should live together, take India to greater heights, and dream of a better tomorrow minus conflicts of all hues".

As we observed in the opening paragraph, the curtain is being drawn on the official celebration christened 'Azadi Ka Amrit Mahotsav,' but India's spirit will roll on. We would hear diverse views being expressed - from optimistic to utterly pessimistic. Those voices come from India's

diversity. They hold a spectrum of political views and may disagree about much else, but they are united about the country's future. It is essential that the institution that can defend India, its courts, parliament, civil services, and media, the pillars of democracy, must be strengthened. But it is equally essential that a socio-economic framework that promotes inclusiveness and strikes at the roots of economic and social inequality must also be protected. A social system that promotes and encourages profiteering cannot sustain the very existence of the institutions which preserve and uphold the Indian democracy. In this perspective, a seemingly sectarian battle of protecting the public sector character of banking or protecting the temples of modern India, the public sector undertakings becomes a wider war cry of saving the nation from the onslaught of cronies of all colours. Common Bond hopes that India will, when country after country is turning their back on democracy, it has to be an example with the beautiful dream of nationhood inscribed in the sloka 'Vasudhaiva Kutumbakam', the whole earth is a family. We should all be rooting for this incredible experiment in the diversity of work. As goes India, so go democracy and the idea of an inclusive society. ■

March on comrades,  
#NationAgainstPrivatisation  
#StrikeHard  
#PowerofUnity  
#BankBachaoDeshBachao

IN THE SKY THERE IS NO DISTINCTION OF EAST AND WEST

## ECONOMY

*We are sharing an important news item penned by Shri Aditya Anand, published in the National Herald on 19.07.2022 quoting a scholarly study that concluded that the merger of Public Sector Banks had weakened the banking system. – Editorial Board*

### EXPERTS CAUTION AGAINST ANY MOVE TO PRIVATISE PUBLIC SECTOR BANKS

Today, July 19, marks 53 years since the Congress government led by the then Prime Minister Indira Gandhi nationalised over a dozen private banks as part of a successful strategy which contributed immensely to the economy and raised financial inclusion. The move led to India emerging as a strong economy.

In the past few years, however, attempts are being made to discredit public sector banks and attribute all their problems to government ownership, making a case for their eventual privatisation.

Susheel Ragade, a former RBI official explained that while the Union government is facing difficulties in providing additional capital to the government banks on account of fiscal constraints, the banks need this money to be able to maintain Capital Adequacy Ratio for continuing their lending operations.

“But using these problems as a reason for privatisation of public sector banks is akin to throwing the baby out with the bathwater,” he said.

National Stock Exchange data published in the media shows the public sector banks’ market capitalisation value comes to ₹ 7,24,436.21 crore (March 31, 2022). As per a report in The Hindu, these banks are not fully owned by the government and hence the value of government holding in these banks (based on market cap) comes to ₹ 4,80,207.35 crore.

As per recommendations of the National Council of Applied Economic Research (NCAER), the first two banks to be privatised should be the ones with better asset quality and the lowest NPAs. “This means, take the best ones away,” said Dr. Santosh Khalate, an assistant professor at the Pune District Education Association’s Mahatma Phule Institute of Management and Computer Studies.

Khalate, who has written a research paper on NPAs of public sector banks, points out that even as privatisation is being considered, the NPAs in the banking sector are increasing year by year, particularly in nationalised banks, an issue that needed to be resolved.

A report recommending the privatization released by NCAER suggests that barring the State Bank of India (SBI), all public sector banks should be privatised because private sector banks have emerged as alternatives to the PSBs with substantial market share. The report said that the Reserve Bank of India was not able to regulate the sector as government ownership was a hindrance (Common Bond will carry the full text of the RBI research paper in its next issue on bank privatization which negates the NCAER report.)

The All-India Bank Officers’ Confederation (AIBOC) termed any move to privatise PSBs as dangerous and one that would result in job losses, branch closures, and financial exclusion.

Data compiled by the confederation showed that PSB mergers had brought down the number of public sector banks from 27 to 12. The number of PSB branches declined by 3,321 between March 2017 and September 2021. “This has resulted in employees being retrenched and bank branch closures. The total employee strength of PSBs dropped from 8.57 lakh in March 2017 to around 7.7 lakh in March 2021,” its General Secretary Soumya Datta explained.

The AIBOC is also worried that besides shrinking employment opportunities for the youth, the government’s move to sell banks would deprive the SC/ST/OBC sections among bank employees of reservations. “The private sector does not follow reservation policies for the weaker sections,” the

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

confederation pointed out.

Experts in the banking sector said the government's unwillingness to make its plans public hinted at its ulterior motive to hand over prime institutions to rich friends. "This manner of privatisation should not be

accepted. Institutions that are over a 100-year-old with branches across the country cannot just be given on a platter to a select few. Begin with other urgent reforms. Target NPAs and strengthen the banking system," a retired banker said. ■

**#BankBachaoDeshBachao**

## BANK LOANS ARE SHRIVELLED AWAY EITHER BY OUT OF PROPORTION LOAN DISBURSEMENT OR BY LOAN REMISSION: COURTESY – NEXUS OF POLITICIAN AND BUREAUCRATS

Common Bond is reproducing a complete text of an article by Yogesh Sapkale published in Moneylife on 05th August, 2022.

Scheduled commercial banks (SCBs) have written off non-performing assets (NPAs) worth over ₹ 9.92 lakh crore during the past five financial years (FYs), the Rajya Sabha was informed. While public sector banks (PSBs) have refused to share with citizens the names of big defaulters under the Right to Information (RTI) Act and with their shareholders, as per the list shared by the ministry of finance, Gitanjali Gems Ltd, with a default of ₹ 7,110 crore is the biggest wilful defaulter in the country.

In a written reply, Dr Bhagwat Karad, minister of state for finance, told the upper house that during the past five fiscal years, from FY17-18 to FY21-22, SCBs wrote off NPAs worth ₹ 991,640 crore. The highest amount written off as bad debt was ₹ 236,265 crore in FY18-19, followed by ₹ 234,170 crore in FY19-20. While the amount mentioned for FY21-22 is ₹ 157,096 crore, the lowest in five years, it is based on provisional data, the minister says.

FY	Amount (in crore Rs.)
2017-18	1,61,328
2018-19	2,36,265
2019-20	2,34,170
2020-21	2,02,781
2021-22	1,57,096
(Provisional Data)	

9,91,640

As per the information shared by the minister, the top-25 big borrowers have defaulted loans worth ₹ 58,958 crore. Besides Gitanjali Gems, the other top-10 big defaulters are: Era Infra Engineering Ltd (₹ 5,879 crore), Concast Steel and Power Ltd (₹ 4,107 crore), REI Agro Ltd (₹ 3,984 crore), ABG Shipyard

Ltd (₹ 3,708 crore), Frost International Ltd (₹ 3,108 crore), Winsome Diamonds and Jewellery Ltd (₹ 2,671 crore), Rotomac Global Pvt Ltd (₹ 2,481 crore), Coastal Projects Ltd (₹ 2,311 crore) and Kudos Chemie Ltd at ₹ 2,082 crore.

Details of top 25 wilful defaulters in Scheduled Commercial Banks as on 31.3.2022

Amounts in crore Rs.	
Borrower Name	Amount Owed
Gitanjali Gems Limited	7,110
Era Infra Engineering Limited	5,879
Concast Steel and Power Limited	4,107
REI Agro Limited	3,984
ABG Shipyard Limited	3,708
Frost International Limited	3,108
Winsome Diamonds and Jewellery Limited	2,671
Rotomac Global Private Limited	2,481
Coastal Projects Limited	2,311
Kudos Chemie Limited	2,082
Zoom Developers Private Limited	1,818
Best Foods Limited	1,653
Forever Precious Jewellery and Diamonds Private Limited	1,639
Deccan Chronicle Holdings Limited	1,594
Siddhi Vinayak Logistic Limited	1,560
SVOGL Oil Gas and Energy Limited	1,486
Surya Vinayak Industries Limited	1,481
Gili India Limited	1,447
EMC Limited	1,342
Rohit Ferro-Tech Limited	1,333
Hanung Toys and Textiles Limited	1,306
Amira Pure Foods Private Limited	1,293
Unity Infraprojects Limited	1,230
S Kumars Nationwide Limited	1,177
Sterling Biotech Limited	1,158

Source: RBI

MOS Finance says, "SCBs and All Indian Financial Institutions report certain credit information of all borrowers having aggregate credit exposure of ₹ 5 crore and above to Reserve Bank of India (RBI), under its central repository of information on large credits (CRILC) database. As per RBI, the CRILC data in

OVERCOME ANGER BY LOVE, EVIL BY GOOD



respect of wilful defaulters is maintained from FY2019 onwards and the total number of wilful defaulters in SCBs as at the end of the last four financial years are ₹ 10,306."

As on	Number
31.3.2019	2,207
31.3.2020	2,469
31.3.2021	2,840
31.3.2022 (Provisional Data)	2,790

10,306

Information shared by the minister shows that from FY17-18 to FY21-22, 12 PSBs wrote off bad loans worth ₹ 727,320 crore. As expected, State Bank of India (SBI), alone wrote off over ₹ 2 lakh crore in these five fiscal years. Up to FY17-18, IDBI Bank was a State-run lender and had written off ₹ 12,515 crore during that fiscal year.

Bank	Amounts written off by Public Sector Banks					Total
	FY2017-18	FY2018-19	FY2019-20	FY2020-21	FY2021-22*	
Bank of Baroda	7,148	19,292	15,912	14,782	17,967	75,101
Bank of India	8,976	7,405	7,618	8,815	3,023	35,837
Bank of Maharashtra	2,460	5,127	5,698	4,931	3,118	21,334
Canara Bank	10,710	21,042	12,431	7,642	8,210	60,035
Central Bank of India	2,924	10,375	4,169	5,992	1,236	24,696
Indian Bank	5,242	7,091	12,151	8,371	8,347	41,202
Indian Overseas Bank	6,908	7,794	16,405	4,618	3,769	39,494
Punjab and Sind Bank	460	1,635	1,781	71	1,134	5,081
Punjab National Bank	15,631	24,076	18,444	15,877	18,312	92,340
State Bank of India	39,151	58,905	52,362	34,402	19,666	2,04,486
UCO Bank	2,735	4,420	12,479	9,410	3,851	32,895
Union Bank of India	13,371	16,040	16,426	16,983	19,484	82,304
IDBI Bank Ltd	12,515	-	-	-	-	12,515
					Grand Total	7,27,320

Dr Karad, the minister, says, "As per RBI guidelines and policy approved by bank boards, nonperforming loans, including, inter-alia, those in respect of which full provisioning has been made on completion of four years, are removed from the balance-sheet of the bank concerned by way of write-off.

"Banks evaluate and consider the impact of write-offs as part of their regular exercise to clean up their balance-sheet, avail of tax benefit and optimise capital, in accordance with RBI guidelines and policy approved by their boards."

It is often claimed that the borrowers and the personal guarantors technically remain liable for recovery of loans even after a compromise settlement is arrived; there are almost nil instances of recovery after that. If precious bank funds are wasted by providing it to the cronies by breaking all norms, possibly further concession is allowed under the guise of a recovery mechanism tilted heavily in favour of the same group of people. ■

## Organisation **PRIVATISATION: PUBLIC SECTOR BANK UNIONS TO INTENSIFY AGITATION, MAY GO FOR 'PROLONGED STRIKES'**

On 21st July, 2022, hundreds of PSB officers and employees gathered at Delhi's Jantar Mantar to reiterate their opposition to privatisation and any bid to bring in a Bill in this regard.



Stepping up their opposition to the Centre's privatisation spree, public sector bank (PSB) employees said they may go for "prolonged strikes" across the country in case the government decides to introduce a Bill in this regard. Hundreds of PSB employees and officers

staged a protest demonstration at Jantar Mantar at the call of United Forum of Bank Unions. They were joined by Central Trade Union (CTU) leaders. The agitational campaign of bank unions in the country, that has witnessed several strike actions in recent years, will continue until the Centre assures that its agenda to privatise the country's PSBs is off the table.

In the Union Budget for the financial year 2021-22, the Narendra Modi government had announced its intent to privatise two PSBs, with Finance Minister Nirmala Sitharaman, in April this year, reiterating that the government will fulfil its commitment to the same.

However, according to one media report, the Central government has not been able to make considerable progress on bank privatisation for these many months now since making the announcement in the face of trade union opposition.

In December last year, over eight lakh bank officers and employees across the country struck work for two days to protest against the listing of a Bill that seeks to amend banking laws in the country in the

legislative business Winter session of Parliament. Taking note of the fierce opposition, the government had deferred the plan.

Likewise, in March this year, banks remained closed, as employees and officers joined the two-day general strike call by CTUs to protest against the privatisation of public enterprises.

Soumya Datta, General Secretary, All India Bank Officers' Confederation, told that the fight to save PSBs from being handed over to private players will only get intensified in the months to come.

"In case the Bill to privatise PSBs is not listed in the ongoing Parliament session then after its conclusion, employees and officers will prepare for activities across the country to ensure that the Bill is not introduced in the next session," Datta said, adding that "*it will be a long-drawn battle, for which the bank staff, 'is prepared.'*"

The resolve to fight 'tooth and nail' against the move to privatise PSBs by bank staff unions is having some impact going by reports that the Centre is unlikely to introduce the contentious Bill in the ongoing Monsoon session. ■

## HOW TO REFORM PUBLIC SECTOR BANKS

***Common Bond is publishing an edited excerpt of an article by Arun Sinha, published in the Free Press Journal on 26th July, 2022.***

India's two prominent economists—Arvind Panagariya, the former vice-chairman of the NITI Aayog and Columbia University professor and Poonam Gupta, the director-general of the National Council of Applied Economic Research (NCAER) and a member of the Prime Minister's Economic Advisory Council (PMEAC)—have in a policy paper batted for privatisation of all public sector banks, except the State Bank of India. If the government was willing to listen to them, they would even want the SBI to be privatised, they said, but "*we recognise that within the Indian economic framework and political ethos (emphasis ours), no government will want to be without a single public sector bank in its portfolio.*"

Panagariya and Gupta are apostles of laissez faire, so their advocacy for disinvestment of public sector banks hardly comes as a surprise. If either of them were prime minister of India, they would transfer all national assets to the private sector and shrink the government to skull and crossbones, a lifeless symbol of warning to them not to cross limits. However, as far as their advocacy for bank disinvestment is concerned, their argument stands on extremely infirm legs.

Their first point is: public sector banks are prone to fraud. Our question to them is: will privatisation eliminate chances of fraud? Has there not been fraud in private banks? Arvind Panagariya may please note, we are not talking of the United States—the capital of the Empire of Laissez Faire where he teaches economics, and where massive frauds took place in

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

private financial institutions nearly 15 years ago, frauds that destabilised the global financial system, a destabilisation from which the world is yet to fully recover—but of India. Do we not remember the fraud committed by Rana Kapoor, the founder, MD and CEO of Yes Bank? He was charged and jailed for advancing loans to a realty company and receiving a ₹ 400-crore-worth property at a prime location in Delhi from the company in his wife's name.

Have we forgotten the fraud committed by Chanda Kochhar, the CEO of ICICI Bank? She broke all rules to sanction ₹ 300 crore loan to Videocon International Electronics Ltd promoted by Venugopal Dhoot, who then transferred ₹ 64 crore to a company called Nupower Renewables Pvt Ltd owned by her husband Deepak Kochhar. And this was not the only case of fraud against Chanda Kochhar. The investigating agencies have discovered corrupt practices in sanction of several other loans during her tenure.

The second point Panagariya and Gupta make is that public sector banks have poor corporate governance. Do the cases of Rana Kapoor and Chanda Kochhar point to robust corporate governance in Yes Bank and ICICI Bank? They actually prove that, as in public sector banks, prudence, diligence and efficiency can go missing in private banks if there is a nexus between the top management of the bank and wicked borrowers. Fortunately, the scale of fraud in Yes Bank and ICICI Bank was not so large as to push them into insolvency. But in two recent cases of private banks, the Global Trust Bank and the Laxmi Vilas Bank, frauds were the norm, leading to their collapse.

It is true that public sector banks had more NPAs (non-performing assets) than private sector banks. As in December 2017, gross NPAs as percentage of total advances in public sector banks stood at 13.5%, while they were 3.8% in private sector banks. The picture we get is that there are NPAs in both public and private banks; only the scale is three times higher in public banks. That calls for better governance and better risk management in public banks. And better governance and better risk

management can be brought about in public banks without privatising them. The gross NPAs of public sector banks have already come down to 5.9% by March 2022.

Yet, not just the apostles of laissez faire, but also the Modi government has been talking about privatising public sector banks. While presenting the Union budget for 2021-22, Finance Minister Nirmala Sitharaman announced the government's decision to privatise two public sector banks. She did not name them. She was expected to introduce a bill regarding that in the current monsoon session of Parliament, but she seems to have deferred it.

Now, Prime Minister Modi's persona is identified with robust governance, a governance that allows no corruption and efficiently delivers services. If that is so, why cannot his government improve the governance of the public sector banks? How can it be that you run a behemoth of a government efficiently but you cannot run twelve banks efficiently?

After all, good governance in banks means nothing but a set of practices that make it impossible for any corrupt or exuberant manager to oblige any unscrupulous borrower at the cost of the bank's finances. It means merit-based appointment of chairman, managing directors and chief executive officers. It means market-compliant salaries, stock options and bonuses to attract the best brains for leadership. It means appointment of directors who have integrity and specialist expertise and no political obligations. It means honest audit.

It means that the quality management establishes strong credit risk assessment departments to evaluate the credit history of the promoter, to demand adequate collateral security, to detect any inflation of credit requirements with over-invoicing, to constantly monitor repayments, to flag a default and to start recovery. It also means that the government strengthens the surveillance and inspections through the RBI to track the graph of major loan accounts ( ₹ 100 crore and above) in every bank, as also to detect wicked promoters who draw credit from one bank to pay the loan of another bank. ■

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

## CIRCULARS

27 dated 30th July, 2022: Revision in Dearness Allowance from August 2022. ■

## JUDICIAL VERDICT

**2022 LLR 276**  
**KARNATAKA HIGH COURT**  
**Hon'ble Mr. P.B. Bajanthri, J.**  
**WP No. 11410/2021 (L-PG), Dt/-8-7-2021**

**General Manager (P) Canara Bank**  
**Vs.**  
**Appellate Authority under Payment of Gratuity**  
**Act, 1972 and Anr.**

**PAYMENT OF GRATUITY ACT, 1972** – Section 4(6)(b)(ii) – Forfeiture of gratuity for misconduct amounting to moral turpitude committed by an employee while on duty – In order to forfeit gratuity the employee must have been connected in view of the word 'offence' appearing in the Act for forfeiture of gratuity – Forging of caste certification for obtaining employment – Being subject matter of disciplinary proceedings – No criminal proceedings were initiated – Hence gratuity of an employee could not be forfeited.

### Important Points

- \* *In order to obtain appointment, the Respondent No. 2 had furnished schedule Tribe Category Certificated dated 19.07.1978 that means that he had committed misconduct prior to 1.7.1981 (order to appointment) and not during the course of employment and such offence is to be proved in the Court of law with deciding criminal law.*
- \* *Termination and cancellation of appointment order of 2 Respondent are with reference to cancellation of caste certificate, therefore, sub-section (6)(b)(ii) of section 4 of the Act is not attracted so as to deny gratuity amount to the 2nd respondent.*
- \* *The management of the bank has not launched criminal proceeding so as to prove offence of moral turpitude in the court of law as such the gratuity of an employee even dismissed from service for forging certificated could not be forfeited.*

1. In the instant petition petitioner has assailed the order of the Appellate Authority (respondent No.1) (vide Annexure-A) dated 22.12.2020.

2. Respondent No.2 - P. Rajendra was appointed as a clerk with the petitioner-Bank on 24.7.1981 under Schedule Tribe Category. In that regard, he had furnished caste certificate dated 19.7.1978. The petitioner - Bank initiated enquiry by framing

charges and issuing charge sheet on 12.3.1990 on the allegations that respondent No.2 is alleged to have submitted Schedule Tribe Certificate which is not a genuine one. Charge Sheet was not proceeded with in terms of the direction issued in W.P. No.2387/1990(as stated in the memorandum of Writ Petition). Thereafter, there were certain internal communications relating to verification of caste certificate whether respondent No.2 belongs

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



to Yadav Community (Golla Community) and such caste would fall under the Schedule Tribe category or not? Consequently, caste certificate dated 19.7.1978 was cancelled in a proceedings dated 7.9.2017 initiated by the District Caste and Income verification Committee. On 27.09.2017, services of respondent No.2 were terminated while canceling the order of appointment of respondent No.2. Thereafter, respondent No.2 submitted representation for settlement of terminal benefits and it was rejected on 13.12.2017. He has rendered 36 years 3 months of service. He had submitted Form-1 claiming payment of gratuity and it was rejected by the petitioner/bank on 26.11.1970. Thus respondent No.2 filed an application before the Controlling Authority in respect of payment of gratuity. Application of respondent No.2 was rejected vide order dated 20.08.2020. Feeling aggrieved by the order of Controlling Authority, respondent No.2 preferred an appeal before the Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972 (for short the Act, 1972). Appeal filed by the respondent No.2 i.e. Appeal No. 36(479) 2019-B1 was allowed in favour of respondent No.2 while setting aside the order of the Controlling Authority dated 20.8.2020 and direction was issued to the petitioner-Bank to pay respondent No.2 ₹10,00,000/- along with interest @ 10% per annum from the date it became due till the actual date of payment. Feeling aggrieved and dissatisfied of the order of Appellate Authority dated 22.12.2020, petitioner - Bank has presented this petition.

3. Learned counsel for the petitioner - Bank vehemently contended that the petitioner-Bank has cancelled the order of appointment issued to respondent No.2 and terminating his services on 27.09.2017 with reference to the cancellation of caste certificate dated 19.7.1978 issued in favour of respondent No.2 in view of the letter of the District Caste and Income Verification Committee dated 07.09.2017. Learned counsel for the petitioner submitted that once the services of respondent No.2 is terminated pursuant to cancellation of caste certificate, respondent No.2 is not entitled to gratuity. It is submitted that petitioner is not entitled to have the benefit of

gratuity in view of Section 4(6)(b)(ii) of the Act, 1972. In support of the aforesaid contention, he relied on the following three decisions furnished along with the memo.

1. AIR SC 1469) (R. Vishwanath Pillai Vs State of Kerala and Ors, (2004) dated 07.01.2004.
2. AIR SC 3271) (Chairman and Managing Director, FCI and Ors V. Jagdish Balaram Bahira and Ors, (2017)
3. High Court of Judicature at Madras judgment dated 04.06.2014 - N. Balu Vs. The Chairman, State Bank of India, Mumbai & Others (Writ Petition No.13346 & 19055 of 2013 & M.P. No.1 and 1 of 2013)
4. Heard the learned counsel for the petitioner-Bank.
5. Question for consideration in the present petition is "Whether respondent No.2 is entitled to gratuity under the Payment of Gratuity Act, 1972 or not?"
6. Undisputed facts are that respondent No.2 was appointed with the petitioner - Bank as a clerk under the Schedule Tribe Category r/w the Caste Certificate dated 19.7.1978. Petitioner-Bank initiated disciplinary proceedings in order to find out the genuineness of the Caste Certificate dated 19.7.1978. Thereafter, enquiry is stated to have been abandoned by petitioner. Further, there were correspondences among petitioner and state authorities in respect of genuineness of the caste certificate dated 19.7.1978 furnished by respondent No.2. Caste Certificate dated 19.07.1978 was cancelled on 7.9.2017 by the District Caste & Income Verification Committee. Pursuant to the cancellation of caste certificate of respondent No.2, petitioner-Bank proceeded to terminate the services of respondent No.2 and cancelled the order of appointment issued to him on 1.7.1981. Section 4(6)(b)(ii) of the Act, 1972 reads as under:

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

"4. Payment of gratuity.- XXXX

(1) to (5) XXXXXX

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

(a) the gratuity of an employee, whose services have 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 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."

Section 4(6)(b)(ii) of the Act, 1972 is in respect of moral turpitude of an employee with reference to such offence committed while he was in the course of his employment. Respondent No.2 was appointed with petitioner-Bank on 1.7.1981. In order to obtain appointment, he had furnished Schedule Tribe Category Certificate dated 19.7.1978 that means he had committed misconduct prior to 1.7.1981(order of appointment) and not during the course of employment and such offence is to be proved in the Court of law. Petitioner-Bank has not launched criminal proceedings. If an employee has committed offence involving moral turpitude during the course of employment, in that event, such employee is not entitled to gratuity amount.

7. The decisions relied by the learned counsel for the petitioner-Bank are in respect of terminal benefits and is not in relation to provisions of Act, 1972. In the present case, question is Whether respondent No.2 is entitled to gratuity with reference to the aforesaid provisions of the Act, 1972 or not?

8. Moral turpitude of respondent No.2 would not fall under Section 4(6)(b)(ii) of the Act, 1972. Moreover, the cited decisions are distinguishable in view of the provisions of the Act, 1972 cited supra & offence is to be proved in a Court of law. Apex Court in the case of Nair Service Society vs. T. Beermasthan, (2009) 5 SCC 545 held as under:

"48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block."

9. The decision of the Apex Court cited supra is in respect of particular statute. In other words, each case depends upon the relevant statute which is required to be taken into consideration. The provisions of payment of Gratuity Act, 1972 are crystal clear that an employee should have committed offence involving moral turpitude in the course of his employment. Undisputedly, respondent No.2 has not committed any moral turpitude/offence during the course of his employment. On the other hand, before joining the petitioner bank, he has obtained the Caste Certificate.

10. The Hon'ble Supreme Court in the case of Union Bank of India and others Vs C.G. Ajay Babu and another, (2018) 9 SCC 529 interpreted

HE WHO SEEKS HAPPINESS BY HURTING WILL NEVER FIND IT

Sub-Section 6 (a) & (b) of Section 4 of Act, 1972  
Paras 15 to 18 are reproduced here under:

“15. Under sub-section (6)(a), also the gratuity can be forfeited only to the extent of damage or loss caused to the Bank. In case, the termination of the employee is for any act or wilful omission or negligence causing any damage or loss to the employer or destruction of property belonging to the employer, the loss can be recovered from the gratuity by way of forfeiture. Whereas under clause (b) of sub-section (6), the forfeiture of gratuity, either wholly or partially, is permissible under two situations: (i) in case the termination of an employee is on account of riotous or disorderly conduct or any other act of violence on his part, (ii) if the termination is for any act which constitutes an offence involving moral turpitude and the offence is committed by the employee in the course of his employment. Thus, clause (a) and clause (b) of sub-section (6) of Section 4 of the Act operate in different fields and in different circumstances. Under clause (a), the forfeiture is to the extent of damage or loss caused on account of the misconduct of the employee whereas under clause (b), forfeiture is permissible either wholly or partially in totally different circumstances. Clause (b) operates either when the termination is on account of: (i) riotous, or (ii) disorderly, or (iii) any other act of violence on the part of the employee, and under clause (ii) of sub-section (6)(b) when the termination is on account of any act which constitutes an offence involving moral turpitude committed during the course of employment.

16. Offence is defined, under the General Clauses Act, 1897, to mean any act or omission made punishable by any law for the time being in force [Section 3(38)].

17. Though the learned counsel for the appellant Bank has contended that the conduct of the respondent employee, which leads to the framing of charges in the departmental proceedings,

involves moral turpitude, we are afraid the contention cannot be appreciated. It is not the conduct of a person involving moral turpitude that is required for forfeiture of gratuity but the conduct or the act should constitute an offence involving moral turpitude. To be an offence, the act should be made punishable under law. That is absolutely in the realm of criminal law. It is not for the Bank to decide whether an offence has been committed. It is for the court. Apart from the disciplinary proceedings initiated by the appellant Bank, the Bank has not set the criminal law in motion either by registering an FIR or by filing a criminal complaint so as to establish that the misconduct leading to dismissal is an offence involving moral turpitude. Under sub-section (6)(b)(ii) of the Act, forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, and convicted accordingly by a court of competent jurisdiction.

18. In *Jaswant Singh Gill v. Bharat Coking Coal Ltd.* [*Jaswant Singh Gill v. Bharat Coking Coal Ltd.*, (2007) 1 SCC 663 : (2007) 1 SCC (L&S) 584], it has been held by this Court that forfeiture of gratuity either wholly or partially is permissible under sub-section (6)(b)(ii) only in the event that the termination is on account of riotous or disorderly conduct or any other act of violence or on account of an act constituting an offence involving moral turpitude when he is convicted. To quote para 13: (SCC p. 670)

“13. The Act provides for a close-knit scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. As noticed hereinbefore, subsection (6) of Section 4 of the Act contains a non obstante clause vis- -vis sub-section (1) thereof. As by reason thereof, an accrued or vested right is sought to be taken away, the conditions laid down thereunder must be fulfilled. The

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provisions contained therein must, therefore, be scrupulously observed. Clause (a) of sub-section (6) of Section 4 of the Act speaks of termination of service of an employee for any act, wilful omission or negligence causing any damage. However, the amount liable to be forfeited would be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or damage. It was not found that the damage or loss caused to Respondent 1 was more than the amount of gratuity payable to the appellant. Clause (b) of sub-section (6) of section 4 of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude. Conditions laid down therein are also not satisfied.

The aforesaid principle is applicable to the present case.

11. The petitioner Bank has not launched criminal proceedings so as to prove offence in the Court of law. Termination and cancellation of appointment order of 2nd Respondent is with reference to cancellation of caste certificate. Therefore, sub-section 6(b)(ii) of section 4 of Act, 1972 is not attracted so as to deny gratuity amount to the 2nd respondent. Therefore, there is no infirmity in the order of Appellate Authority dated 22.12.2020. Hence, petitioner Bank has not made out a case so as to interfere with the impugned order dated 22.12.2020 passed by the Appellate Authority vide Annexure-A. Hence, the following:

### **Order**

*Writ petition stands dismissed at the admission stage itself. Petitioner-Bank is hereby directed to release the gratuity amount to respondent No. 2 in terms of the order of the Appellate Authority dated 22.12.2020 vide Annexure – A to the writ petition within a period of two months from the date of receipt of this order.*

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