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*Editorial*

## WELCOME 2023

We extend our warm new year's greetings to all our members, readers, patrons, well-wishers and their families. We bid farewell to the top leadership of the Confederation in 2022 and will begin our new innings in 2023 under the new leadership. However, the challenges that exist



before the Confederation have not changed but could well emerge stronger in the year 2023. Let us start the new year with a fresh resolve to accept the gauntlet and confront the challenges head on. Our campaign against bank privatization will be sustained, but it should now evolve into other forms of movement apart from the highly successful and acclaimed social media campaign #BankBachaoDeshBachao which is reaching to every nook and corner of the country. The other important task is settling all pending issues of the 8th Joint Note and concentrate on the commencement of negotiation for the next wage revision for which the Charter of Demands has already been submitted.

These tasks must be accomplished keeping in mind that the government may renew its efforts of privatisation of the public sector banks and other derogatory and repressive measures like rolling out of the Labour Code and denying hard-

earned rights to the working people. The government has already given a statement in parliament recently that it will take a view on privatisation of public sector banks after consultation with the concerned department and the regulator. Hence, it is crystal clear that the ruling dispensation buoyed by the

recent electoral results in Gujarat is in no mood to shelve the decision of bank privatisation. The Confederation has a task cut out to prepare a roadmap to counter the move by forging unity amongst all stakeholders and gearing up our affiliates and state units to rise to the task. We live in a country where life's hardship, poverty, and misery essentially follow a human being from the cradle to the graveyard. It is essential therefore to broaden the horizon of our movement and merge our sector-specific activities with the broader waves of the movement that the nation is witnessing for a better, inclusive and truly democratic India.

An organisation is judged ultimately by the way it negotiates the challenge. The entire world economy and the socio-political system are passing through a phase when the accepted ideals of the welfare state and inclusive social development are facing multifarious challenges. There is a

**A JUG FILLS DROP BY DROP**

growing tendency for autocratic rule and concentration of political and economic power in the hands of a select few. At the same time, thousands are deprived of their livelihood every day, and a systematic destruction of the environment is going on for whetting the appetite of crony corporates.

The year 2023 imposes upon our shoulders the task of rediscovering our priorities and repositioning ourselves to accomplish the great ideals for which this Confederation was founded in 1985. Common Bond reassures readers that it will continue to espouse the cause of the officers' fraternity support the general working-

class movement. It will remain the torch bearer for having the broadest possible unity of action and thought within the Confederation and hope that a rejuvenated Confederation will lead the membership to new heights of glory and success in the coming days. Stay Well! Stay Safe! Emerge in Struggle!

March on Comrades,

- # NationAgainstPrivatisation
- # StrikeHard
- # PowerofUnity
- # BankBachaoDeshBachao

## ECONOMY & BANKING

*We are sharing a news item from the Kolkata edition of Economic Times dated 6th December, 2022 on the reported demand made by the bankers in their pre-budget meeting with the Hon'ble Finance Minister seeking tax free fixed deposits up to ₹ 5.00 lakh. Interestingly, the IBA is reported to have demanded also that the Pension Scheme in the banking industry be revised and brought under a Pay Commission like structure ensuring that the pension upgraded automatically. – Editorial Board Common Bond.*

### BANKS WANT FIXED DEPOSITS UP TO ₹ 5 LAKH BE MADE TAX - FREE

Banks are seeking a level playing field on garnering funds as they believe they are placed at a disadvantage vis-a-vis mutual funds and insurers that offer tax breaks to customers. Ahead of the budget, banks have made representations to the finance ministry to make investments in fixed deposits of up to ₹5 lakh tax free as they want small-ticket deposits to become competitive with small savings plans and insurance products.

The Indian Banks Association (IBA) made the representation on behalf of banks, which have lately seen deposit growth trail the pace of credit expansion.

“Banks are increasingly losing out against national savings schemes, mutual funds and insurance products that offer tax-free savings to small customers; hence we have made budget

representations to the finance ministry to bring in provisions that make small value deposits more lucrative,” said a banker who was part of the meeting.

“We have submitted that interest on fixed deposits of up to ₹ 5 lakh be made tax free so that banks can become competitive against other savings products.”

The wedge between credit and deposit growth continued to widen and stood at 9 percentage points at the end of November. While credit expanded at 17%, deposits increased at 8.2%. The pace of deposit growth tumbled in November from 9.5% in October. Total banking deposits are at ₹173.7 lakh crore.

Credit to deposit ratio has been increasing over

IN THE SKY THERE IS NO DISTINCTION OF EAST AND WEST

the past year, and touched 74.4, climbing more than 5 percentage points in the period.

Despite increase in rates, bank deposits have continued to lose out to insurance schemes, which offer high tax-free returns, and to tax-saver mutual fund plans.

Meanwhile, banks have also sought relief on tax paid from gains on one-time settlement schemes.

“Currently, we have to pay tax on the entire loan

amount; for example if we receive ₹70 on a ₹100 loan, the law stipulates tax be paid on the entire loan. We have requested the income tax rules be amended to consider haircuts on such loans,” said another banker.

Another demand for the consideration of the finance ministry relates to the prevalent pension scheme. Nationalised and co-operative banks have sought that the pension scheme be amended and brought under a pay commission-like structure, which gets automatically upgraded periodically.■

## ORGANIZATION

Circular No. 2022/36

Date: 30.11.2022

*Dear Comrades,*

### COM RUPAM ROY TO TAKE OVER AS GENERAL SECRETARY W.E.F 1ST DECEMBER, 2022

The time has come to bid an emotional goodbye to all of you and pass on the baton of this mighty Confederation in the capable hands of Comrade Rupam Roy, President-designate AISBOF, in terms of the unanimous decision of the 96th Executive Committee meeting held at Chennai on 14th and 15th September, 2022 and subsequently confirmed in the 97th Executive Meeting held at Guwahati on the 18th November, 2022.

Com Rupam Roy joined the State Bank of India in 2001 as Clerk-cum-Cashier with an initial posting in a remote branch at Roing in Arunachal Pradesh. His leadership capability was exhibited from day one when he helped the staff members and others, ignoring the pains of posting in such a remote place. He was selected as a Trainee Officer in 2006 in recognition of his banking skill and served different states of the North-East during his probation days. He was posted at Guwahati LHO of the State Bank of India in 2008. He



did a stupendous job assisting the officers while being posted at HRMS Department. His probation to assuming the leadership in the Circle Association of SBIOA (North-Eastern) Circle was quite natural and synonymous with his demonstrated quality of standing by the members from day one of his service life.

He has excellent control over the technological developments sweeping the industry and touching every bit of our life. He is also an accomplished Defence Representative and has a specific interest and control over disciplinary matters and fitment issues. He was elected as a Central Committee member of SBIOA (NE) in 2010. His probation in the leadership echelon of the Association was smooth. He was selected as Secretary of Finance in

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

2013 and given independent charge of Finance and SBOA Public School at Guwahati. His passion for the entrusted responsibilities made the school one of the best in the city of Guwahati.

In 2015, Comrade Roy was elected as the General Secretary of the Circle Association and had been leading SBIOA (NE) from the front ever since. His extraordinary organisational skills, commitment to the members, and mastery over the issues affecting the fraternity brought him to a broader national arena. He was elected as Senior Vice President of both AIBOC and AISBOF. He was elected as the Chairman of AISBOF in April 2022. He will take over as the President of AISBOF from 1st December, 2022.

In the Confederation, he was the Administrative Secretary during Com DT Franco's tenure and was elevated to Senior Vice-President in 2018. He was one of the signatories of the historic 8th Joint Note. With his razor-sharp faculty and an excellent grasp of technology, and having age on his side, he would definitely prove to be the ideal choice to take our Confederation to the next level.

The undersigned is immensely grateful to the affiliates and the Executive Committee members for having the trust in Comrade Rupam for leading the Confederation as General Secretary from 1st December, 2022. He is confident that his dynamism, proven leadership qualities and passion for the trade union movement will write many a glorious chapter in the annals of the Confederation in the coming days ensuring continuity at the top.

All of us are aware that our immediate challenge is to thwart the government's ill-motivated design for privatising the public sector banks. With his immense exposure in handling social media, the undersigned is confident that Comrade Rupam Roy will take the campaign **#BankBachaoDeshBachao** to a new height covering many unexplored terrains. Other vital issues include Wage Revision, the introduction of 5 day work week, and settlement of all residual issues, including updating pension. He is also confident Com Rupam will carry forward the

arduous task of rejuvenating the state units; focusing on RRBs and Co-operative banks, and drafting more women in the movement. AIBOC will continue to remain the dominant force of the bank employees' movement in an officer-driven industry.

Before the undersigned signs off, he acknowledges his gratitude to all the senior leaders that he had the privilege to work in tandem, viz., Com Soumen Roy Choudhury, Com Dilip Saha, Com Debasis Ghosh, Com Sunil Kumar, Com Murali Soundararajan T. and remains ever grateful to them for extending unflinching support and guidance. He is indeed thankful to all affiliates and state unit members for the support provided in difficult times. He is also confident that Com P M Balachandra and Com Rupam Roy will make an incredible team to take the Confederation to the next level.

The undersigned places on record his unbounded gratitude to the entire membership, members of the Executive Committee, his secretariat, and veterans of the movement who have provided him with their love, blessings, and support at all critical junctures. The tumultuous four and half years that the undersigned was at the helm have transformed his life. He has tried his earnest best to espouse the cause of our fraternity with the goal and objective of making AIBOC the dominant force in the banking trade union industry and resisting the banking privatisation bill at any cost. The extent of his success is up to the membership to assess, but the undersigned would again wish to reiterate that there was no dearth of his effort and commitment and that he had tried heart and soul. AIBOC will flow through his veins till his last breath, and he will continue emotionally and spiritually attached to this mighty Confederation.

Comradely yours,

Sd/-  
(Soumya Datta)  
GENERAL SECRETARY

#MarchOnAIBOC  
#OnlyChoiceAIBOC  
#RightChoiceAIBOC  
#BankBachaoDeshBachao

OVERCOME ANGER BY LOVE, EVIL BY GOOD



Dear Comrades,

**AIBOC BIDS ADIEU TO COM SOUMYA DATTA, GENERAL SECRETARY,  
ON HIS SUPERANNUATION FROM THE SERVICES OF THE STATE BANK OF INDIA**

Comrade Soumya Datta, General Secretary, AIBOC and AISBOF, had laid down his office on 30th November, 2022 on his superannuation from the active service of the State Bank of India.

Comrade Soumya Datta was born on 27th November, 1962 in Kolkata, had his schooling at South Point High School and did his graduation in Economics from Jadavpur University. He completed his LL.B., MBA, and CAIIB and has several other professional and academic distinctions. He joined the State Bank of India as a Probationary Officer on 2nd February, 1987.

His optimism, passion for hard work, dedication, and commitment to the cause, apart from being an exceptional human being with the highest level of analytical skill, ensured his movement from Assistant Secretary of Ranaghat Composite Unit of SBIOA (Bengal Circle) in 1990 to General Secretary of the Circle itself in 2015. He was a natural choice for General Secretary, AIBOC in July 2018 and also assumed the Chair of President AISBOF.

Comrade Soumya Datta had spent better parts of the last two decades ensuring moments of rare soaring pleasure to thousands of bank officers. He may not have been aware of how much the



leadership and the Confederation benefitted through his intermittent conversation covering the entire nook and corner of the country. We know of his prowess, and he mesmerised us with his exciting and gripping discussion on issues confronting the Confederation.

The Confederation has no hesitation in admitting that the past 4 years would not have been the same without Comrade Soumya Datta at the helm. The Confederation underwent an inevitable major transition

ensuring historical achievements during this eventful time, and Comrade Soumya Datta was the principal architect. This was reflected umpteen times starting from the sordid episode involving Kalyan Jewellers, determination to have a full mandate for discussions on the charter of demands, accomplishing a wage settlement including improvement of family pension during trying Covid times, when wage cut, retrenchment, are the order of the day. It is his contribution to make AIBOC the determining force of the bank employees' movement with his singular realization that it is now an officer-driven industry. He should also be credited for imploring us that the officers' organization signs the Joint Note and that Bipartite should be banished from our vocabulary.

He exhibited the rare quality of an ardent

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

campaigner against the wrong economic policies of the government, and he is a crusader against the threat of bank privatisation. The pan India campaign of BankBachaoDeshBachao launched under his leadership has seen an unprecedented response with 313K plus likes as of now, be it raising a storm in social media, be it taking it to the street with the ground-breaking initiative, Delhi Chalo Jatha," be it launching a country-wide mass movement, the obdurate action on the part of Comrade Datta has all along been illustrative of his leadership, shrewdness and his never yielding attitude to act as a defiant for a cause. We need to carry forward this campaign which should be our best tribute to this living legend.

Comrade Soumya Datta, whom we had admired, shared some beautiful moments with us all in the Confederation. All those moments and feelings will reverberate for many days. We know that we are not going to live that time again. He may sometimes look passive and disappointed either in himself or the world around him. Still, his

determination would never allow him to get his dream shattered because he knew ignominy would haunt the movement, and he would be the last person to accept such a situation.

We strongly believe that Comrade Soumya Datta is just retiring from bank service. His leadership is a deed of historical significance and a genuine milestone in our confederated life.

In our capacity and on behalf of all members of AIBOC convey our sincere appreciation for his colossal contribution and urge him to intensify his fight to safeguard the rights of commoners and assist the banking unions in particular. We also wish him an active and healthy life in the years to come.

With revolutionary greetings,

**Sd/-**  
**(Rupam Roy)**  
**General Secretary**

## **CIRCULARS**

- 36 dated 30th November, 2022** : Com Rupam Roy to take over as General Secretary w.e.f. 1st December, 2022
- 37 dated 01st December, 2022** : AIBOC bids adieu to Com Soumya Datta, General Secretary, on his superannuation from the services of the State Bank of India
- 38 dated 16th December, 2022** : UFBU Meeting held at Chennai on 15.12.2022
- 39 dated 19th December, 2022** : UFBU writes to IBA and CLC for discussion on residual issues of the 8th Joint Note.
- 40 dated 19th December, 2022** : UFBU writes to IBA for initiation of discussion on the 9th Joint Note.■

## JUDICIAL VERDICT

[2022 (174) FLR 224]  
(CALCUTTA HIGH COURT)  
**T.S.SIVAGNANAM and HIRANMAY BHATTACHARYYA,JJ.**  
**F.M.A.No.652 of 2019**  
With  
**IA No. CAN 2 OF 2018 (Old No.CAN 7657 OF 2018)**  
May 13, 2022  
Between  
**STATE BANK OF INDIA and others**  
and.  
**RATAN KUMAR RABABI and others**

*State Bank of India Officers Service Rules, 1992- Rule 67(1) –Payment of Gratuity Act 1972-Section 4-Withholding of payment of gratuity-On the ground of pendency of disciplinary proceeding-Order of dismissal against the respondent with direction to forfeit entire gratuity-Employee submitted form N before Controlling Authority under act 1972 and his claim was rejected-However Appellate Authority hold that the respondent was entitled for gratuity-Learned Single Judge dismissed the writ petition of Bank-Hence present appeal by Bank-Held order of removal and forfeiture of gratuity had attained finality because that was not challenged by the respondent-Appellate Authority had no jurisdiction to deal with the order of punishment and modify or set aside the order of forfeiture of gratuity since the order of punishment was not the subject-matter of challenge in appeal –Order of learned Single Judge and the order of Appellate Authority both set aside- Order of Controlling Authority restored-Appeal allowed. [Paras 18 to 24]*

### JUDGMENT

**Hiranmay Bhattacharyya, J.-** This intra-Court appeal is directed against a judgment and order dated July 30, 2018 passed by a learned Single Judge in WP 4229 (W) of 2018.

2. The short question that arises for consideration in the instant appeal is whether the appellant/ employer was justified in withholding the

payment of gratuity of the respondent No. 1/ employee even after his superannuation from service on the ground of pendency of disciplinary proceedings.

3. The facts in a nutshell that are necessary for the consideration of the above issue are as follows:

The respondent No. 1 (for short “the employee”) joined the service of the State Bank of India (for

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

short "the employer") as a cashier-cum-clerk-cum-typist and he ultimately held the post as Chief Manager (Audit). During his posting at Kolkata, local head office, he was served with a charge-sheet on 22.10.2011. The respondent-employee retired from service on superannuation with effect from 30.11.2011. After completion of the departmental enquiry, the disciplinary authority proposed to impose major penalty of "removal from service" under Rule 67(1) of State Bank of India Officers' Service Rules, 1992 (for short "SBIOSR") and "for forfeiture of entire gratuity" in terms of **Section 4** of the Payment of Gratuity Act, 1972 (for short "the 1972 Act"). By a letter dated 07.08.2012 an order of major penalty was passed on 10.08.2012 whereby the charge-sheeted officer was inflicted with punishment of "removal from service" under Rule 67(1) of SBIOSR and "for forfeiture of entire gratuity" in terms of **Section 4** of the Payment of Gratuity Act, 1972. The respondent preferred a departmental appeal which stood rejected on 19.12.2013. The employee submitted Form N before the Controlling Authority under the **Payment of Gratuity Act, 1972** praying for a direction upon the employer to pay gratuity to him. Controlling Authority, by an order dated August 22, 2016, rejected the claim of the respondent against which the employee approached the appellate authority under the 1972 Act. Appellate Authority, by an order dated December 14.12.2017, held that the employee is entitled to be paid gratuity of 10,00,000/- along with simple interest from the date of superannuation till the date of payment after setting aside the order passed by the Controlling Authority. Employer challenged the order dated December 14, 2017 passed by Appellate Authority under the 1972 Act by filing a writ petition being WP 4229(W) of 2018 which was dismissed by a learned Single Judge by a judgment and order dated July 30, 2018. Being aggrieved, employer preferred this intra-Court appeal.

4. Mr. Majumder, learned advocate for the appellant contended that since the penalty order attained finality, the authority under the 1972 Act exceeded its jurisdiction by holding that the respondent is entitled to gratuity which would amount to modifying the penalty order. He further submitted that once the employee accepted the penalty order, his right to claim gratuity stood forfeited. He further submitted that the appellate authority under the 1972 Act as well as the learned Single Judge while passing the order impugned relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Jaswant Singh Gill v. Bharat Coking Coal Ltd.** which has since been overruled by a larger bench of the Hon'ble Supreme Court of India in the case of **Chairman-Cum-Managing Director, Mahanadi Coalfields Limited v. Rabindratnath Choubey**. He further submitted that in **Rabindranath Choubey** (supra) it has been held that gratuity can be withheld in case a disciplinary proceeding is pending against an employee.

5. Per **contra**, Mr. Basu, learned advocate for the respondent contended that SBIOSR do not permit the authority to forfeit the gratuity in any circumstances whatsoever. He further submitted that his statutory right to get gratuity under the 1972 Act cannot be curtailed merely on the ground that the employee did not challenge the penalty order. He distinguished the judgment in the case **Rabindranath Choubey** (supra) by submitting that the said decision is not of any assistance to the appellant as Rule 34(3) of the CDA rules which was the Rule under consideration before the Hon'ble Supreme Court of India empowered the authority to forfeit the gratuity whereas Rule 19 of the SBIOSR do not empower the appellant to forfeit the gratuity. He also submitted that since the employer has not challenged the Recovery Certificate issued by the Controlling Authority under the 1972 Act, instant writ petition was not maintainable. He also submitted that the term



“removal from service” after superannuation of an employee as per rule 19(3) does not come within any of the provisions enumerated in **Section 4** of the 1972 Act. He also submitted that since the pecuniary loss suffered by the employer could not be ascertained and/or quantified, the gratuity could not be forfeited by the employer.

6. We have heard the learned counsels for the parties and perused the materials placed.

7. The question that falls for consideration in the instant appeal is whether an authority exercising power under the 1972 Act can modify and/or set aside the order of punishment passed by the disciplinary authority forfeiting the gratuity.

8. It is not in dispute that charge-sheet was issued to the respondent No. 1 prior to his date of attaining the age of superannuation.

9. It is evident from the materials on record that the disciplinary authority by a letter dated November 22, 2011 informed the respondent employee that the appropriate authority has accorded approval for invocation of the provisions contained in Rule 19(3) of the SBIOSR and accordingly the service of the respondent in the bank has been extended for conducting the disciplinary proceedings under the service rules.

10. The disciplinary proceedings continued even after the superannuation of the employee by invoking Rule 19(3) of SBIOSR and the appointing authority after conclusion of the departmental enquiry passed the major penalty order on 10.08.2012. By the said order, punishment of removal from service under Rule 67(i) of SBIOSR and forfeiture of entire gratuity in terms of **section 4** of the 1972 Act was inflicted upon the employee.

11. The contention of the respondent No. 1 is that gratuity under the 1972 Act could not be withheld by the employer on the ground of pendency of the

disciplinary proceedings as the right to get gratuity accrued in terms of the 1972 Act immediately on the date of his superannuation that is on 30.11.2011. On the other hand the employer contended that an employee against whom disciplinary proceedings can continue even after superannuation in accordance with the service rules cannot be treated as a superannuated employee and punishment of dismissal/termination can be inflicted even after the superannuation. According to employer, an employee governed by the service rules could not have applied for gratuity before completion of the disciplinary proceedings.

12. The appellate authority under the 1972 Act held that the employee is entitled to gratuity. While arriving at the said finding, the appellate authority under the 1972 Act relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Jaswant Singh Gill** (supra).

13. The learned Single Judge dismissed the writ petition by relying upon an observation of the Hon'ble Supreme Court of India in the case of **Chairman-Cum-Managing Director v. Mahanadi Coal Fields Limited v. Rabindranath Choubey** wherein the Hon'ble Supreme Court while referring the issue to be decided by a larger bench observed that **Jaswant Singh Gill's** case directly answered the question where in the scheme of the 1972 Act, gratuity has to be necessarily released to the employee concerned on his retirement even if departmental proceedings are pending against him. The learned Single Judge being conscious of the fact that the issue was referred to a larger bench was of the view that the order of the appellate authority under the 1972 Act speaks of a possible view.

14. In **Jaswant Singh Gill** (supra) the controlling authority and the appellate authority ordered the payment of gratuity on the ground that in the order

passed by the departmental authority, the quantum of damage or loss caused was not indicated and it was not the case covered by **Section 4(6)(a) and 4(6)(b)** of the 1972 Act. The High Court opined that the controlling authority could not have gone into the validity of the dismissal order and forfeiture of the gratuity. On such facts the Hon'ble Supreme Court held that the provisions of **Section 4(6)** would prevail over the service rules governing such employee. It was further held that misconduct did not cover the grounds mentioned in **Section 4(6)(a)** for recovering the loss nor it was the case of misconduct in which gratuity could have been withheld wholly or partially in the exigencies as provided in **Section 4(6)(b)**. It was further held that even if the disciplinary enquiry was initiated before the age of superannuation, if the employee attains the age of superannuation, the question of imposing a major penalty by removal or dismissal from service would not arise.

15. Three Hon'ble Judges of the Supreme Court of India in the case of **Rabindranath Choubey** (supra) after noticing the judgment delivered by three Hon'ble Judges of the Supreme Court in the case of **State Bank of India v. Ram Lal Bhaskar** held that if the service rules provide that a disciplinary proceedings initiated against an officer while in service may be continued and concluded even after the date when such employee shall attain the age of superannuation and major penalty could be inflicted provided the disciplinary proceedings were initiated by the employee while he was in service. It was further held that in such a case a major penalty which includes the dismissal from service can be imposed even after the employee has attained the age of superannuation and/ or was permitted to retire on attaining the age of superannuation, provided the disciplinary proceedings were initiated while the employee is in service. The Hon'ble Supreme Court further held that Sub-section (6) of Section 4 of the 1972 Act shall be attracted in such a case and the amount

of gratuity can be withheld till the disciplinary proceedings concluded. Thus, this Court is unable to accept the contention of Mr. Bose that in the absence of any provision empowering the appellant to withhold the gratuity in the SBIO SR the authorities could not withhold the gratuity and the same became due and payable immediately on the date of his superannuation that is on 30.11.2011.

16. It was further held in **Rabindranath Choubey** (supra) that in a case where disciplinary proceedings were initiated for very serious allegations of misconduct which caused substantial loss to the employer and upon such being proved and the punishment is given, the provisions of sub-section (6) of section 4 of the 1972 Act would be attracted and it would be within the discretion of the employer to forfeit the gratuity payable to the employee.

17. The judgment in **Jaswant Singh Gill** (supra) was overruled by the larger bench in **Rabindranath Choubey** (supra) *inter alia* for the reasons that the authority under the **Payment of Gratuity Act, 1972** had no jurisdiction to go into the legality of the order of disciplinary authority which was not questioned. It was further observed that in **Jaswant Singh Gill** (supra) the Court did not consider the scope of the provisions of the **Payment of Gratuity Act, 1972** and the provisions of the service rules providing legal fiction of employee deemed to be in service even after superannuation.

18. In the case on hand the appointing authority in the order dated 10.08.2012 returned a finding that the charge-sheeted officer has been chiefly responsible for the financial loss of 1.90 crores to the bank. On such finding the charge-sheeted officer was inflicted with the penalty of removal from service under Rule 67(i) of SBIO SR and forfeiture of entire gratuity in terms of **section 4** of the 1972 Act. The said order had attained finality

and is thus binding upon the employee and the employer.

19. The principle laid down in *Jaswant Singh Gill* (supra) was the basis for passing the order by the appellate authority under the 1972 Act. The observations made in *Rabindranath Choubey* (supra) while overruling *Jaswant Singh Gill* (supra) are clearly applicable to the facts of the instant case as the order of punishment inflicted upon the employee is not under challenge. The reasons assigned by the appellate authority under the 1972 Act against forfeiture of gratuity was in view of the decision in *Jaswant Singh Gill*. Since *Jaswant Singh Gill* (supra) stands overruled, the order of the appellate authority under the 1972 Act cannot be sustained in the eye of law. In view of the observations in *Rabindranath Choubey* (supra) it cannot also be said that *Jaswant Singh Gill's* case is a possible view as held by the learned Single Judge and as such the same also calls for interference.

20. This Court is, therefore, of the considered view that the Appellate Authority while exercising its power under the 1972 Act cannot act as the Appellate Authority of the disciplinary authority imposing the punishment. An authority exercising powers under 1972 Act, which in the instant case is the Appellate Authority, had no jurisdiction to deal with the order of punishment passed by the disciplinary authority. The said authority could not sit in appeal over the order of punishment of the disciplinary authority and modify or set aside the order of the disciplinary authority forfeiting the gratuity. Since the order of punishment is not the subject-matter of challenge in this appeal, this Court does not deem necessary to deal with the argument of Mr. Basu that the gratuity could not have been forfeited in a case of removal from service.

21. Now, this Court shall deal with the decisions cited by Mr. Basu in support of his contention. A

co-ordinate bench of this Court by a judgment dated 17.11.2021 passed in W.P.C.T. No. 140 of 2019 in the case of *Union of India and Ors. V. Gurtiboina Appaia v. V.G.Shankar* while dealing with the right of the railway administration to withhold, recover or adjust from the death- cum- retirement gratuity to adjust, the normal rent and any other amounts as may be due from the ex-employee on vacation of the railway accommodation held that **sections 4 (6) and 13** of the 1972 Act overrides the Railway Service (Pension Rules, 1993) as well as other statutes. The said decision was not on the issue as to whether the employer has a right to withhold gratuity during pendency of a disciplinary proceedings even after his superannuation in view of the legal fiction in the service rules. Thus, the said decision has no manner of application to the facts of the instant case.

22. A co-ordinate bench of this Court by a judgment dated 18.01.2018 passed in MAT No. 1522 of 2017 with CAN No. 8857 of 2017 in the case of *United Bank of India v. Bidyut Baran Haldar and others*. while dealing with an issue whether the bank could attach/adjust the gratuity payable to the employee upon termination of his service on the ground that monies are due and payable by the employee to the bank on account of loan that had been advanced by the bank to the employee during the pendency of his service held that since the bank did not prefer any appeal from the order of the Controlling Authority holding that adjustment of gratuity amount against the outstanding loan is against the provisions of 1972 Act and the certificate issued by such authority in pursuant to such order was also not under challenge, the co-ordinate bench, on such facts, held that the bank was bound by the order of the controlling authority. The facts of the said case is distinguishable as in the case on hand the order of the appellate authority under the 1972 Act has been challenged by the appellant. Certificate proceeding is in the nature of execution

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proceedings and once the executable order has been challenged, the certificate issued by the controlling authority need not be challenged separately. Thus, this Court do not find any substance in the argument of Mr. Bose that the writ petition at the instance of the appellant herein was not maintainable for not having challenged the certificate issued by the controlling authority.

23. A Division Bench of the Madras High Court by a judgment dated 23.08.2021 passed in W.A. No. 1558 of 2011 and M.P. No. 1 of 2011 in the case of *The Management, Coimbatore District Central Co-operative Bank Ltd. v. N. Somasundaram and others*. while dealing with a case involving recovery of loss caused to the bank held that since the surcharge proceedings has come to an end it was open to the authorities to recover the loss by invoking the provisions of the *Revenue Recovery Act* from the employee but the gratuity cannot be withheld in view of *section* 13 of the Payment of Gratuity Act. The said decision is distinguishable on facts and as such the same has no manner of application to the facts of the instant case.

24. For the reasons as aforesaid the order of the learned Single Judge dated July 30, 2018 and the order dated December 14, 2017 passed by the appellate authority under the 1972 Act are set aside and quashed. Consequently, the order of the Controlling Authority dated August 22, 2016 stands revived. All consequential steps, if any, taken by the authorities under the 1972 Act pursuant to the order of the Appellate Authority dated December 14, 2017 and/or the order passed by the learned Single Judge dated July 30, 2018 also stands set aside and quashed. The appeal, thus, stands allowed. There shall be however, no order as to costs. The application also stands disposed of accordingly.

25. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

T.S. Sivagnanam, J. - I agree.

*Appeal Allowed.*

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