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Editorial

CRASH LANDING

Normally, we avoid commenting on the turmoil in any specific sector of the economy unless it affects the banking sector adversely. It is axiomatic that the banking sector cannot remain immune from adverse happenings in the economy both at the macro and the micro level. In that backdrop, we cannot resist our temptation to comment on the recent crash landing of "Go Fast" (Earlier Go Air) preceded as it was by bankruptcy of Kingfisher Airlines and Jet Airways. Our immediate provocation is filing a bankruptcy petition by Go Fast before NCLT with an involvement of more than ₹ 6,200 crore of bank finance mainly from the public sector. We need not elaborate on the well-known story involving Shri Vijay Mallya and his Kingfisher Airlines and the technical loss that the banking system had to sustain for his default. Though it was not so widely discussed, reports are trickling in that founder of Jet Airways, Shri Naresh Goyal, was diverting funds to his personal and family accounts, and almost after four years of suspension of operation by the airlines, he has now proceeded with a fraud case. You will not win a prize by guessing he is also not in India. Yes, he is not.

The story surrounding these three airlines has a common thread. They were all floated as the poster boy of the entry of private capital in the aviation sector. At the same time, systematic efforts were made to destabilise the two public sector giants Air India and Indian Airlines, through an unplanned merger and floating of a weak appendage in the form of Alliance Air. The emerging middle class is delighted with the availability of so many options now available in the domestic sector for flying, and such cutthroat competition has also reduced airfare substantially, making air travel affordable for them. This entry of private capital in the airline sector completed its journey with the taking over of Air India by Tata Group. Over the years, the skeleton of such privatisation move has come out of the cupboard.

It is yet another story that the owners of all three sold airlines were always hobnobbing with the political bosses. We are confident that nothing will happen to them, and Shri Mallya and Shri Goyal may not resurface again in the Indian territory. But we are concerned that our esteemed clients may lose their money through write-offs and employees and, more particularly,

A JUG FILLS DROP BY DROP

the officers may have to pay the price of the sin committed by policymakers and their crony friends. We are all aware that the banks are supposed to be very particular in ensuring due diligence before sanctioning any big-ticket loan, which also passes through the scrutiny of the Board. The Board has been immune from the potential troubleshooters by excluding the officers' representative since 2014, maybe to ensure the safe passage of such dubious loan proposals. Some of the top brass of the banking system is so desperate that they could make public statements to continue financing certain friendly capital group of the ruling establishment despite a dark cloud hovering over their financial activities.

The Insolvency and Bankruptcy Code, which provided for the setting up of NCLT, could resolve only 98 cases involving ₹ 18,100 crore against a total of 809 cases involving a staggering amount of ₹ 2.3 trillion, as per media reports. The settled amount represents only 0.37 percent of the claim. If we stray a little further, we will observe that in the case of Videocon, the haircut was nearly 96 percent, while in the case of Jet Airways, the prospective bidder would have to pay only ₹ 1,200 crore (appx.) as against an estimated outstanding of ₹ 15,000 crore.

The Parliamentary Standing Committee on Finance has severely condemned the functioning of the NCLT. It has now recommended that a floor amount be fixed to recover bank dues. The functioning of NCLT and insolvency professionals has been severely criticized, and various studies have suggested alternatives. A time has come

to demand immediate stoppage of such wanton loot of banking resources on the one hand and denial of due benefits to the employees, both serving and retired, citing poor financials of the bank.

We also wish to raise a broader question. Today the lion's share of the banking resources is with the public sector. Despite this, these resources are being misutilised to benefit private owners who mismanaged their enterprises. Such actions by the crony capitalists only confirmed that ruthless privatization and selling of precious national assets could defer the crisis for a few months but would ultimately bring more woes to the economy and will destabilize the banking sector completely. Privatisation of public sector banks will only add more fuel to the fire of destroying precious national assets, and the damage will be irreversible.

It is high time to expose the government and its policy of recklessly selling national assets at the nation's cost. Resistance needs to be built to insulate the banking sector from the onslaught of crony capitalists and halt the onward march of the cronies and their ruling-class friends. This can save the nation from the crash landing and the imminent holocaust.

Stay Well! Stay Safe! Emerge in Struggle!

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

IN THE SKY THERE IS NO DISTINCTION OF EAST AND WEST

BANKING

We share an article published in the Business Standard on 23rd April, 2023 by Shri Tamal Bandyopadhyay, a senior journalist and adviser to Jana Small Finance Bank Ltd. This article is presented to our readership to make the field level functionaries aware of their responsibilities in repulsing such arrogance from a section of senior bankers.

THE HR AILMENT OF PUBLIC SECTOR BANKS

Incidents of suicides highlight the prevalent work culture in PSBs

I wish it were an apocryphal story. But it's not. Early March, when India was celebrating Holi, the festival of colour, a senior banker attended the wedding of a close friend's daughter in Mumbai. It was a public holiday. The gentleman stayed put through all the rituals over two days at a five-star hotel but was seen hiding whenever the camera clicked to shoot the goings-on.

Why was he doing that? Was he camera-shy? Not exactly. He didn't want to leave any trace of his presence at the wedding. The Delhi-based banker was not comfortable with the idea of any of his bosses getting to know that he was at the wedding in Mumbai over two days in March, the last month of the financial year. This could have been interpreted as dereliction of duty. This is despite the fact that one of the two days was a public holiday.

In the past, the banker had seen a colleague being reprimanded for missing office for one day in March. He had a fever.

This sums up the stress that most public sector bankers, across the hierarchy, go through. There are many other pressure points. A few recent media reports tell us the story.

In early April, the Hindustan Times reported that the managing director (MD) of a Goregaon-based private company was booked for allegedly abetting the suicide of the manager of the State Bank of India's (SBI's) Hindu Colony branch. The banker, Sandesh Malpani (44), had jumped off his ninth-floor flat. He had left behind a suicide note, alleging that he was forced to end his life because of the MD.

According to the FIR, the MD had drawn a loan of ₹ 8.49 crore from ICICI Bank Ltd. The company had approached SBI's Hindu Colony branch for transferring the loan, which the branch did after preliminary assessment. Under the terms of the transfer, the company was to submit the title deeds of two properties for which the loan was taken, but it did not.

Malpani's senior colleagues held him responsible for the lapse. Under tremendous stress, the banker chose to end his life. In his suicide note, he mentioned the names of three other bank officials who were involved in processing the loan.

Another report (in The Sentinel) in January was on Silchar (Assam) police arresting Yogendra Pandey, chief manager (audit) of SBI, for the mysterious death of a young branch manager, Kuldeep Dasgupta. Pandey was arrested at the Silchar railway station from where he was about to catch the last train to Guwahati.

Going by the FIR, filed by the deceased's mother, Dasgupta had blown the whistle on the corrupt practices of some of his senior colleagues while sanctioning agricultural loans to local farmers. He was mentally harassed, continuously, and even forced to buy gifts for Pandey, his mother alleged.

It may sound bizarre but incidents of public sector bankers dying by suicide could probably equal the number of such bankers quitting their jobs. They enjoy job security and also higher salary than their private sector peers at junior and middle levels, but the stress they go through is very different from

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

what private bankers face.

The number of clerical employees and subordinates in banks has plunged in the past decade, between 2010 and 2021, while the number of officers has witnessed a sharp spike. In 2005, clerks and subordinates combined made for at least 63 per cent of the employees in scheduled commercial banks. By 2010, this had dropped to 55 per cent and by 2021, 30 per cent. That's the industry figure, but the decline is even sharper in the public sector, thanks to digitisation. The number of branches has gone up by more than one-fourth in the past decade but employee strength has fallen.

Incidentally, in 2015, the finance ministry had asked the public sector lenders to consider promoting lower-rung employees on merit in view of the imminent retirement of many senior executives. The ministry asked the banks to promote the competent clerks to scale I and II officers. The pressure on such employees is too high as they struggle to cope with the new ecosystem and meet the high expectations of the organisation.

The HR heads of private banks have been facing a very different kind of challenge — the highest-ever employee turnover (at least for some of these banks). Till recently, the turnover was high for the front-end employees — those interacting directly with the customers, including the relationship managers. But now employees across segments, including those involved in specialised jobs such as technology, compliance and risk management, have started leaving in hordes.

Apart from one bank poaching from another, bank employees are in high demand in IT companies, fintechs, techfins, fast-moving consumer goods outfits and even delivery service providers. A section of them — however small — is also leaving to launch their own start-ups. An ambitious and restless lot, looking for different opportunities. The issues in public sector banks are unique. In most of the banks, the focus is on short-term monthly and quarterly targets for deposits and

loans. That seems to be the main source of stress for the bankers.

There are other issues as well. As most banks are fast-tracking promotions, too many employees of different seniority levels are jostling for those positions, making the whole environment hostile. Then, there is too much focus on cross-selling of financial products such as mutual funds and insurance policies. For the time being, of course, the primary focus is on deposit mobilisation for most banks but, overall, the emphasis on cross-selling of others products for ramping up fee income is diluting pure-play banking and hurting the work ethics of many who firmly believe in conventional banking.

Add to these the perennial pressure of implementing several government schemes.

A bigger cultural issue is misbehaviour by senior bankers, who don't mind using abusive language to run their junior colleagues down. Several video clippings have been doing the rounds on social media, depicting such incidents. The practice of blaming juniors for most lapses is creating a fear psychosis, leading a few to take extreme steps.

The poor HR culture seems to be prevalent in other public units in the financial sector such as Life Insurance Corporation of India (LIC). In January, First India reported the suicide of Sujit Kumar Pandey, a senior manager at LIC. The report, datelined Sasaram (Bihar), said Pandey had hanged himself. The contents of his suicide note are not in the public domain but his colleagues talk about work pressure as the trigger.

The psychological pressure is sometimes too much to bear even for senior employees. I am aware of a senior general manager of one public sector bank whose blood pressure rises every time the managing director stops talking to him. This happens for missing targets. At meetings, when he is ignored and the boss doesn't even look at him, he becomes restless and the time he spends in the office gets longer.

Will he quit his job? No. He will continue working in this high-stress environment and, hopefully, not reach the tipping point.

KNOW THE FINANCIAL TERMINOLOGY

- I) Waterfall mechanism for liquidation –
 - i) The waterfall mechanism under IBC Code gives priority to secured financial creditors over unsecured financial creditors.
 - ii) The mechanism says that if a company is being liquidated, these secured financial creditors must be first paid to the full extent of their admitted claim, before any sale proceedings are distributed to any other unsecured creditors.
 - iii) U/s 53 of the IBC which deals with the waterfall mechanism, the topmost priority is given to cost related to liquidation process and dues of workmen of the corporate debtor. The dues of the workmen include all their salaries, provident fund, pension, gratuity as well as any other fund maintained for the welfare of the employees.
- II) Producer Surplus –
 - i) Producer Surplus is defined as the difference between the amount the producer is willing to supply goods for and the actual amount received by him when he makes the trade. Producer Surplus is a measure of producer welfare.
 - ii) A producer always tries to increase his

producers surplus by trying to sell more and more but it is not simply possible to increase it indefinitely since the demand for his product has its own elasticity.

- III) The Green Deposit Framework –
 - i) A green deposit is an interest bearing instrument received by bank for a fixed period the proceeds of which are earmarked for green financing such as funding of renewable energy project.
 - ii) As per RBI guidelines, banks will accept deposit as cumulative or non-cumulative.
 - iii) All scheduled commercial banks and small finance banks excepting RRBs and other local area banks, NBFCs can accept deposit under this scheme.
 - iv) Apart from renewable energy project mentioned in point no. (i) the proceed from the green deposit can be used to fund projects in :
 - a) Energy efficiency
 - b) Clean transportation
 - c) Climate change adaptation
 - d) Sustainable water and waste management
 - e) Pollution prevention and control
 - f) Green building
 - g) Management of living natural resources, and bio-diversity conservation.

The allocation of fund raised through green deposit during a financial year shall be subject to an independent third party verification (TPV) on an annual basis.

CIRCULARS

18 dated 28th April, 2023: Circular on DA w.e.f. 01.05.2023.

19 dated 29th April, 2023: Circular vehemently denouncing the derecognition decision of postal unions by the Department of Posts, GOI.

20 dated 30th April, 2023: Circular on May Day.

THREE THINGS CANNOT BE LONG HIDDEN: THE SUN, THE MOON AND THE TRUTH
Common Bond, June -2023

JUDICIAL

[2023 (176) FLR 410]
(MADHYA PRADESH HIGH COURT)

VISHAL MISHRA, J.
W.P.No.8913 of 2019

February 3, 2022

Between

GENERAL MANAGER, CANARA BANK

and

SHRI PRAKASH N. MANDVE and others

Constitution of India, 1950-Article 226-Delayed payment of gratuity-Order of appellate authority in favour of employee-Only dispute remained with regard to interest due to delayed payment of gratuity-Held departmental and criminal proceeding initiated against the employee-Termination order was quashed by the High Court-In criminal case employee was acquitted-Petitioner promptly and without delay deposited the gratuity amount on demand by Prescribed Authority as the criminal case was pending against the employee-No delay on the part of petitioner-Employee not entitled for interest-Petition allowed.[Paras 14 to 18]

JUDGMENT

VISHAL MISHRA, J.-With the consent of the parties the matter is finally heard.

Challenge in this petition has been made to an order dated 10th July, 2019 passed by the Gratuity Appeals Nos. 60/18 and 61/18, whereby, Deputy Chief Labour Commissioner, Central Jabalpur has passed an order to pay gratuity amount alongwith interest to the respondent No.1. Challenge is being made on limited issue that whether the respondent No.1 is entitled for grant of interest for the delayed payment of gratuity by the authority or not?

2. It is pointed out that the petitioner are a cooperate body constituted under the **Banking Companies Act, 1970** having its head office at Manipal and an incorporate office at Bangalore. The respondent No.1 was appointed on 2nd April, 1977 as Probationary Clerk by the Bank and was confirmed on 28.10.1977. While working in the petitioner's bank at its Gandhi Bagh, Nagpur Branch between 09.11.2010 to 30.09.2011, the respondent by corrupt and illegal means or otherwise by abusing his official position demanded and accepted pecuniary advantage of ₹ 5000/- from one Rakhika, a customer of the Bank

on 14th July, 2011. The respondent No.1 was trapped by ACB, CBI Nagpur on the complaint of the customer and after investigation, an FIR was registered against him for offences punishable under **Prevention of Corruption Act** and a charge-sheet has been filed against the respondent No.1. A departmental enquiry was drawn up against the respondent No.1 and charges were found to be proved and the disciplinary authority *vide* order dated 31st May, 2016 found that respondent No.1 liable for breach of Regulation 3(1) read with Regulation 24 of the Syndicate Bank Officer Employees' (Conduct) Regulations, 1976 and punishment of dismissal from service was imposed upon the respondent No.1. An appeal preferred by the respondent No.1, was rejected and thereafter show-cause notice dated 19th October, 2016 was issued to the respondent No.1, wherein, he was asked to submit a reply as to why his gratuity amount should not be forfeited. A reply was duly submitted by the respondent No.1 and the authority after considering reply of respondent No.1 had decided that the act committed by the respondent No.1 falls within the purview of offence involving moral turpitude, therefore, he was informed that he was not entitled for any gratuity as per Rule 8(1)(ii) of the **Payment of Gratuity Act, 1972**.

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

3. The respondent No.1/employee aggrieved by the action of the petitioner/bank had raised a claim in prescribed form before the Regional Labour Commissioner (Central) Jabalpur. The case was registered as ALC 36-(45) and the Controlling Authority under *Payment of Gratuity Act, 1972* and RLC, Bhopal. The controlling authority after considering the reply filed by the respondent No.1 as well as the evidence led by the authorities had arrived at a conclusion that the respondent No.1 was entitled for payment of gratuity and the claim to the tune of ₹ 10.00 lac was allowed in favour of the respondent/employee. Thereafter a notice was for payment of gratuity to the bank in prescribed form on 27.03.2018 was issued, but no claim was granted by the authority. An appeal was preferred by the respondent No.1 before the Deputy Chief Labour Commissioner, (Central) Jabalpur as well as by the employer and the appeal were registered as Gratuity Appeal Nos.60/18 and 61/18. The appellate authority *vide* impugned order has dismissed the appeal filed by the employer i.e. the petitioner and has allowed the appeal filed by the respondent/employee and has further directed for payment of interest alongwith payment of gratuity.

4. It is submitted that the employee/respondent is not entitled for any interest as the appeal was not filed within time, the prescribed limit as provided under the *Payment of Gratuity Act* is 120 days and in terms of the *Section 7 (7)* of the Act, the appeal was filed with a delay without there being any explanation for the same. It is argued that the respondent/employee while in service was caught red handed by the CBI personnel and was placed under suspension and disciplinary action was taken against the respondent/employee. The disciplinary authority had terminated the services of the respondent/employee, but the aforesaid order of termination was quashed by this Hon'ble Court *vide* order dated 06.04.2018 passed in W.P.No.3011/2017, whereby, this Hon'ble Court while quashing the termination orders granted liberty to the authorities to pass a fresh order keeping in view the Syndicate Bank (Employees') Pension Regulations, 1995. Thereafter, the authorities have not chosen to take any action against the respondent/employee. It is further pointed out that a criminal case which

was registered against the respondent/employee under the provisions of *Prevention of Corruption Act*, the respondent/employee has been honorably acquitted by the judgment of Special Judge *vide* order dated 23.09.2019 passed in Special CBI case No.34/11. It is submitted that once the respondent/employee has been acquitted by the Special Court and termination order has been quashed by this Court and there is no action subsequently taken by the authorities, the respondent/employee is duly entitled for interest. Reliance has been placed on the judgment passed by Hon'ble Supreme Court in the case of *Union Bank of India v. C.G. Ajay Babu* in Civil Appeal 8251/2018 decided on 14th August, 2018 and also in the case of *Prakash M. Mandve v General Manager, Syndicate Bank*, W.P.No.3011/2017 decided on 6.04.2018 holding that in such circumstances, the authorities have directed for payment of gratuity amount alongwith interest.

5. In the present case, the authorities have confined their challenge only with respect of interest part. It is submitted that both the appeals; one submitted by the employer and other by the employee were taken into consideration for analogous hearing and were decided by a common order. The authorities have found no substance in the appeal preferred by the employer and the appeal preferred by the employee was allowed considering the aforesaid judgments of the Hon'ble Supreme Court and the law with respect of grant of interest on the gratuity amount. It is submitted that the pension and gratuity can only be withheld under exceptional circumstances and can be withheld only as per provisions mandate under the law. It is argued that *Section 4* of the Payment of Gratuity Act has specifically prescribed for payment of gratuity. It is argued that only in terms of provisions of *Section 4 sub-section (6)* of the Act, the authorities can withhold the gratuity amount, therefore, there is no justification of the authorities in withholding the gratuity without even waiting for outcome of the criminal proceedings. Once there is a presumption that until and unless the employee or accused is held guilty and punished by the criminal court, he has always be treated as an innocent person. The respondent/employee stood retired during these proceedings, therefore, the authorities were duty bound to make payment of gratuity, even otherwise, the gratuity can

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

only be withheld only in exceptional circumstances, whereby offence in the nature of forgery having ingredients of moral turpitude is being committed. As per the Banking Rules, the Bank can always withhold or recover amount towards the loss to the Bank and forfeiture of the gratuity amount is permissible to that extent only. Therefore, the order passed by the appellate authority granting interest to the respondent/employee is just and proper, does not warrant any interference in the present petition. He has prayed for dismissal of the writ petition.

6. Heard learned counsel for the parties at length and perused the record.

7. From a perusal of the record, the admitted position is that the respondent No.1 while in service in the Bank was caught red handed for taking bribe of ₹ 5000/- from the customer. He was placed under suspension and disciplinary proceedings were initiated alongwith criminal proceedings against him. The disciplinary proceedings ended in termination of service, which subsequently was put to challenge before this Court and this Court *vide* order dated 06.04.2008 passed in W.P.3011/2017 has quashed the termination order of the respondent/employee, however, extended the liberty to the authorities *i.e.* even if they want, they can pass a fresh order. Admittedly no subsequent proceeding is drawn up by them, therefore, the order of this Court have attained finality. The respondent/employee was acquitted in the criminal case by all the authorities and it was an honorable acquittal. Thus, no charges were found to be proved against the respondent/employee. In such circumstances, the respondent/employee is entitled for payment of gratuity.

8. Even in this petition challenge is made by the authority to the extent of grant of interest. It is submitted that the matter was already sub-judiced by various Courts, therefore, until and unless a decision is taken, the authorities were dutybound and cannot pay gratuity amount to the respondent/employee. It is further argued that the appeal filed by the respondent/employee claiming interest amount itself is not maintainable as the same was filed with delay.

9. The Hon'ble Supreme Court in the case of *Union Bank of India and others v. C.G. Ajay Babu and another* has held as under:

"9. Section 4 the Act, to the extent relevant, reads as follows: "4 Payment of gratuity.—(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,—

- (a) on his superannuation, or
- (b) on his retirement or resignation, or
- (c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation .— For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

xxx xxx xxx xxx

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

(6) Notwithstanding anything contained in subsection (1),—

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

been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee may be wholly or partially forfeited—

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

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

18. 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.

20. In the present case, there is no conviction of the respondent for the misconduct which according to the Bank is an offence involving moral turpitude. Hence, there is no justification for the forfeiture of

gratuity on the ground stated in the order dated 20.04.2004 that the “misconduct proved against you amounts to acts involving moral turpitude”. At the risk of redundancy, we may state that the requirement of the statute is not the proof of misconduct of acts involving moral turpitude but the acts should constitute an offence involving moral turpitude and such offence should be duly established in a court of law.”

10. The Hon’ble Supreme Court in the case of *Jaswant Singh Gill v. Bharat Coking Coal Ltd. and others* has held as under:

“13. **The Act** provides for a closely neat 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, sub-section (6) of **Section 4** of the Act contains a **non- obstante** clause **vis-a-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 provisions contained therein must, therefore, be scrupulously observed. Clause of Sub-section (6) of **Section 4** of the Act speaks of termination of service of an employee for any act, willful 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 damages or loss caused to Respondent No. 1 was more than the amount of gratuity payable to the appellant. Clause 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.”

11. The Hon’ble Supreme Court in the case of *State*

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

of Jharkhand and others v. Jitendra Kumar Srivastava and another, has held as under:

“7. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. Conceptually it is so lucidly described in **D.S. Nakara and others. v. Union of India**; by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

“The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service? What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in **Deoki Nandan Prasad v. State of Bihar and others**. wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one’s discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in **State of Punjab and another v. Iqbal Singh**.”

8. It is thus hard earned benefit which accrues to an employee and is in the nature of “property”. This right to property cannot be taken away without the due process of law as per the provisions of **Article 300-A** of the Constitution of India.”

12. The Hon’ble Supreme Court in the case of **State of W.B. v. Haresh C. Banerjee and others**, has held as under:

“5. Articles 19(1)(f) and 31(1) have been repealed by the Constitution (Forty-Fourth Amendment) Act, 1978 w.e.f. 20th June, 1979. The right to property is no longer a fundamental right. It is now a constitutional right, as provided in **Article 300-A** of the Constitution. Right to receive pension was a fundamental right at the time of framing of Rules in 1971. The question is whether a Rule framed under proviso to **Article 309** of the Constitution providing for withholding of the pension would **ipso facto be ultra vires**, being violative of **Article 19(1) (f)** as it stood in 1971 when Rules were framed.”

13. Thus, from the aforesaid analysis, it is clear that pension and gratuity are not the bounties, are the hard earned properties by rendering his services to the department and are declared to be a constitutional right.

14. The question before this Court for consideration is whether the respondent No.1 is entitled for interest on the delayed payment of gratuity. Some dates are important to be considered:-

Dates	Event
14.07.2011	FIR was registered against the respondent No.1 while he was in service;
19.06.2014	Charge-sheet was issued to him;
30.06.2014	He attained the age of superannuation;
31.05.2016	Termination order was passed after his superannuation;
18.11.2016	Appellate order affirming termination order was passed;
06.04.2017	Both orders were quashed by this Court in W.P.No.3011/2017,
23.09.2019	He was acquitted in criminal case.

HE WHO SEEKS HAPPINESS BY HURTING WILL NEVER FIND IT

From the aforesaid, it is clear that criminal proceedings as well as disciplinary proceedings were drawn against the respondent No.1 while he was in service. Serious allegation of taking bribe was against him as he was caught red handed and the entire proceedings continued upto 23.09.2019 i.e. upto his acquittal in criminal case by the learned Special Judge.

15. The Hon'ble Supreme Court recently in the case of **Chairman- cum-Managing Director, Mahanadi, Coalfields Limited v. Rabindranath Choubey**, has considered the aspect of withholding of gratuity during pendency of disciplinary proceedings and held as under:

"10.17 **Section 4** provides for payment of gratuity. **Section 4(6)** contains a *non-obstante* clause to sub-section (1). In case of service of the employee have been terminated for wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, gratuity shall be forfeited to the extent of the damage or loss so caused as provided under **section 4 (6)(a)**. Even in the absence of loss or damage, gratuity can be wholly or partially forfeited under the provisions of **section 4(6)(b)**, in case termination of services was based upon disorderly conduct or act of violence on his part or offence involving moral turpitude committed during the course of employment. Thus, it is apparent that not only damage or loss can be recovered, but gratuity can be wholly or partially withheld in case services are terminated for the reasons specified in **section 4 (6)(b)**.

10.31 Several service benefits would depend upon the outcome of the inquiry, such as concerning the period during which inquiry remained pending. It would be against the public policy to permit an employee to go scot-free after collecting various service benefits to which he would not be entitled, and the event of superannuation cannot come to his rescue and would amount to condonation of guilt. Because of the legal fiction provided under the rules, it can be completed in the same manner as if the employee had remained in service after superannuation, and appropriate punishment can

be imposed. Various provisions of the **Gratuity Act** discussed above do not come in the way of departmental inquiry and as provided in **Section 4(6)** and Rule 34.3 in case of dismissal gratuity can be forfeited wholly or partially, and the loss can also be recovered. An inquiry can be continued as provided under the relevant service rules as it is not provided in the **Payment of Gratuity Act, 1972** that inquiry shall come to an end as soon as the employee attains the age of superannuation. We reiterate that the Act does not deal with the matter of disciplinary inquiry, it contemplates recovery from or forfeiture of gratuity wholly or partially as per misconduct committed and does not deal with punishments to be imposed and does not supersede the Rules 34.2 and 34.3 of the CDA Rules. The mandate of **Section 4(6)** of recovery of loss provided under **Section 4(6)(a)** and forfeiture of gratuity wholly or partially under **section** is furthered by the Rules 34.2 and 34.3. If there cannot be any dismissal after superannuation, intendment of the provisions of **Section 4(6)** would be defeated. The provisions of **section 4(1)** and **4(6)** of Payment of Gratuity Act, 1972 have to be given purposive interpretation, and no way interdict holding of the departmental inquiry and punishment to be imposed is not the subject matter dealt with under the Act.

11. In view of the above and for the reasons stated above and in view of the decision of Three Judge Bench of this Court in **Ram Lal Bhaskar** (supra) and our conclusions as above, it is observed and held that (1) the appellant - **employer has a right to withhold the gratuity during the pendency of the disciplinary proceedings, and (2) the disciplinary authority has powers to impose the penalty of dismissal/major penalty upon the respondent even after his attaining the age of superannuation, as the disciplinary proceedings were initiated while the employee was in service.**

Under the circumstances, the impugned judgment and order passed by the High Court cannot be sustained and the same deserves to be quashed and set aside and is accordingly hereby quashed and set aside and the order passed by the Controlling

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Authority is hereby restored. However, the appellant-employer is hereby directed to conclude the disciplinary proceedings at the earliest and within a period of four months from today and pass appropriate order in accordance with law and on merits and thereafter necessary consequences as per Section 4 the Payment of Gratuity Act, 1972, more particularly Sub-section (6) of Section 4 the Gratuity Act and Rule 34.3 of the CDA Rules shall follow. The present appeal is accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs."

16. From the aforesaid analysis, it is clear that the amount of gratuity can be withheld pending enquiry against an employee, if the proceedings were initiated while he was in service. There is no dispute with respect to the fact that the criminal as well as departmental proceedings were initiated against the respondent/employee while he was in service. The disciplinary proceedings ended on 31.05.2016 and he was terminated from service. Termination was quashed on 06.04.2018 by this Court in W.P.No.3011/

2017. In criminal case, he was acquitted on 23.09.2019. The petitioner/employer has deposited the amount of gratuity on 17.07.2018 with the controlling authority Bhopal vide demand draft No.503484 dt. 13.07.2018, as the criminal case was pending against the respondent No.1. Thus, it is clear that the petitioner/employer has taken a prompt action to deposit the gratuity amount. It cannot be said to be with delay. Counsel for the petitioner has fairly stated that amount towards gratuity is received, but interest is not paid.

17. From the aforesaid analysis of the case, it is held that, there is no delay in making the payment towards gratuity. Respondent No.1 is not entitled for any interest on the gratuity amount, in view of the judgment of Hon'ble Supreme Court in the case of *Rabindranath Choubey (supra)*.

18. The petition is allowed. No orders as to cost.

Petition Allowed.

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