

Editorial
Stay Healthy, Stay Safe

NEW CHALLENGES

The new challenges apart from the Covid Epidemic are staring at our doors. While we are yet to grapple with several organizational changes that the bank is bringing about in the past one year in the name of rationalization and streamlining of the various functions of the bank especially in introducing a series of administrative reforms despite the hectic pressure that our rank and file is facing across the country, has now decided to introduce the second Voluntary Retirement Scheme in the bank. Our members may recollect that there was a study of the human resources requirement and operational efficiency of the existing workforce by M/s. Boston and Company - wherein the Federation had presented comprehensive views and came out with a huge data base to prove that there is a need to augment the strength of the workforce as the recruitment had come to a standstill for more than a decade except for a few appointments here and there which has caused a serious damage to the age profile of the working staff. The Federation has been making fervent appeal to the Management that the branches are reeling under acute shortage of staff and the officers are virtually burning the mid night oil to keep the branches functioning.

The Federation was surprised to learn that the Management has now come out with a new scheme

of Voluntary Retirement for those who have completed 25 years of service and 55 years of age - more or less on the same pattern as was introduced in the year 2001. The Federation protested continuously against any scheme which are meant to ease out the workforce from the institution prematurely. The first VRS was a big blow to the employees and officers who choose to continue in the office while a large chunk of the workforce left the institution by availing attractive financial package under VRS. The bank had also introduced an exit scheme which was renewed as and when the bank wanted to ease out employees of the bank. The recent one was when the Associate Banks were merged with State Bank of India, the employees and officers who were joining the mainstream of State Bank of India were given an option to continue their service in SBI or to seek exit from the service. While, the merger process was a painful one, the offer of exit option to the employees of the Associate Banks was another blow to the serving employees and officers in the bank.

The Federation has immediately conveyed its anguish against the proposed new VRS introduced in the bank. The Federation has presented a comprehensive view on the impact of the proposed VRS and how it would affect the day to day

NATION FIRST, ORGANISATION NEXT, INDIVIDUAL LAST

functioning of the Bank, particularly the branches all over the country. The Federation while decrying the efforts of the bank for reduction of the workforce has brought to the fore as how the functioning of the branches are affected and how the bank would find it extremely difficult in handling the future problems confronting the banking industry with acute shortage of staff. The Federation also conveyed to the Management that an important issue such as VRS should have been brought to the bilateral forum more so when our representative on the Central Board of State Bank of India is not appointed due to the reasons best known to the Government of India as the Board had no opportunity to hear the views of the nominees of the Officers on the Board of the Bank. The Bank continues its initiative in bringing drastic changes in the functioning of the bank as well as the digitalization efforts - which is taking a heavy toll on our workforce. The present offer of VRS is bound to result in the exodus of all our senior officers both in service and experience apart from a big drain in the experience in several critical fields. The Bank has a peculiar approach, while it wishes to offer a package to those who still have service in the bank, has been continuously recruiting officers on contract basis from the retirees who have retired from the bank to shoulder the huge workload that has resulted due to the shortage of staff at the branches.

The timing of the scheme is similar to the earlier one. The Officers organizations are seriously concerned with arriving at a good wage settlement keeping in view of the present living conditions and work situations in the branches. The unions are busy in pursuing the negotiations for an early settlement. The SBI has thought that the present timing would definitely tempt a large number of officers and employees to opt for the scheme since the revision will add to their compensation package. The Federation is concerned about the exodus and hence wanted a bilateral discussions on the subject.

The Bank no doubt is aware of the acute shortage

of staff in the bank, is coming out with periodical exit schemes. It has been taking the support of outside manpower through outsourcing of several functions at the branches. More than anything else it is using the same workforce who have retired after their superannuation in the bank on contractual basis to attend to various functions. The Bank has been periodically sending out messages to our retirees offering them the various types of jobs on contract basis so that the pending work can be cleared by these retirees. The Bank has a policy of offering the continuity of service to those who have retired on superannuation up to a maximum age limit of upto 65 years. In other words, even those who have retired on superannuation at the age of 60 years will have opportunity to join the bank on contract service and continue their service for another 5 years. It is a clear indication that there is a plenty of workload that remains unattended and the existing workforce are finding it extremely difficult to cope up with the workload due to the shortage of staff all over the country. The State Bank of India is a premier banking institution in the country. It is expected to lead the banking industry in a successful manner in particular in protecting the interest of the Public Sector Banks. It has always remained as a model employer avoiding all initiatives which will create a fear amongst the workforce about the job security in the bank. In realization of the stress situation prevailing in the branches it has come out with several new schemes such as work life balancing - encouraging the officers to avail leave so that they can devote sufficient time for their families and spend holidays with them so that the pressure of work is eased and come back to work with more enthusiasm and happiness.

It is in this background, the Federation has explained in detail the various consequences of the proposed VRS and sought an immediate bilateral meeting to discuss on the issues threadbare. All our members are advised to await for further developments in the matter. ■

SUCCESS AWAITS AT THE DOOR WHERE DILIGENCE IS

VOLUNTARY RETIREMENT SCHEME

Text of our letter No.6512/59/20, Dated: 31.08.2020, Addressed to The Deputy Managing Director (HR) & CDO, State Bank of India, Corporate Centre, Madame Cama Road, Mumbai – 400 021

We have been given to understand that the bank has mooted a proposal to introduce a provision for seeking voluntary retirement by officers and employees. This sudden development has come as a shocker to us. Through this communiqué, we are constrained to place on record our views on such an unwarranted development at a time when the entire country is in the throes of the deadly Covid-19 pandemic, amidst other multifarious challenges faced by the Bank.

2. Our Federation has always been a strong votary of participative management. It is an undeniable matter of fact that we represent the entire officers' cadre of the Bank, and as a major stakeholder, are cogs of the same wheels of progress of the Bank, as the Management is. As the main drivers of business of the Bank, an equal right of say in policy making which affects the fortunes of the Bank and its staff, is a natural given in the Human Resources culture and ethos of our Bank. Needless to say, we expect to be taken into confidence whenever any change in the service conditions of the officers and radical structural changes in the Bank, especially in the HR domain, are envisaged. To our dismay, we find that this VR scheme, which is poised to have far reaching ramifications on the Industrial Relations climate of the Bank and a lasting impact on the lot of the officers' community in the Bank, has been introduced keeping the Officers' Federation completely in the dark. While expressing our deep anguish, resentment and opposition on this unwarranted and unwelcome development, we make our substantiated stand as under;

a. Departure from bilateralism: While we engage with the Bank on many issues concerning

officers in their day to day functioning, a critical decision of reducing the number of officers/ employees by way of a VRS has been taken unilaterally without any regard to bilateralism. It is just and fair expectation that as major stakeholders, we should have been taken into confidence and the issue discussed threadbare before arriving at some mutually agreeable conclusion.

b. Absence of Workmen & Officer Directors to protect the interest of the stake holders: We note with deep consternation the fact that despite repeated reminders, there has been apparently no perceptible effort to nominate the Workmen and Officer Directors on the Board of the Bank, despite judicial directions and statutory requirements. The procrastination on the part of management is beyond comprehension. It is unfathomable that a forward-looking, premier, government-owned organization like our esteemed institution has been ignoring not only the aspects of good and ethical governance but also mandatory requirement and legal obligation of having such Directors on the Board. We are constrained to believe that the only purpose of not nominating Workmen and Officer Directors on Board is to block the channels of information to the legitimate stakeholders.

It is no wonder therefore that, in the absence of Directors representing workmen and the officers on the Board, we are not privy to the discussions and resolutions passed by the board and which also deprives us from raising and recording our concerns and contrarian views, if necessary, on issues which may have a deep impact on the balance sheet of the Bank as well as on the HR policies of the Bank. You may recall that we had expressed our angst in the last CNC meeting held through VC on 28th July 2020 on the lack of dissemination of vital information and about the necessity to do so on a sustained basis. The same can only be done in a bilateral forum which we

ARISE, AWAKE, STOP NOT TILL THE GOAL IS REACHED

also insisted on being set up to deliberate on issues pertaining to major changes in HR policies. Despite our strong objections and the assurance made to us, the management is proceeding arbitrarily. Thus, the opportunity to protect the interest of the officers' fraternity is being denied to their accredited representatives. This has resulted in our views not being heard at Board level, giving room for unilateral decisions, detrimental to officers and in the long run to the Bank.

c. Inadequate Human Resources: It is a well-known fact that the inadequacy of human resource is all pervading in the Bank, whatever may be the attempts to portray otherwise. Most of the circles are functioning below 80% of the assessed manpower, more so at junior/middle management grades. Unrealistic man power planning and irrational method of arriving at human resource requirements have resulted in wrong projection of manpower requirement at branches and offices. Branches are reeling under acute shortage of manpower and consequential pressure. In fact, inadequate staffing is the root of all problems, be it customer acquisition, retention, achieving top line or the bottom line or even compliance. We have a significant percentage of the branches in the custody of a single officer. Officers are toiling day and night to foster the growth and development of our organization, shouldering humongous workload. Social life and work-life balance of officers today have become a mirage which exists only in well-meaning circulars which in the current scenario is impossible to implement in letter and spirit. Despite all odds, the officers are serving and trying to meet the expectations of the Bank and the customers. Under these circumstances, instead of augmenting human resources, a diametrically opposite decision of encouraging mass exodus has been taken, which will further deplete a dwindling workforce. The merger of the Associate Banks with the Bank is yet to stabilize, many issues pertaining to service conditions of employees of erstwhile Associate Banks are unresolved and the integration of resources, culture, ethos and hierarchy is still to be achieved.

In this context, it is surprising that the Bank could think of a VRS without proper mapping of manpower requirements.

d. FIMM Network and the challenges emerging there from: Implementation of FIMM vertical has resulted in innumerable problems at the ground level. We have given our feedback about the disruptions that could be caused to the service-delivery capabilities and the compliance aspects of the Bank and its consequential effects on business and HR. Creation of this vertical by itself has further widened the pre-existing staff shortage. In many Circles, more than 50% branches in this network are single officer branches. The Bank is unable to provide required human resources to the branches and the outfits. Several components of FIMM like – RACCs, DSHs and RBOs are grossly understaffed. To address the crisis, the Bank had to employ retired officers. This vindicates our arguments that the Bank is woefully understaffed. With this, it is also true that employment opportunity in Banks to many unemployed youth of the country is being denied. The concept of CSPs, BCs and re-engaging retired officers to perform regular Banking jobs is misplaced. While they could be facilitators, they cannot replace the regular banking system and personnel. The attempt to do away with permanent staff and placing the banking in the hands of CSPs, BCs/Apprentices et al, will prove counterproductive as it has a direct impact on our goodwill and could throw up operational and reputational risks.

e. Covid19 - various measures of Government need more and more human resource for implementation: To combat the economic crisis and distress caused by the pandemic, the Central Government has implemented a number of schemes, programmes and policies apparently for kickstarting the economy by way of infusion of liquidity, DBTs, social security measures, increased lending to agri and SME segments etc. The majority of the financial package of around Rs. 20 lakh crore announced by Government will

flow only from/through banking channel. Ours is the single largest Bank, spread across the length and breadth of the country. As such, the weight of national expectation hangs heavy on our shoulders. Further, moratorium granted to borrowers on account of Covid-19, associated relief and concessions accorded/proposed by RBI/Government will have a direct impact on the asset quality of the Bank. Financial experts are of the opinion that huge part of the exposure may end up as stressed. This calls for substantial human resource to take care of business and manage the portfolio.

The need of the hour is a realistic assessment of necessary Human resources needed to rise to this challenge and if the situation so warrants, add to our staff strength. But, the present initiative is an antithesis to the logical demands of the current scenario.

f. CDS – linking to extension, consequential impact: We have brought to your attention the numerous lacunae in CDS and its effect on the career of the officers. CDS, unscientifically and illogically is being linked to even extension of service, which we have protested vehemently, both in writing and in our meetings. The CDS should be delinked from extension forthwith and it should be scrapped altogether.

3. Our officers are suffocating under the woes of gross understaffing, galloping stressed assets, carrying the weight of implementation of umpteen numbers of government schemes and yet deliver the best possible customer service even at great personal cost. We need not remind you of the number of colleagues we lost while providing Banking service to the nation. Human capital is considered to be the most valuable asset of an institution as it takes a lot of investment in time and money to build up such invaluable human assets. Having built up such a vast array of priceless human assets, it is a suicidal and retrograde step for the Bank, to let them ride into the sunset prematurely, instead of utilizing their

experience and expertise to the dregs.

Incontrovertibly, the above challenges demand accelerated augmentation of human resources and not giving the so called 'golden handshake' to the invaluable experienced officers through this ill-conceived VRS. We might venture to suggest that this was the ideal time to recruit raw talent who with their infectious enthusiasm could be the mentees to the experienced and time tested senior Bankers who would make excellent mentors. We have no hesitation in saying that VRS is instigated retrenchment. The pressure-cooker like situation, inadequate staffing, mounting pressure at branches and offices, misplaced initiatives like linking CDS to extension, transfer hazards, ill-treatment meted out to officers will all fuel the exodus of experienced and matured officers. The already burdened workforce will be furthermore saddled with the additional workload of officers who opt for VRS. Already strained social and family life of officers at all levels will be adversely affected. We apprehend that this step might just be the proverbial straw which broke the camel's back.

4. State Bank of India, being the premier financial institution, is also the flagship bank in the country providing employment as well as catering to the financial needs of approximately 44 crore population., Any impairment at this critical juncture is likely to have telling effect on the banking industry, economy and the most importantly large customer base "from the bottom of the ladder to the uppermost step", who repose utmost faith in the 'banker to the nation'.
5. While we strongly denounce the proposed VRS, we are constrained to say that any modification to the service conditions/structural changes in the Bank should only be by way of bilateral discussion. We call upon the Bank not to implement the scheme. Also, we urge upon the management to convene an emergent meeting with the Federation leadership for a detailed discussion on this issue.■

LET CUSTOMER SERVICE BE OUR MOTTO

WORKSHOP ON DISCIPLINARY PROCEEDINGS - LEARNING AND TRAINING THE VIRTUAL WAY! 152ND PROGRAM CONDUCTED BY N.A.T.U.R.E

Federation has been conducting programmes on Disciplinary Proceedings to instill the sense of discipline in the Bank, creating awareness about the DOs and DON'Ts, and to equip the Officers to defend the members in the unfortunate instances of disciplinary proceedings being invoked against any of them.

NATURE (NATIONAL ACADEMY OF TRADE UNION RESEARCH AND EDUCATION), the education & training wing of Federation, has been conducting such programmes for decades. As the current pandemic situation has imposed certain restrictions on movement and conduct of training programmes in a physical mode, it has been decided to conduct the training programmes in virtual mode till normalization.

2. On 30th August 2020 we made a beginning by conducting a Virtual Workshop 'Disciplinary Proceedings for New Defense Assistants', on Google Meet. 100+ Officers from various circles participated along with their Circle General Secretaries and Presidents. Com. Sunil Kumar, President (AIBOC), Com. Ravinder Gupta (Chairman, AISBOF), Com. Deepak Sharma (President, AISBOF) and the undersigned also participated in the programme. Com. Ajit Kumar Mishra, Sr. Vice President, AISBOF & General Secretary of our Patna Circle conducted the day's workshop. The subject was covered in lucid language, explaining the gamut of defence and the procedure involved. Feedback from the participants has been very encouraging. The success has encouraged us to continue with more such workshops in the coming days.

3. Chairman, AISBOF, Com. Ravinder Gupta, in his address shared the need of having these workshops in the changed environment. He also reflected on the operational and structural changes in the DA & DP structure in the bank and how these kinds of sessions can make the membership aware about the same. Com. Sunil

Kumar, President, AIBOC congratulated the Federation for holding such a unique programme, the first of its kind. President, AISBOF, Com. Deepak Sharma, encouraged and motivated the participants and communicated the need of sharing the knowledge with the younger generation Bankers. The undersigned appreciated the dedication and initiative of the young Bankers to be part of the defense proceedings for fellow employees and wished them success.

4. Apart from the lead faculty, Com. Ajit Kumar Mishra, several other senior Defense representatives shared valuable advices with the participants. Com. Sanjeev Sabhlok, General Secretary, Bhopal and Com. Rupam Roy, General Secretary, NEC spoke and gave practical tips to the participants in handling disciplinary cases. Com. B Sukkaiah, General Secretary, Hyderabad Circle, while thanking the Federation for this initiative appreciated the participants for coming forward to defend officers, also gave suggestions in handling disciplinary issues.

5. Comrades, Federation has begun a new era in tune with its vision to equip the officers with necessary skill and knowledge in handling disciplinary cases. We seek the cooperation and active participation of all Circles in this endeavour and encourage participation of officers for such programmes in future, as and when scheduled. Digital Certificates were presented over email to all the participants at the end of the workshop for their participation. The undersigned places on record his appreciation to Com. Deepak Kumar Sharma, President AISBOF for conceptualizing the programme and shouldering the responsibility of organizing the maiden venture. Com. Priyavrat of SBIOA Chandigarh Circle also deserves special mention to provide the technical support. We also place on record our appreciation to the sincere efforts of Com. Ajit Kumar Mishra for making the programme an overwhelming success. ■

BE TRUTHFUL, BE FEARLESS

COVID-19 PANDEMIC: RISING CASES OF INFECTION AMONG SBI EMPLOYEES OUR CONCERNS AND SUGGESTIONS

Text of our letter No: 6466/58/20, Dated: 07.08.2020, Addressed to The Chairman, State Bank of India, Corporate Centre, Madam Cama Road, Mumbai 400021.

At the outset, we wish to place on record our genuine admiration for the way you have steered the Bank and also banking industry during the pandemic times, keeping paramount the interest of the employees as well as the other stakeholders especially the customers.

2. Sir, despite all efforts the spread of infections is increasing everywhere without any sign of abatement. The GOI has also initiated number of schemes to alleviate the economic distress of the common people, this has resulted in customers thronging our premises, at a time when social distancing is the order of the day. Due to this our officials are being exposed and getting infected by the dreaded disease and are often succumbing to the infection under tragic and unfortunate circumstances, leaving their families to an uncertain future and abject penury.

3. Since life risk is grimly associated with extending essential banking services to people at the time of

the global pandemic, we request the Bank to consider the following in case of Covid-19 mortality: -

a) To enhance the protective insurance cover from the existing Rs.20 lakh to 50 lakh in line with the scheme announced by the Hon'ble Finance Minister for the benefit of the health workers.

b) To provide Compassionate Appointment to next of the kin of all deceased employee irrespective of age in sync with the IBA scheme for the employees and officers providing employment to the next of kin of the deceased. In fact, our Federation has been consistently seeking a modification of our extant Compassionate Appointment scheme.

c) In the eventuality of death of an official, the family members, who also get infected with Covid-19, within the quarantine period, be reimbursed for the related medical expenses in line with the provisions of Bank's medical scheme for the dependent of a serving officer.

We repose utmost faith and trust in your good office that the issues referred in the foregoing will be suitably addressed. ■

Judicial Verdict

**[2020 (165) FLR 32]
(BOMBAY HIGH COURT-NAGPUR BENCH)
MANISH PITALE, J.**

W.P.No. 6006 of 2016

January 29, 2020

Between

WESTERN COAL FIELDS LTD.

And

PRESIDING OFFICER and another

Payment of Gratuity Act, 1972-Section 4 (6) (b) (ii)-Gratuity-Claimed by respondent No. 2-dismissed from his service on the basis of giving false date of birth-Service rendered by him was more than 22 years-Controlling authority granted gratuity to the respondent No.2-Appeal filed by the petitioner was dismissed-Hence, present writ petition-Held, for depriving an employee of gratuity under section 4 (6) (b) (ii) of Act initiation of criminal proceeding is necessary which will culminate in conviction for an offence-Employer could then come to a conclusion that such an offence does involve moral turpitude and then forfeit the gratuity-That was no so in the present case-No interference with the concurrent findings of authorities

OUR LIFE IS WHAT OUR THOUGHTS MAKE IT

concerned-Writ petition dismissed. [Paras 15 to 22]

Payment of Gratuity act, 1972-Section 4 (6) (b) (ii)-1Misconduct' and "offence"-Although the act of respondent No.2 was a "misconduct" under the standing order, gratuity could be forfeited only if it was an 'offence' involving moral turpitude. [Para 12]

JUDGMENT

MANISH PITALE, J.- Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for rival parties.

2. The petitioner - Western Coal Fields Limited is disputing the right of respondent No.2 towards gratuity under the provisions of the Payment of Gratuity Act, 1972. The Controlling Authority (Assistant Labour Commissioner) and Appellate Authority (Deputy Chief Labour Commissioner) under the provisions of the said Act have concurrently repulsed the attempt on the part of the petitioner to deprive the respondent No.2 of the amount of gratuity payable under the provisions of the said Act. It has been held concurrently that the respondent No.2 is entitled to payment of gratuity on the basis of service of 22 years 6 months and 8 days put in by the respondent No.2 with the petitioner. The said authorities have concurrently rejected the contention of the petitioner that it was entitled to forfeit gratuity payable to the respondent No.2 under Section 4(6)(b)(ii) of the said Act.

3. The respondent No.2 joined service with the petitioner in the year 1990 and he was regularized in general Mazdoor category - I on 01/01/1992. On 21/4/2002, when the respondent No.2 was working on the post of Fitter (Auto) Category IV, a complaint was received at the headquarters of the petitioner, stating that while the actual date of birth of the respondent No.2 was 01/07/1953, he had entered service by falsely claiming his date of birth as 01/07/1960. On this basis, charge sheet was issued against the respondent No.2 on 07/09/2012, for giving false information on his date of birth by reducing his age for the purpose of employment. Pursuant to the said enquiry, report dated 05/02/2013 was submitted and on the basis of findings in the enquiry report, the respondent No.2 was dismissed from service on 28/3/2013.

4. The petitioner issued show cause notice on 25/04/2013, to the respondent to show cause as to why gratuity payable to him ought not to be forfeited on the ground that he was dismissed for misconduct of giving false information regarding

date of birth for the purpose of fraudulently seeking employment. The respondent No.2 had submitted a form prescribed under the provisions of the said Act for claiming gratuity on the basis of his continuous service. On 30/09/2015, the Controlling Authority passed an order holding that the respondent No.2 was entitled to receive gratuity for such continuous service and directed the petitioner to pay amount of Rs. 4,25,557/- along with 10% simple interest w.e.f. 28.3.2013, till actual date of payment.

5. The petitioner deposited the said amount and filed an appeal under the provisions of the said Act before the Appellate Authority. The petitioner contended that it was entitled to forfeit gratuity amount payable to the respondent No.2 by exercising power under Section 4(6)(b)(ii) of the said Act, as service of the respondent No.2 had been terminated for providing false information regarding date of birth, which constituted an offence involving moral turpitude. The Appellate Authority considered the facts of the case, as also the judgment cited on behalf of the petitioner and it came to a conclusion that even if service of the respondent No.2 was terminated on misconduct defined under the standing order, "misconduct" was distinct from "offence". It was held that since Section 4(6)(b)(ii) of the said Act pertains to an offence involving moral turpitude, merely because the service of the respondent No.2 was terminated for misconduct of having given false information regarding his date of birth, it could not be said that the provision applied for the petitioner to forfeit gratuity payable to respondent No.2. On this basis, the appeal was dismissed and the order passed by the Controlling Authority was confirmed.

6. Aggrieved by the said order, the petitioner filed the present writ petition, wherein notice was issued for final disposal and interim relief was granted in favour of the petitioner.

7. Mr. A. M. Ghare, learned counsel appearing for the petitioner contended that both the authorities erred in holding in favour of respondent No.2, because the fact that the respondent No.2 had submitted false information regarding his date of birth had been proved in the departmental enquiry. It was found that the actual date of birth of the respondent No.2 was

01/07/1953, while he had falsely got his date of birth recorded while obtaining employment with the petitioner as 01/07/1960. If his actual date of birth is taken into consideration, he would not have been even eligible for employment with the petitioner. It was submitted that such falsehood polluted the inception of the respondent No.2 into the employment of the petitioner and, therefore, it was clearly an act of moral turpitude, thereby showing that the petitioner was entitled to forfeit the gratuity payable to the respondent No.2, under Section 4(6)(b)(ii) of the said Act. It was submitted that the authorities below wrongly held that unless criminal proceedings were initiated and offence was registered against respondent No.2 for the said conduct on his part and then conviction was rendered against him, that gratuity could be forfeited. The learned counsel appearing for the petitioner relied upon judgment of the Hon'ble Supreme Court in the case of Devendra Kumar Vs. State of Uttaranchal and others, to contend that in the said case, suppression of information while seeking employment had been held to be an act of moral turpitude. It was submitted that if the law as laid down in the said judgment was applied to the facts of the present case, it was clear that the petitioner was entitled to forfeit the gratuity payable to respondent No.2.

8. It was further submitted that even though the Hon'ble Supreme Court in the case of Union Bank of India and Others Vs. C.G. Ajay Babu and another, had held that the registration of criminal offence and conviction for an offence involving moral turpitude by the Competent Court of jurisdiction was necessary for invoking Section 4(6)(b)(ii) of the said Act, the said opinion of the Hon'ble Supreme Court relying upon an earlier judgment in the case of Jaswant Singh Gill Vs. Bharat Coking Coal Ltd, was obiter dicta, which was not binding on this Court. It was submitted that the said view taken in both the judgments of the Hon'ble Supreme Court could not be said to ratio decidendi, as the question did not squarely arise for determination in these cases before the Hon'ble Supreme Court. In order to support this argument, the learned counsel relied upon judgment of the Hon'ble Supreme Court in the case of State of Gujarat and Others Vs. Utility User's Welfare Association and Others, wherein "inversion test" was approved and applied by the Hon'ble Supreme Court to determine the ratio decidendi of a particular judgment. It was further submitted that this Court in its judgments in the

cases of Mohandas Issardas and others Vs. A. N. Sattanathan and others and Shankar Amrita Deshmukh Vs. M/s Paper and Pulp Conversions Ltd. and another had held that the opinion of the Hon'ble Supreme Court would be binding on the High Courts in India if the opinion was on a question that arose for determination before the Hon'ble Supreme Court. On this basis, it was contended that the impugned orders passed by the two authorities below were required to be set aside.

9. On the other hand, Mr. B.B. Meshram, learned counsel appearing for respondent No.2 supported the orders passed by the authorities below. It was contended that the petitioner had not instituted any criminal proceedings against respondent No.2 in the present case and, therefore, there was no question of the respondent No.2 having been accused of an offence involving moral turpitude and there was no question of the respondent No.2 having been convicted for any such offence. By placing reliance on the judgment of the Hon'ble supreme Court in the case of Union Bank of India and Others Vs. C.G. Ajay Babu and another (supra), it was submitted that the writ petition deserved to be dismissed.

10. Heard learned counsel for rival parties and perused the material on record. Considering the nature of submissions made before this Court, a reference to Section 4(6)(b)(ii) of the aforesaid Act is necessary, which reads as follows :

"4. Payment of gratuity -123

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6. Notwithstanding anything contained in sub-section (1) - (b) the gratuity payable to an employee [may be wholly or partially forfeited] -

(i)

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

11. In the present case, there is no dispute about the fact that the misconduct of having given false information regarding his date of birth was proved against respondent No.2 in the departmental enquiry and on the basis of such findings his service was

terminated. The question is whether such an act, which was proved in a departmental enquiry by the petitioner would constitute an offence involving moral turpitude, justifying forfeiture of his gratuity under Section 4(6)(b)(ii) of the said Act. There is no doubt about the fact that, but for furnishing of such false information about his date of birth, the respondent No.2 would not have been able to secure employment with the petitioner. Thus, the very inception of the respondent No.2 into employment with the petitioner was based on a false information. There is substance in the contention raised on behalf of the petitioner that by such falsity the very process of securing employment was polluted by the respondent No.2 and if such an act went unpunished and the respondent No.2 was held entitled for gratuity, it would clearly send a wrong message to the society. It is on this basis that it has been strongly contended on behalf of the petitioner that the impugned orders passed by the two authorities below deserve to be set aside. It is claimed that if an employee like the respondent No.2, who at the initial stage of entering in public employment indulged in such falsity, it clearly involves an act of moral turpitude and such an employee ought not to be granted the gratuity amount. It is submitted that any other interpretation of the aforesaid provision would militate against the very object of the provision and it would encourage persons like the respondent No.2 to blatantly make false claims regarding their date of birth and other such vital information for securing employment.

12. Both the authorities below have held against the petitioner on the basis of the words used in the aforesaid provisions. It has been held that although the act of the respondent No.2 was certainly a "misconduct" under the aforesaid standing orders, gratuity could be forfeited under the aforesaid provision only if it was an "offence" involving moral turpitude. The Appellate Authority has discussed in detail about distinction between "misconduct" and "offence" and has reached findings in favour of respondent No.2.

13. Since Section 4(6)(b)(ii) of the said Act empowers an employer to forfeit gratuity wholly or partially, it is in the form of an exception to the general Rule under the said Act regarding payment of gratuity to an employee, who otherwise satisfies the requirements specified in Section 4 of the said Act. Gratuity is an amount paid to an employee in consideration for continuous service that is put in by such an employee

for years together (minimum service required being five years of continuous service). It is, therefore, directly relatable to every completed year of service and it is based on the rate of wages last drawn by the employee. The requirements under Section 4 of the said Act are clearly spelt out and the quantum of gratuity can be ascertained based upon the facts pertaining to each employee. There is no doubt about the fact that in the present case the respondent No.2 had completed 22 years 6 months and 8 days continuous service with the petitioner. Therefore, on the basis of number of years of service put in by respondent No.2, he was clearly eligible for payment of gratuity under the provisions of the said Act, particularly Section 4 thereof.

14. Since Section 4(6)(b)(ii) of the said Act is an exception to the whole object and purpose of the said Act to pay gratuity to an employee for the continuous service put in, it has to be interpreted strictly. The fact that it was proved that the respondent No.2 had furnished false information regarding his date of birth, demonstrates that he had indulged in misconduct as specifically defined in service standing orders. It is on the basis of such proven misconduct that the respondent No.2 stood dismissed from the service and thereby he was deprived of the balance years of service that he could have otherwise claimed. In a sense, he stood penalized for his misconduct.

15. The crucial question that arises for consideration is, as to whether such misconduct proved in a departmental enquiry, which had attained finality could be equated with "an offence involving moral turpitude". In this context, the appellate authority is justified in examining as to what could be defined as an offence. The standing orders obviously cannot be referred to find the definition of the expression "offence". In the Code of Criminal Procedure, 1973, "offence" means any act or omission punishable by any law for the time being in force. The question is whether the findings rendered in departmental enquiry conducted by the petitioner (employer) would be enough to conclude that the act of the respondent No.2, which stood proved and led to the termination of his service, constitutes an "offence" involving moral turpitude. The answer has to be in the negative, because whether an act constitutes an offence can be decided only by a Competent Court. This is because, whether the material on record and acts attributed to a person indicate the ingredients of an offence would have

to be judged on the basis of proceedings under criminal jurisprudence. The further question as to whether such an offence involves moral turpitude could perhaps be in the domain of a proceeding other than that under criminal jurisprudence, but what would constitute an offence, could certainly not be within the purview of departmental enquiry or any such enquiry by an employer.

16. Therefore, for an employer to deprive an employee of gratuity under Section 4(6)(b)(ii) of the said Act, would necessarily require initiation of criminal proceedings that would culminate in conviction for an "offence". The employer could then come to a conclusion that such an offence does involve moral turpitude and then forfeit the gratuity of an employee. This is because the said provision has to be interpreted strictly as it has the consequence of depriving an employee of gratuity for which he would otherwise be eligible, based on long years of continuous service.

17. In this context, the Hon'ble Supreme Court in the case of Union Bank of India and Others Vs. C.G. Ajay Babu and another (supra), has categorically held as follows :

"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 situation :(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. Therefore, the contentions raised on behalf of the petitioner cannot be accepted and the concurrent orders passed by the authorities cannot be said to be erroneous. In so far as the binding nature of the aforesaid judgment of the Hon'ble Supreme Court, the opinion of the Hon'ble Supreme Court is the ratio decidendi by application of the 'inversion test' and it is not obiter dicta not binding on this Court.

19. The judgments of this Court relied upon by the learned counsel appearing for the petitioner in the

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cases of Mohandas Issardas and others Vs. A. N. Sattanathan and others (supra) and Shankar Amrita Deshmukh Vs. M/s Paper and Pulp Conversions Ltd. and another (supra) on the question of precedents, ratio decidendi and obiter dicta, would also not come to the assistance of the petitioner. This is because, it has been categorically held therein that opinion of the Hon'ble Supreme Court on a question that arises for determination, is binding on the High Courts.

20. A perusal of the judgment of the Hon'ble Supreme Court in the case of Union Bank of India and Others Vs. C.G. Ajay Babu and another (supra), shows that in the opening paragraph the question framed for consideration was, whether forfeiture of gratuity under the Payment of Gratuity Act, 1972, is automatic on dismissal from service. In the process of deciding this specific question and upon hearing the counsel, the Hon'ble Supreme Court examined whether Section 4(6)(b)(ii) of the said Act would apply in the case before it and then laid down the law as quoted above. In fact, the Hon'ble Supreme Court after referring to the facts of the said case and in the context of the question framed, held in paragraph 19 as follows : "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 jurisdiction for the forfeiture of gratuity on the ground stated in the order dated 20-4-2004 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".

21. Hence, it becomes very clear that the Hon'ble Supreme Court did lay down its opinion regarding Section 4(6) (b)(ii) of the said Act, while deciding the specific question framed in the facts and circumstances of that case. Therefore, the said opinion of the Hon'ble Supreme Court is binding on this Court.

22. In view of the above, it is found that there is no substance in the present writ petition and accordingly, it is dismissed. Rule is discharged.■

Petition Dismissed.

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