

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 9666 OF 2010

CANARA BANK AND ANOTHER ..APPELLANTS

VERSUS

LALIT POPLI (DEAD) THROUGH LRS. ..RESPONDENTS

J U D G M E N T

MOHAN M. SHANTANAGOUDAR, J.

1. The judgment dated 12.09.2008 in LPA No. 553 of 2008 passed by the Division Bench of the High Court of Delhi is called in question in this appeal.

2. Brief facts leading to this appeal are:

The respondent – Lalit Popli, who is now dead and represented through his legal heirs, was employed as a clerk in appellant's bank and was dismissed from service on 30.06.1995,

consequent upon a departmental enquiry in which he was found guilty of fraudulently withdrawing an amount of Rs.1,07,000/- from the saving account of a customer. The Manager of the Bank (Shri Meenakshisundaram), an officer (Shri S.S. Bhutani) as well as Special Assistant (Shri Rakesh Tyagi) was also indicted and they were also found guilty of negligence in relation to the very same incident. The disciplinary authority by its order dated 18th September, 1994 awarded the punishment of 'censure' to the Manager of the Bank (Shri Meenakshisundaram) and ordered recovery of Rs.77,000/- from him. Likewise, the disciplinary authority by its order dated 23rd January, 1995 awarded the punishment of 'censure' to Shri S.S. Bhutani and Shri Rakesh Tyagi and ordered recovery of Rs.15,000/- from each of them. The appeals filed by the said three employees challenging the orders of the disciplinary authority were also dismissed and they did not carry the matter any further and they deposited the amount, as ordered against them.

Insofar as the respondent – Lalit Popli is concerned, the disciplinary authority by its order dated 30th June, 1995 awarded the punishment of 'dismissal from service'.

3. The respondent preferred Writ Petition (Civil) No. 2269 of 1995 challenging the order of dismissal, which came to be allowed by learned Single Judge of the High Court vide his order dated 7th August, 1998 and the order of dismissal was set aside. The appellant – Bank filed an appeal against the order of the learned Single Judge of the High Court being LPA No. 465 of 1998. During the pendency of the Letters Patent Appeal before the High Court, it was decided by the bank to withhold an amount of Rs.74,180.09, payable to the respondent, which included the gratuity and provident fund(employer's contribution) and to keep the same in a fixed deposit with a view to adjust the said amount towards any loss caused to the bank by the respondent. LPA No. 465 of 1998, after hearing, was allowed by the Division Bench of the High Court and the order of dismissal was restored. Further appeal by the respondent was dismissed by this Court by a detailed judgment on 18.02.2003 (reported as Lalit Popli vs. Canara Bank, (2003) 3 SCC 583).

After the dismissal of the matter by this Court, the respondent made number of representations to the bank to release the amount of gratuity and the employer's contribution towards

provident fund, which was held up by the bank, by pointing out that the bank had already recovered the entire amount of loss caused to the bank from the other three employees as mentioned supra, and therefore it was not justified on the part of the bank in withholding the terminal benefits payable to the respondent. The bank replied to the respondent that since the matter was sub judice before the Court, the bank was unable to accede to his request. After the dismissal of the matter by this Court, the bank vide its order dated 24.06.2003 decided to recover the amount of Rs.1,07,000/- from the respondent and to refund the amount already recovered from the other three employees, to them. By then, the amount of Rs.74,180.09, which was kept in a fixed deposit, had attained the maturity value of Rs.1,08,923/-. The bank ordered that out of Rs.1,08,923/-, an amount of Rs.1,07,000/- be adjusted against the loss caused to the bank by the respondent, who had withdrawn the said amount by forging the signature of the account holder. Though, the bank had earlier decided to recover the said amount from the respondent, the bank could not recover from the respondent since the matter as against the respondent was sub judice before the Courts of law at various

stages. Only after the litigation ended in finality up to this Court, the bank passed an order to recover Rs.1,07,000/- from the respondent and therefore the bank adjusted Rs.1,07,000/- out of Rs.1,08,923/- (the maturity value of Rs.74,180.09), towards loss caused to the bank by the respondent and remaining amount of Rs.1,923/- was released in favour of the respondent.

4. Being aggrieved by such action of the bank, the respondent approached the High Court by preferring Writ Petition(Civil) No. 6149 of 2003, which came to be allowed by the learned Single Judge of the High Court holding that the bank had already recovered the loss caused to the bank from the other three employees, who were indicted and punished in relation to the very incident and therefore any further amount sought to be recovered from the respondent would be impermissible inasmuch as the bank would be doubly enriching itself. The order of the learned Single Judge is affirmed by the Division Bench of the High Court in LPA No. 553/2008, which is impugned before this Court in this appeal.

5. Heard learned counsel for the parties, who argued in support of their respective cases.

6. This Court in the first round of litigation by its judgment dated 18.02.2003 had given a categorical finding that it was the respondent who committed forgery which ultimately led to the loss caused to the bank. Thus, his case stood on a different footing from the other three employees. Since the amount recovered from the other three employees, who were imposed penalty of 'censure', is refunded to them, the bank had to recover the amount of loss caused to it from the person who was the author of the forgery.

Looking to the material on record, we find that the other three officials were held to be negligent in their duty and as held by this Court in its judgment dated 18.02.2003, that it was the respondent, who committed forgery of the signature of the account holder, consequent upon which the bank had suffered loss to the tune of Rs.1,07,000/-. Therefore, the bank has taken an equitable decision to recover the entire amount from the respondent and to refund the amount already recovered from the other three officials, because they were only found to be negligent in their duty.

7. Rule 12 of the Canara Bank Employees' Gratuity Fund Rules (for short, 'Gratuity Rules'), Clause 19 of the Canara Bank Staff Provident Fund Regulations, 1994 (for short, Provident Fund

Regulations) and Rule 3(4) of Chapter VIII of the General Conduct Rules, governing the services of the employees fully support the action taken by the bank against the respondent in withholding the amount of gratuity and employer's contribution towards provident fund.

8. Rule 3(4) of Chapter VIII of the General Conduct Rules states that "an employee who is dismissed for misconduct shall not be entitled to gratuity".

Rule 12 of Gratuity Rules reads thus:

"Rule 12. Notwithstanding anything contained in the preceding Clauses where an employee has been dismissed for misconduct and such misconduct has caused financial loss to the Bank, he shall not be eligible to receive the gratuity to the extent of the financial loss caused to the Bank."

Likewise, Clause 19 of Provident Fund Regulations reads thus:

"Clause 19. If a member causes financial loss to the Bank by misconduct, fraud, gross negligence or other conduct of like nature and is dismissed from the service of the Bank or is permitted to leave the service of the Bank in consequence of such misconduct, fraud, gross negligence or other like conduct, the amount of such financial loss sustained by the Bank shall be deduced by the Trustees from the Bank's

contribution out of the amount due to the member and be paid to the Bank.”

Special Rules relating to gratuity, mentioned supra, makes it amply clear that the employee who has been dismissed for his misconduct and if such misconduct has caused financial loss to the bank, he shall not be eligible to receive the gratuity to the extent of financial loss caused to the bank. So also, Clause 19 of the Provident Fund Regulations permits the bank to deduct the payment of provident fund to the extent of financial loss caused to the bank from the bank's contribution. Both the aforementioned Clauses are plain and simple. They are unambiguous. Since Rule 12 of the Gratuity Rules and Clause 19 of the Provident Fund Regulations permit the bank to withhold gratuity and deduct the bank's contribution towards provident fund, in such matters, the bank was justified in recovering the amount of financial loss sustained by it, which was caused by the respondent, from out of the gratuity and employer's contribution towards provident fund payable to the respondent/employee.

9. Thus, in our considered opinion, the High Court was not justified in setting aside the decision of the bank to recover the

amount of loss sustained by it from the respondent, particularly when the bank is empowered to do so, as discussed supra. Accordingly, the instant appeal is allowed. The judgment and order passed by the Division Bench of the High Court in LPA No. 553/2008 dated 12.09.2008 dismissing the appeal filed by the bank, as also, by the learned Single Judge of the High Court allowing Writ Petition(C) No.6149 of 2003 dated 30.05.2008 filed by the respondent are set aside and the Writ Petition(C) No. 6149 of 2003 filed by the respondent stands dismissed and it is held that the bank has rightly recovered the loss of Rs.1,07,000/- sustained by it from the respondent. However, there shall be no order as to costs.

.....J.
[ARUN MISHRA]

NEW DELHI;
DECEMBER 6, 2017.

.....J.
[MOHAN M. SHANTANAGOUDAR]