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## Gratuity forfeiture permissible without criminal conviction for misconduct involving moral turpitude

In a recent case that signals a shift in the judicial interpretation, the Hon'ble Supreme Court of India (“**Supreme Court**”) in the case of *Western Coal Fields Ltd vs. Manohar Govinda Fulzele*<sup>1</sup> has ruled that a criminal conviction would not be necessary to forfeit an employee's gratuity, if the employee's services are terminated for an offence involving moral turpitude, which has been established through a disciplinary inquiry conducted by the employer.

This ruling diverges from the traditional stance which typically required a court conviction prior to imposing punitive measures such as forfeiture of gratuity. This ruling underscores the need to uphold ethical standards within the workplace, pointing towards the fact that actions reflecting moral failing can carry serious repercussions, regardless of criminal proceedings.

### The law on forfeiture of gratuity

Under the Payment of Gratuity Act, 1972 (“**Gratuity Act**”), gratuity (a monetary benefit paid to separating employees who have completed at least 5 (five) years of service, payable at the time of separation), can be partially or fully forfeited by an employer in certain limited circumstances amounting to misconduct. Among other circumstances, Section 4(6)(b)(ii) of the Gratuity Act permits an employer to forfeit an employee's gratuity, if their services are terminated for committing an offence involving moral turpitude, provided such offence occurred during the course of employment.

### Brief facts

In the instant case, an employee who had served for nearly 22 (twenty-two) years with a public sector undertaking (“**PSU**”) faced disciplinary action for misconduct related to submitting a fraudulent date of birth certificate during their initial appointment to secure employment with the PSU. The disciplinary inquiry revealed that the employee was actually born in 1953, whereas the submitted date of birth at the time of appointment indicated the year of birth as 1960, thereby substantiating the charges of misconduct. Consequently, under Section 4(6)(b)(ii) of the Gratuity Act, the employee's gratuity was forfeited when his services were terminated for committing an offence involving moral turpitude.

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<sup>1</sup> 2025 SCC OnLine SC 345

The present case was clubbed with similar appeals involving other employees of the Maharashtra State Road Transport Corporation (“**MSRTC**”), where conductors in MSRTC-operated stage carriages were found guilty of misappropriating fares collected from passengers.

The employees contested the forfeiture of their gratuity, based on the ruling in the case of *Union Bank of India vs. C.G. Ajay Babu*<sup>2</sup> (“**Ajay Babu Case**”) wherein the Supreme Court had held that a criminal conviction would be necessary for forfeiture of gratuity, if the employee’s services are terminated due to an offence involving moral turpitude. The employees’ counsel also argued that the employee had served for 22 (twenty-two) years in the PSU, and that the gratuity amount was the result of their dedicated service. They emphasised that the employee’s record with the PSU had been flawless, and that gratuity was a statutory right that cannot be denied upon termination of employment.

In response, the PSU contended that, irrespective of the employee’s otherwise unblemished tenure, the employee would not have been employed with the PSU had the true date of birth been disclosed at the time of appointment. The PSUs’ counsel relied on judicial precedents that suggested that the suppression of material facts during the hiring process constitutes an offence involving moral turpitude and accordingly argued that the employee’s conduct in withholding such critical information constituted an act of moral turpitude, which was substantiated through a disciplinary inquiry.

## Issues

The Supreme Court examined the following issues:

1. whether or not gratuity can be forfeited in the event of termination of service on the grounds of misconduct, in case such act of misconduct is categorised as ‘an act constituting an offence involving moral turpitude’, without there being any conviction in a criminal case or even a criminal proceeding being initiated? and
2. whether forfeiture of gratuity of such terminated employee should be in part or whole?

## Analysis and key observations

The Supreme Court emphasised that the interpretation adopted in the *Ajay Babu Case* did not arise from the language of the statutory provision (that is, Section 4(6)(b)(ii) of the Gratuity Act). Specifically, the requirement for misconduct to be ‘duly established by a court of law’ was not part of the statutory text and therefore cannot be read into it. Moreover, the text of the law prescribes that an employee should have been ‘*terminated for any act which constitutes an **offence** involving moral turpitude*’. The Supreme Court drew reference to the definition of ‘offence’ under the General Clauses Act, 1897, which is defined as ‘*any act or omission made punishable by any law for the time being*’. A reading of this provision suggests that there is no requirement for a court ‘conviction’.

The Supreme Court further distinguished between the evidentiary standards in criminal proceedings and disciplinary inquiries and observed that while a criminal case requires proof ‘beyond a reasonable doubt’, a disciplinary inquiry operates under the lower standard of ‘preponderance of probabilities’. Drawing parallels, the Supreme Court clarified that the forfeiture of gratuity provision does not spell out the need for conviction in a criminal proceeding as a pre-requisite to forfeit gratuity. Instead, forfeiture can be triggered if the charges of misconduct for an offence involving moral turpitude are substantiated through a disciplinary inquiry, even in the absence of a criminal conviction. In this respect, the Supreme Court further opined that in order to forfeit gratuity, an employer will need to necessarily issue a notice to the terminated employee, allowing the employee to represent both on the question of the nature of the misconduct, that is, whether it constitutes an offence involving moral turpitude, and the extent to which such forfeiture can be made.

Regarding whether gratuity should be fully or partially forfeited, the Supreme Court ruled that the gravity/severity of the misconduct should dictate the extent of forfeiture. In this context, with reference to the PSU where the appointment

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<sup>2</sup> (2018) 9 SCC 529

of the employee was illegal, the Supreme Court opined that the employee must in no manner seek the fruits of his employment by receiving gratuity as he would not have been employed in the first place had his accurate date of birth been disclosed. As a result, the Supreme Court upheld the decision to forfeit the employees' gratuity in entirety. Contrastingly, in cases involving minimal misconduct, such as small-scale misappropriation by conductors in the MSRTC, the Supreme Court adopted a more lenient stance and directed the appointing authority to limit the forfeiture to 25% of the gratuity payable.

## Conclusion

With the Supreme Court affirming that gratuity can be forfeited even in the absence of a criminal conviction for misconduct involving moral turpitude, the Supreme Court has empowered employers to take decisive action against ethical breaches that can undermine workplace integrity. In other words, employers can now implement stricter disciplinary measures without the fear of lengthy legal battles over gratuity claims when dealing with cases involving moral turpitude.

Additionally, this ruling encourages businesses to take proactive measures to ensure that their workplace environment upholds ethical behavior and integrity. In this respect, implementing regular training sessions that emphasise upon the importance of ethical behavior and the consequences of violations can foster a culture of accountability and awareness among employees. At the end of the day, this ruling encourages both employers and employees to uphold high ethical standards, ultimately enhancing the overall workplace culture and contributing to a healthier organisational ecosystem.

In a recent ruling involving sexual harassment, the Delhi High Court<sup>3</sup> had held that an employee's gratuity cannot be forfeited even if the internal committee, established under the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, finds the employee guilty of sexual harassment. In contrast, the current judgment sends a strong message about the importance of moral integrity in professional settings, making it a significant and welcome judgment in the realm of employment laws.

Having said that, employers should consider implementing clear policies outlining what constitutes 'moral turpitude' besides maintaining meticulous documentation to support any forfeiture decisions.

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<sup>3</sup> *Punjab National Bank vs. Sh. Niraj Gupta and Anr*, (LPA 907/2024 and CAV 443/2024, CM APPL. 52155-52157/2024)

## Employment Practice

JSA has a team of experienced employment law specialists who work with clients from a wide range of sectors, to tackle local and cross-border, contentious and non-contentious employment law issues. Our key areas of advice include (a) advising on boardroom disputes including issues with directors, both executive and non-executive; (b) providing support for business restructuring and turnaround transactions, addressing employment and labour aspects of a deal, to minimise associated risks and ensure legal compliance; (c) providing transaction support with reference to employment law aspects of all corporate finance transactions, including the transfer of undertakings, transfer of accumulated employee benefits of outgoing employees to a new employer, redundancies, and dismissals; (d) advising on compliance and investigations, including creating compliance programs and policy, compliance evaluation assessment, procedure development and providing support for conducting internal investigations into alleged wrongful conduct; (e) designing, documenting, reviewing, and operating all types of employee benefit plans and arrangements, including incentive, bonus and severance programs; and (f) advising on international employment issues, including immigration, residency, social security benefits, taxation issues, Indian laws applicable to spouses and children of expatriates, and other legal requirements that arise when sending employees to India and recruiting from India, including body shopping situations.

JSA also has significant experience in assisting employers to ensure that they provide focused and proactive counselling to comply with the obligations placed on employees under the prevention of sexual harassment regime in India. We advise and assist clients in cases involving sexual harassment at the workplace, intra-office consensual relationships, including drafting of prevention of sexual harassment (POSH) policies, participating in POSH proceedings, conducting training for employees as well as Internal Complaints Committee members, and acting as external members of POSH Committees.

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