

## HR Law Hotline

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### FORFEITURE OF GRATUITY FOR MISCONDUCT: SUPREME COURT CLARIFIES LEGAL POSITION

- The SC's ruling in the WCL Case clarified that gratuity can be forfeited for offences involving moral turpitude based on an internal disciplinary inquiry, without the necessity of a criminal conviction.
- The SC differentiated between serious offences like securing employment through fraud, which justify full forfeiture, and lesser infractions like minor misappropriation, where only partial forfeiture may be appropriate.
- Employers must exercise discretion in forfeiture decisions by ensuring proportionality between the misconduct and the extent of gratuity withheld while adhering to principles of natural justice.

#### I. INTRODUCTION

Gratuity is a statutory retiral benefit that provides financial security to employees in recognition of their continuous long-term service to an organisation. While the Payment of Gratuity Act, 1972 ("**Gratuity Act**") ensures that employees are rewarded for their service, it also grants employers the right to forfeit gratuity under specific circumstances, particularly when any misconduct by an employee constitutes an offence involving moral turpitude. The extent to which gratuity can be forfeited and whether a criminal conviction is necessary has been a recurring legal question. Courts have frequently been called upon to consider whether an employer has the right to forfeit gratuity based solely on internal disciplinary inquiries.

In a significant ruling, the Supreme Court ("**SC**") recently addressed this issue in **Western Coal Fields Ltd. vs.**

**Manohar Govinda Fulzele<sup>1</sup>** ("**WCL Case**"). At the core of the dispute was whether gratuity can be forfeited when an employee is terminated for an offence involving moral turpitude, even in the absence of a criminal conviction by a court of law. The appeals stemmed from cases where employees were found guilty of serious infractions—one securing employment through fraudulent misrepresentation, and others engaging in misappropriation of funds.

These cases raised critical questions about an employer's authority to forfeit gratuity for misconduct, the necessity of a criminal conviction for such forfeiture, and the principles of proportionality in determining the extent to which gratuity may be withheld. The SC's ruling provides vital clarity on how internal disciplinary proceedings, natural justice, and the gravity of misconduct interplay in decisions related to forfeiture of gratuity.

#### II. WCL CASE

##### ■ Factual Background

In the present case, the appeals were filed by **Western Coal Fields Ltd. ("WCL")**, a **Public Sector Undertaking ("PSU")**, and the **Maharashtra State Road Transport Corporation ("MSRTC")** against judgments that ruled the **forfeiture of gratuity impermissible** under the **Gratuity Act**. These judgments relied on the SC's decision in **Union Bank of India and Ors. v. C.G. Ajay Babu<sup>2</sup>** ("**Ajay Babu Case**"), which held that gratuity could not be forfeited **without a criminal conviction**.

In the case of **WCL**, the respondent, an employee of the PSU was found guilty of **misconduct** for securing employment through fraudulent means. During the employer's **internal inquiry**, it was established that he had submitted a **forged birth certificate**, misrepresenting his date of birth as 1960 instead of 1953 to secure appointment. In consequence, the **PSU terminated his employment** and **forfeited his entire gratuity**.

Similarly, in the case of **MSRTC**, the employees were conductors operating stage carriages who were found guilty of **misappropriating fares collected from passengers**. As a result, **MSRTC forfeited their gratuity**.

##### ■ Issues raised

The primary issue raised in light of the above-mentioned facts is whether gratuity can be forfeited by the employer under Section 4(6)(b)(ii) of the Gratuity Act, upon termination of service of employee for misconduct which can be categorized as an offence involving moral turpitude, without there being any conviction in a criminal case or even a criminal proceeding having been initiated.

##### ■ Arguments advanced

- The PSU argued that the employee fraudulently secured his appointment by misrepresenting his date of birth, which rendered his employment invalid from the outset. Since his actual birth year was 1953, but he declared it as 1960, he would not have been eligible for the position had he disclosed his true age at the time of appointment. The PSU further relied on **Devendra Kumar v. State of Uttaranchal<sup>3</sup>**, which held that an

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appointment obtained by employing fraud or suppressing material information shall constitute an offence involving moral turpitude.

- The MSRTC contended that under Section 4(6)(b)(ii) of the Gratuity Act, gratuity can be wholly or partially forfeited if an employee is terminated for an act constituting an offence involving moral turpitude, provided the offence was committed during the course of employment.
- The respondent argued that he had served the PSU for nearly 22 years with an otherwise unblemished record. He argued that gratuity is a statutory right under the Gratuity Act, and represents the fruit of his service, which should not be denied solely due to the termination of his employment. He relied on the SC's ruling in the Ajay Babu's Case, which held that gratuity cannot be forfeited without a criminal conviction.

#### ■ Findings of the court

The SC's ruling on the issue is twofold. Firstly, it declares the interpretation of Section 4(6)(b)(ii) of the Gratuity Act (which pertains to the forfeiture of gratuity for offences involving moral turpitude) in the Ajay Babu Case as obiter dicta and 'uncalled for'. This is because, in the Ajay Babu case, Section 4, including subsection (6), was found inapplicable by virtue of Section 4(5) of the Gratuity Act (which safeguards an employee's right to receive more favorable gratuity terms under any award, agreement, or contract with the employer). Secondly, in the Ajay Babu Case, the court had held that for an act to qualify as an offence, it must be punishable under law, and it is not the employer but the court that determines whether an offence has been committed.<sup>4</sup> Furthermore, the statute does not merely require proof of misconduct involving moral turpitude; rather, the act must constitute an offence involving moral turpitude, which must be duly established in a court of law before gratuity can be denied.<sup>5</sup> To that extent, the SC held that Section 4(6)(b)(ii) does not speak of a conviction in a criminal proceeding for an offence involving moral turpitude.

In the present case, the SC held that since the said provision does not have the requirement of establishing a conviction in a criminal proceeding, for an offence involving moral turpitude in a court of law, the same cannot be read into it. The SC held that *"the only requirement is for the Disciplinary Authority or the Appointing Authority to decide as to whether the misconduct could, in normal circumstances, constitute an offence involving moral turpitude, with a further discretion conferred on the authority forfeiting gratuity, to decide whether the forfeiture should be of the whole or only a part of the gratuity payable, which would depend on the gravity of the misconduct."*

On the facts of the case, the SC in the case of the PSU, held that, obtaining employment through fraudulent misrepresentation of the date of birth vitiates the entire appointment and failure to initiate criminal proceedings does not mitigate against the forfeiture. As the appointment itself was obtained by way of fabricated/forged certificate and hence held to be illegal, the employer's decision to forfeit the entire gratuity of the employee was upheld. For MSRTC employees, the SC held that *"misappropriation definitely is an act constituting an offence involving moral turpitude"*, but observed that the Appointing Authority should have taken a more sympathetic approach. Hence, it held that the full forfeiture of gratuity was disproportionate considering the small sums involved and directed that only 25% of the gratuity be forfeited, with the remaining amount to be released to the MSRTC employees.

### III. ANALYSIS AND CONCLUSION

The SC, through this judgment, provides clarity on the legal position concerning the forfeiture of gratuity for an offence involving moral turpitude. The judgment reinforces the employer's right to forfeit gratuity based on findings from an internal departmental inquiry, rather than requiring a criminal conviction. However, it also underscores the significance of conducting such disciplinary inquiries in a manner that adheres to the principles of natural justice, ensuring fairness, thorough evaluation of facts, and a reasoned determination of whether the misconduct genuinely constitutes an "offence involving moral turpitude".

By upholding forfeiture in cases where fraudulent means were used to obtain employment, the SC affirms that employers have the authority to take decisive action against employees engaged in offences involving the element of moral turpitude. At the same time, the judgment highlights the need for a measured and proportionate approach when deciding the extent of gratuity forfeiture. This is evident in the SC's handling of the MSRTC employees' case, where it recognized misappropriation as an offence involving moral turpitude but also acknowledged the relatively minor sums involved. Instead of endorsing complete forfeiture, the SC directed a partial forfeiture, ensuring that the punishment was not disproportionate to the offence. While there is no exhaustive list defining what constitutes an offence involving moral turpitude, the SC in this case explicitly held that forgery of documents to secure employment and misappropriation of funds are acts that unquestionably fall within this category.

The judgment establishes a balanced legal framework, allowing employers to forfeit gratuity without a criminal conviction while ensuring that such forfeiture is reasonable and fair, taking into account the gravity of the offence and its financial impact on the employee.

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<sup>1</sup>2025 INSC 233

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

<sup>3</sup>(2013) 9 SCC 363

<sup>4</sup>Para 18 of Ajay Babu Case

<sup>5</sup>Para 20 of Ajay Babu Case

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