

GAHC010112762022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/260/2022

THE ASSAM FINANCIAL CORPORATION LTD. AND 2 ORS.
VITTIYA BHAVAN, MD. SHAH ROAD, PALTANBAZAR, GUWAHATI-781008,
ASSAM, REPRESENTED BY ITS MANAGING DIRECTOR.

2: THE MANAGING DIRECTOR

ASSAM FINANCIAL CORPORATION LIMITED
VITTIYA BHAVAN
MD. SHAH ROAD
PALTANBAZAR
GUWAHATI-781008
ASSAM

3: THE TRUSTEE
ASSAM FINANCIAL CORPORATION
GROUP GRATUITY ACCUMULATION FUND
VITTIYA BHAVAN
MD. SHAH ROAD
PALTANBAZAR
GUWAHATI-781008
ASSA

VERSUS

BHABENDRA NATH SARMA AND 6 ORS. B
S/O LT. MAHENDRA NATH SARMA, H.NO. 10, BYE LANE NO. 2, (BHASKAR
KALITA PATH), SHANTINAGAR, KAHILIPARA, GUWAHATI-781019, P.S.
DISPUR, DIST. KAMRUP (M), ASSAM, PIN-781019.

2: NRIPENDRA NATH BARMAN
S/O LT. MOTILAL BARMAN
KALYANINAGAR JENAKI PATH
H. NO. 62
KAHILIPARA

GUWAHATI
DIST. KAMRUP (M)
ASSAM
PIN-781019.

3:SUBHAS SARMAH
S/O LT. KHAGESWAR SARMAH
VILL
BHATTAPARA
P.S. AZARA
DIST. KAMRUP (M)
ASSAM
PIN-781017.

4:DEEPAK KR. DAS
S/O LT. PURNA CH. DAS
H. NO. 62
SOUTH SARANIA
P.O ULUBARI
P.S. PALTANBAZAR
DIST. KAMRUP (M)
GUWAHATI-781007
ASSAM

5:THE STATE OF ASSAM
DEPTT. OF PUBLIC ENTERPRISES THROUGH THE COMMISSIONER AND
SECRETARY OF PUBLIC ENTERPRISES DISPUR
GUWAHATI-6

6:THE COMMISSIONER AND SECRETARY
O THE GOVT. OF ASSAM
DEPTT. OF FINANCE
DISPUR
GUWAHATI-6.

7:LIFE INSURANCE CORPORATION OF INDIA
GUWAHATI
GUWAHATI DIVISIONAL OFFICE JEEVANPRAKASH
FANCY BAZAR
GUWAHATI-78100

Advocate for the Petitioner : MR. R K D CHOUDHURY

Advocate for the Respondent : SC, FINANCE

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT & ORDER (ORAL)

Date : 25-07-2023

(Arun Dev Choudhury, J)

1. The present intra court appeal is presented against the judgment and order dated 08.04.2022 passed by the learned Single Judge in WP(C) No.3697/2020, whereby the learned Single Judge held that the respondents/writ petitioners shall be entitled for gratuity under the provisions of Payment of Gratuity Act, 1972 (hereinafter referred to as 'Act of 1972').

2. The writ petitioners were employees under the Appellant Corporation and superannuated from service on attaining their age of superannuation in the year 2018 and 2019. They were paid gratuity in terms of the Assam Financial Corporation (Payment of Gratuity to Employees) Regulation, 1964 (hereinafter referred to as Regulation, 1964). However, the grievances of the petitioners were that they are entitled for gratuity in terms of section 4(5) of the Act of 1972 and same has been denied to them.

3. The respondent Corporation took a stand that the petitioners have been paid the gratuity in terms of the Regulation 1964 read with Assam Financial Corporation Staff Regulation 2007 (hereinafter referred to as Regulation 2007). It was the further case of the Corporation that as the Appellate Corporation is a statutory authority being created under State Financial Corporation Act, 1951 (herein after referred to as 'Act of 1951') and the Regulation 1964 and Regulation 2007 were enacted in exercise of

the power conferred thereon. The same are having statutory force and accordingly, the petitioners being employees of the Corporation, they are entitled for gratuity in terms of the Regulation framed by the Corporation and not under the Act of 1972.

4. The learned Single Judge relying on section 14 of the Act of 1972 came to a conclusion that in view of the non-obstante provisions that the payment of gratuity to the petitioners could be governed by the Act of 1972 and not by the two Regulations i.e. Regulation 1964 and Regulation 2007 of the Act of 1951.

5. Mr. R.K. D. Choudhury, learned counsel for the appellants relying on the decision of a Coordinate Bench passed in WA No.275/2021 (***Assam Gramin Vikash Bank vs. Smt. Bobita Gupta***) argues that the Act of 1951, being a special Act, shall have overriding effect upon the Payment of Gratuity Act. The Regulation, 1964 being framed under Rule making power provided in the Act of 1951, such regulation shall have also similar overriding effect.

6. The decision rendered in ***Bobita Gupta*** (supra), the regulation providing payment of gratuity to the employees of the Bank clearly stipulates that an officer or employee shall be eligible for payment of gratuity as per provision of the Act of 1972 or as per sub regulation 2 of Regulation 1972 framed by the Bank, whichever is higher. Therefore, such a provision in the regulation of the Bank is in conformity with the section 4 (5) of the Act of 1972 and therefore, such decision is of no help in determining the issue

involved in the present *lis*.

7. The Hon'ble Apex Court in the case of ***Y.K. Singla vs. Punjab National Bank and Others*** reported in ***(2013) 3 SCC 472***, laid down the following proposition:

I. The mandate of section 14 of the Act of 1972 would have overriding effect with reference to any inconsistency in any other provision or instruction relating to payment of gratuity.

II. Sub-section 5 of section 4 of the Act of 1972 permits an employee to be regulated, for the purpose of gratuity, under an alternative provision/arrangement but said sub section assures that the employee should receive better terms of gratuity.

8. In view of the aforesaid settled proposition of law, this Court is of unhesitant view that the learned Single Judge has rightly allowed the writ petition.

9. Accordingly, the present appeal stands dismissed being devoid of any merit.

10. Parties to bear their own cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant