

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 62 of 2021

Appellant :- Raj Bahadur Singh

Respondent :- State Of U.P.Thru Prin.Secy. Cooperative Soc.Deptt. And Ors.

Counsel for Appellant :- Alok Singh, Anand Kumar

Counsel for Respondent :- C.S.C., Anurag Kumar Singh

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Jaspreet Singh, J.

Heard Shri Alok Singh, learned counsel for the appellant and Shri Anurag Kumar Singh, learned counsel for the respondents No.3 and 4.

The instant intra-court appeal has been preferred by the appellant against the order dated 28.02.2020 passed in W.P. No.7168 (SS) of 2013 whereby the writ petition of the appellant was dismissed.

The submission of the learned counsel for the appellant is that under an agreement made with the Society, the appellant was entitled to the grant of gratuity @ 30 days for every completed year of service.

It is submitted that prior to the rules of 1975, there was a memorandum of settlement in terms whereof the appellant was entitled to get gratuity @ one month's basic pay inclusive of the dearness allowance for every completed year of service.

It is further submitted that with the advent of Payment of Gratuity Act, 1972, Section 4 of the said Act provides that nothing in the Section shall affect the right of an employee to receive better terms of gratuity under any award or agreement with the employer. It is thus submitted that in light of the aforesaid provision, the respondents could not hold the appellant to a term which was less favourable. Accordingly, the appellant was entitled to the gratuity @ 30 days for every completed year of service.

It is also submitted that the appellant was paid the gratuity which was less and this aspect has not been appropriately considered by the writ Court.

Shri Anurag Singh, learned counsel for the respondents has

pointed out that the appellant was governed by the U.P. Cooperative Societies Employees Service Regulations, 1975, in terms whereof the age of retirement had been enhanced to 60 and in terms of the said regulations, the gratuity was to be paid @ 15 days of month for every completed year of service. It is thus urged that the appellant retired at the age of 60 in accordance with the service regulation and now is turning around to seek the payment of gratuity as per the settlement.

The Court has considered the rival submissions and also perused the material on record. Admittedly under the settlement, the age of retirement was 58 years and it is not disputed by the learned counsel for the appellant that the appellant had retired at the age of 60 i.e. to say that he has taken the benefit and opted to be governed by the regulations of 1975.

It will also be relevant to notice that the Regulations of 1975, Regulation 102 (iii) provides that notwithstanding anything contained in these regulations, the existing employees shall have an option to continue be governed by the existing service rules, if any, in the society in respect of the emoluments and benefits and to opt for the new service rules on the matter.

Apparently, the appellant had the option to opt for either the old rules as per the settlement or in terms of the Regulations of 1975, but no such option in writing was exercised but the fact remained that he continued to work till the age of 60 i.e. he tacitly and by conduct adopted the Regulations of 1975. Once the aforesaid position is not disputed, it is not open for the appellant after attaining retirement at the age of 60 years and after having taken the benefit of the regulations insofar as the age of retirement is concerned and then turning around to seek gratuity as per the settlement. The reasons indicated by the learned Single Judge do not suffer from any error. The appeal is devoid of merit and is consequently, dismissed.

With the aforesaid observations, the appeal is **dismissed**.

Order Date :- 19.7.2023

Gurpreet Singh

(Jaspreet Singh, J.) (Pritinker Diwaker, C.J.)