

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5225 of 2013

=====

1. Indian Bank A Body Corporate Constituted Under Banking Companies (Acquisition And Transfer Of Undertakings) Act Of 1970, Having Its Corporate Office At 254-260, Avvai Shanmugham Salai, Royapettah, Chennai,- 600014 Represented By Its General Manager And Having Its Zonal Office At I Floor, Govind Bhawan, New Dakbanglow Road, Patna Amongst Other Zonal Officer And Branches In Other Places, All Over India.

.... Petitioner/s

Versus

1. The Union Of India Through The Secretary, Ministry Of Labour And Employment, New Delhi.
2. The Assistant Labour Commissioner (Central) Patna Cum The Controlling Authority Under The Payment Of Gratuity Act, 1972, Maurya Lok Complex, 2nd Floor, A- Block, Room No. 17, Patna.
3. Kaushal Kishore Thakur S/O Late Braj Kishore Thakur Flat No. 302, Raj Kishori Apartment, Kavi Raman Path, P.S- Buddha Colony, District- Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Dr. Vinay Kumar Singh,
Mr. Amit Kumar

For the Respondent/s : Mr. Alok Kumar Sinha

=====

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 12-01-2016

Heard Dr. Binay Kumar Singh for the petitioner and Mr.

Anil Kumar Sinha for the respondent no. 3.

The order dated 18.1.2013 assailed in the writ petition is passed by the Assistant Labour Commissioner(Central), Patna on an application filed by the respondent no. 3 under the Payment of the Gratuity Act, 1972 (for short 'the Act'). The Authority under the impugned order directed for payment of gratuity to the respondent no. 3. Aggrieved thereby, the writ petition has been filed.

It has been submitted on behalf of the respondent no. 3 that the petitioner Bank has an alternative and efficacious remedy which is statutory in nature. He refers in this regard to Section 7(7) of the Act which reads as under:-

“Section-7(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf.

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period for a further period of sixty days.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount.”

Dr. Singh, on the other hand, submits that the alternative remedy is not a bar to the exercise of writ jurisdiction in case the authority passed an order completely without jurisdiction or in blatant breach of the provision.

In my view, the jurisdiction exercised by the Authority under the Act cannot be said to be completely without jurisdiction. It is a matter of interpretation of certain expression used in the Act and the reasons assigned therefor by the Authority. It has also been

brought to the notice of the Court that a writ petition is pending at the instance of the respondent no. 3 for payment of his legal/admissible post retiral dues.

Be that as it may, considering the submissions of the parties and on perusal of the materials on record, I am not persuaded to invoke the extraordinary and discretionary writ jurisdiction. The writ application is dismissed.

If so advised, the petitioner Bank may invoke the provisions of the Act to assail the order dated 18.1.2013 passed by the Assistant Labour Commissioner, Central, Patna after seeking condonation of delay.

Pankaj/-

(Kishore Kumar Mandal, J)

U			
---	--	--	--