IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1229 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 8748 of 2014

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Rana Pratap Singh, son of Late Guru Dayal Singh, resident of Village Uttar Badi Tola, P.S.- Sursand, District - Sitamarhi.

.... Appellant/s

Versus

1. The Uttar Bihar Gramin Bank through its Chairman , Head Office, Kalambagh Chowk , Muzaffarpur.
2. The Chairman - Cum - Disciplinary Authority, Uttar Bihar Gramin Bank, Kalambagh Chowk, Muzaffarpur.
3. The General Manager, Uttar Bihar, Gramin Bank, Head Office, Kalambagh Chowk, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Rajeev Roy Mr. Gyan Prakash
For the Respondent/s	:	Mr. Prabhakar Jha

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 28-07-2016

The order dated 17th March, 2015 passed by the learned Single Bench of this Court in CWJC No. 8748 of 2014 is the subject matter of challenge in the present Letters Patent Appeal. The appellant has claimed a direction to the respondent-Bank to make payment of gratuity withheld without rhyme and reason and to pass a fresh order in the light of his representation dated 30th January, 2014.

As per facts on record, after conclusion of departmental proceeding, an order of dismissal was passed by the Bank on

04.01.2012. An appeal against that order was also dismissed on 26.07.2012. Aggrieved against the said order of dismissal, the appellant filed CWJC No. 23383 of 2012 which was dismissed giving rise to LPA No. 752 of 2013. The said appeal was dismissed on 08.01.2013. In view thereof, the order of dismissal passed against the appellant attained finality.

It is thereafter, the appellant submitted a representation in respect of the punishment imposed. Such representation was decided which was challenged before the learned Single Bench in the present writ petition which has since been dismissed.

In the present appeal, learned counsel for the appellant has relied upon Rule 72 of the Uttar Bihar Gramin Bank (Officers and Employees) Service Regulations, 2010 (hereinafter referred to as 'the Regulations') to contend that gratuity can be withheld in the case of dismissal if the misconduct, the basis of dismissal, causes financial loss to the Bank. The relevant extract of Rule 72 is reproduced here-in-below:-

> "**72. Gratuity**. – (1) An officer or employee shall be eligible for payment of gratuity either as per the provisions of the Payment of Gratuity Act, 1972 (39 of 1972) or as per sub-regulation (2), whichever is higher.
>
> (2) Every officer or employee shall be eligible for gratuity on,-
>
> (a) retirement,
>
> (b) death,
>
> (c) disablement rendering him unfit for further service as certified

> by a medical officer approved by the Bank, or
>
> (d) resignation after completing 10 years of continuous service, or
>
> (e) termination of service in any way except by way of punishment after completion of 10 years of service :
>
> Provided that in respect of an employee there shall be no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only.
>
> ………. …………… …………..”

The argument of learned counsel for the appellant is that though there is numerous charges against the appellant but there is no finding in respect of financial loss to the Bank, therefore, gratuity may not be withheld. We do not wish to examine the said argument inasmuch as there is no order passed by the Bank of withholding the gratuity for the reason that the act of the appellant has caused financial loss to the Bank.

Therefore, we deem it appropriate to direct the respondent-Bank to pass an order as to whether the act of misconduct, the basis of dismissal of the appellant, has caused any financial loss to the Bank and to what extent. If the extent of financial loss is more than the amount of gratuity payable, then gratuity would not be payable. But, if the amount of financial loss is lesser than the amount of gratuity, the balance dues will be payable to the appellant.

Thus, we dispose of the present appeal with a direction to the respondent-Bank to pass an order to give effect to Rule 72 of the Regulations as quoted hereinabove. The needful be done within a period of four months from today.

The appeal is accordingly disposed of.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

mrl.

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