

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.5278 of 2015

ORDER:

This Writ Petition is filed, under Article 226 of the Constitution of India, to declare the action of respondents in not releasing the Gratuity and Encashment of Earned Leave and other retiral benefits as illegal and arbitrary and to issue a direction to the respondents to pay Gratuity and Encashment of Earned Leave and other retiral benefits.

Initially, the petitioner was appointed as paid Secretary on 18.06.1981 in Dandabadra Primary Agricultural Cooperative Society, Vizainagaram District. While the petitioner was working in the second respondent society as Paid Secretary, as per G.O.Ms.No.67, the petitioner was merged into Bank Employee in D.C.C. Bank, Vizainagaram, vide Proceedings in R.C.No.477/2009-C(Co.op), dt. 28.02.2009, and the second respondent was directed to relieve the petitioner on 01.03.2009. Fourth respondent issued Proceedings in R.C.No.Admn/ Cadre. Sec/2009, dt. 01.03.2009, appointing the petitioner as Staff Assistant in DCC Bank, Vizainagaram. Accordingly, the petitioner reported to duty and later retired on attaining the age of superannuation on 30.04.2012. Though the petitioner is retired from service in the year 2012, respondent Nos. 1 and 2 did not pay retiral benefits, like Gratuity and Encashment of Earned Leave, as per Bye-laws of the Society. Thereafter, the Society passed a Resolution dt.17.08.2014 for payment of retiral benefits of the petitioner and subsequently, on 26.09.2014, the District Central Cooperative Bank, has held a meeting and passed a resolution accepting to pay the retiral benefits to the Special Category Employees, including the petitioner, but the respondents did not release the retiral benefits to the petitioner.

As the petitioner is retired from service as Staff Assistant, he is entitled to claim Gratuity, as per Bye-Law No.9 and Encashment of Leave, as per Bye-law No.6 (b) of the Society. But the respondents did

not release the Gratuity and Encashment of Earned Leave though he is entitled to. Hence, the petitioner seeks to declare the action of the respondent Nos. 1 and 2 as illegal and arbitrary and hence, he prayed for the aforesaid reliefs.

Respondent Nos. 1 and 5 filed Counter denying the material allegations while contending that they have no objection to release the amount for the period during which the petitioner worked in the bank, subject to production of 'No Due Certificate' from the Society where he was initially appointed, and requested to pass appropriate orders.

Second respondent filed a separate Counter contending that the petitioner after retirement from DCC Bank did not approach the Society by making a representation for issuance of 'No Due Certificate' and unless he approached the second respondent, by way of representation, 'No Due Certificate' cannot be issued and on such representation, the Society has to verify the amount due, if any, and after deducting the amount, 'No Due Certificate' will be issued.

Therefore, second respondent has no objection to issue 'No Due Certificate', subject to a representation made by the petitioner, if any, for the period he worked in the society subject to Bye-laws and eligibility.

Fourth Respondent filed a separate Counter while admitting about the petitioner was working in the Society and the DCC Bank and finally in para No.9 expressed readiness of 4th respondent to pay bank's share of Gratuity and Encashment of Leave, after submission of 'No Due Certificate' by 2nd respondent to the bank and thereafter the bank would release the retrial benefits to the petitioner.

During the course of hearing, Sri M. Akella Padma, learned counsel for the petitioner, reiterated the grounds urged in the Petition,

contending that as per Bye-laws No.9 of the Society, the petitioner is entitled to claim maximum Gratuity of Rs.1,00,000/- and as per Bye-Law No. 6 (b), the petitioner is entitled to Encashment of Earned leave for a period of 240 days and that second respondent did not issue 'No Due Certificate', despite approaching the second respondent several times. Hence, he prayed to allow the petition.

Whereas, the respondent Nos.1,5,2 and 4 reiterated their contentions while reporting no objection to pay their share of amount for the period the petitioner worked as per Bye-laws, subject to production of 'No Due Certificate'.

Considering the rival contentions and perusing the material available on record, now the point that arise for consideration is:

“ Whether the petitioner is entitled to recover Gratuity and Encashment of Earned Leave, as per Bye-Laws Nos.9 and 6 (b) of the Society, if so, whether the action of the respondents in denying the payment of Gratuity and Encashment of Earned Leave as illegal and arbitrary?”

POINT: Undisputedly the petitioner worked in various Societies and finally in the Second Respondent Society till 1.03.2009 when he was relieved from the office of Second Respondent as paid secretary, vide proceedings in R.C.No.477/2009-C(Co.op), Dt. 28.02.2009, and later he was appointed as Staff Assistant in DCC Bank on 1.03.2009 and worked in the same post till attaining the age superannuation on 30.04.2012.

The dispute is with regard to share in payment of Gratuity and Encashment of Earned Leave to the petitioner. According to the material on record, the petitioner joined in Dandabadra Primary Agricultural Cooperative Society, Vizainagaram, and later transferred to different Societies and he finally retired as Staff Assistant in DCC Bank on merger. Respondent No.2 is contending that he is liable to pay Gratuity and Encashment of Earned Leave for the period he

worked in the Second Respondent Society only. Similarly, respondent No.5 is contending that he is liable to pay Gratuity and Encashment of Earned Leave only for the period the petitioner worked in the Bank. However, the contention of the petitioner is that in view of the Bye-Laws, he is entitled to recover Gratuity and Encashment of Earned Leave only from respondent No.2 and respondent No.5 jointly.

At this stage, it is relevant to refer Bye-law No.9 of the Second Respondent Society, which reads as follows:

“ For every completed year of service, the employee is eligible to get 15 days of pay towards Gratuity as per the Gratuity Act, with a maximum of Rs.1,00,000/-. The Managing Committee may sanction the gratuity to the employee of Society”.

The said Bye-law came into force in the month of October, 2006. By that time, the petitioner is working as Paid Secretary in the second respondent Society. However, the services of the petitioner were merged with DCC Bank and on merger, he worked as Staff Assistant in DCC Bank and thereby, he ceased to be an employee of second respondent on merger with DCC Bank from the date of appointing as Staff Assistant. Therefore, the petitioner worked for a short period in the second respondent society and for the said period only, the second respondent is liable to pay amount and not beyond that. Admittedly, DCC bank is governed by NABARD guidelines and the bank has to calculate the Gratuity and other benefits, as per those guidelines, for the period the petitioner worked. But, no guidelines are placed on record for perusal of this Court to decide the gratuity payable to the petitioner and the amount towards Encashment of Leave for the period, he worked in the fifth respondent bank. However, second respondent is not denying its liability to pay the share of Gratuity and Encashment of Earned Leave for the period the petitioner worked in the Second Respondent Society, subject to production of 'No Due Certificate'. Fifth respondent also admitted its liability to pay share of Gratuity and

Encashment of Earned Leave for the period the petitioner worked in the 5th respondent, as per the guidelines, subject to production of 'No Due Certificate' by the petitioner issued by the Second Respondent Society. Admittedly, the petitioner did not furnish 'No Due Certificate' obtained from the 2nd respondent to the fourth respondent bank, to enable the fourth respondent to pay their share of Gratuity and Encashment of Earned Leave. However, during the course of hearing, learned counsel for Second respondent fairly accepted to issue 'No Due Certificate', subject to making a representation by the petitioner and after adjustment of dues, if any.

In view of concession of the Second Respondent counsel for issue of 'No Due Certificate', the petitioner is directed to approach the Second Respondent and submit a representation for issuance of 'No Due Certificate' and on receipt of such representation, Second Respondent is directed to issue 'No Due Certificate', subject to petitioner's eligibility, as per Bye-Laws, within a period of 15 days from the date of receipt of representation from the petitioner and settle his Gratuity and Encashment of Earned Leave for the period, the petitioner worked in the second respondent.

On receipt of 'No Due Certificate', the petitioner is at liberty to approach fourth respondent by way of making a representation claiming the retiral benefits, like Gratuity and Encashment of Earned Leave from the 4th respondent and on such representation by the petitioner, fourth respondent is directed to pay the amount due towards Gratuity and Encashment of Earned Leave, as per the guidelines of NABARD, within a period of two months from the date of receipt a copy of the representation from the petitioner.

With the above observation, this Writ Petition is disposed of, but without costs.

As a sequel, miscellaneous petitions, if any, pending in this

case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 28-04-2016.

eha

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

-

W.P.No.5278 of 2015

Dt. 28-04-2016

eha