

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.35261 of 2016

Date: 03.04.2017

Between:

C.Shyamsundar Rao, s/o late C.Suryaprakasa Rao,
Aged about 83 years, Occu: Retd.employee,
R/o 531, Road No.12, Banjara Hills, Hyderabad.

.....Petitioner

and

UCO Bank, Head Office, 3-4, DD Block, Sector-1,
Salt Lake City, Kolkata, rep.by its Chairman and
Managing Director and another.

.....Respondents



The Court made the following:

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ORDER:

Petitioner was an employee of UCO Bank. He retired from service on attaining the age of superannuation w.e.f. 01.09.21993, while working as Assistant General Manager in Scale-V. At the time of retirement, petitioner was drawing salary and allowances as applicable to Scale-V as per the Fifth Bipartite Settlement. While in service, petitioner opted for pension and accordingly, he is getting monthly pension. Petitioner retired from service while working in Kolkata. After retirement, he lives in Hyderabad and drawing his pension in Hyderabad.

2. The Fifth Bipartite Settlement ended on 31.10.1992. The Sixth Bipartite Settlement came into effect from 01.11.1992. However, as per the Memorandum of Understanding between Indian Bank Association, which represent all the Banks, and Employee/ Officers Unions / Associations, it was agreed for certain additional benefits and also cut-off date for application of certain benefits. In terms of the settlement, the enhanced gratuity was made applicable only from 01.11.1994. Revised gratuity is not extended to employees/officers of the banks, who retired from service between 01.11.1992 and 31.10.1994. Since petitioner retired from service on 01.09.1993, he is also affected by the cut-off date.

3. According to the petitioner, he was paid an amount of 1,22,163/- as gratuity, whereas he is actually entitled 2,39,117/- if revised gratuity was extended to him. This revised gratuity is denied to him illegally and, therefore, he is not

only entitled to the payment of gratuity amount, but also entitled interest @ 10% p.a., from October, 1993 till date. The issue of cut-off date and denying of revised gratuity was agitated before the High Court of Karnataka in W.P.No.1931 of 2002 (*Smt. Saroja Shiva Kumar Vs. State Bank of Mysore*). By judgment dated 25.11.2011, learned single Judge held that denial of revised gratuity by applying the cut-off date is illegal and directed grant of benefits. Learned single Judge held that settlement arrived at between Indian Banks Association and Employee's Union, can never be set-up as a defence to deny the gratuity by holding that 'parties cannot contract out of statute'. Writ Appeal No.181 of 2002 filed by State Bank of Mysore was dismissed on 14.09.2012. Special Leave Petition (C) No.1677 of 2013 was dismissed by the Supreme Court on 28.01.2013. Review petition was also dismissed on 14.03.2013.

4. As a consequent to the declaration given by Karnataka High Court and affirmed by the Supreme Court, petitioner applied to his Bank to pay difference in gratuity along with interest. UCO Bank referred the matter to the Indian Banks Association for clarification. The said Association vide their letter dated 13.06.2013 clarified that several matters are pending in Supreme Court on the same issue and the claim of the petitioner may be deferred till the outcome of the cases pending in Supreme Court. Petitioner made further representation on 20.06.2013 informing his Bank that matter has already attained finality and, therefore, merely because some other matters are pending in Supreme Court is not a ground to deny his claim. He has followed it up by legal

notices dated 08.10.2015 and 08.01.2016. Aggrieved by the inaction in paying the amounts, this writ petition is filed.

5. Before dealing with the respective contentions on the merits of the issue, it is necessary to first consider the objections raised by the respondent-Bank on maintainability of the writ petition.

6. In the counter-affidavit, two objections on maintainability of writ petition are raised. Firstly, it is contended that if the petitioner is relying on the provisions of Payment of Gratuity Act, 1972, an effective and efficacious remedy is provided under the Act to redress his grievance and, therefore, writ petition is not maintainable; and secondly, it is contended that petitioner retired from service in Kolkata and, therefore, he ought to have instituted the writ petition in Kolkata High Court. The institution of writ petition in this Court is not maintainable on his service grievance.

7. On the first objection, it is seen that what is claimed by the petitioner is, on account of new Bipartite Settlement on revising pay scales gratuity is also required to be revised, whereas for applying revised gratuity cut-off date is applied and benefit is not extended to the petitioner. Thus, claim of the petitioner flows from the revision of pay scales as per the Sixth Bipartite Settlement. Incidentally, petitioner also relied on the provisions of the Payment of Gratuity Act to claim that benefits of gratuity cannot be denied by way of settlement arrived at between two groups when statute confers right to claim higher gratuity. Furthermore, the issue was agitated before the Karnataka High Court and Karnataka High Court held in favour of an employee whose is similarly situated. Further, petitioner is aged about 83 years and having regard to the

age, it is not just and equitable to throw the writ petition on the ground that an alternative remedy is available under the Payment of Gratuity Act; that would be causing greater injustice to a senior citizen.

8. Further, alternative remedy is not a bar for entertainment of the writ petition. Jurisdiction vested in the High Court under Article 226 of the Constitution of India is very wide. It is an extraordinary redressal mechanism to reach out to any person in need of judicial remedy. It imposes no constraints on the writ Court in the exercise of jurisdiction. However, ordinarily, writ Court does not entertain the writ petition if an aggrieved person has an effective and efficacious remedy available within the hierarchal structure of an organization, more particularly if it is State or instrumentality of the State or statute under which right is claimed, provides for such remedy or service conditions prescribe remedies within the organization. This self-imposed restraint is only to ensure that a person knocking the doors of the writ Court under Article 226 has ordinarily exhausted all other remedies available to him, but his grievance is not redressed. This would enable writ Court to exercise its extraordinary, equitable and discretion jurisdiction in deserving cases. Thus, merely because an alternative remedy is available, writ petition need not be thrown out.

9. Having regard to the peculiar facts of this case, age of the petitioner and earlier decision of Karnataka High Court, affirmed by the Supreme Court, this Court is not inclined to throw the petition on this ground. Moreover, this very objection was also

raised before the Karnataka High Court and Karnataka High Court rejected the claim that petitioner therein did not avail the remedy under the Payment of Gratuity Act, 1972 and held writ is maintainable.

10. This takes to second objection. Article 226 (2) of the Constitution of India reads as under:

“Art.226. Power of High Courts to issue certain writs:

(1) xxxxx

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”

11. This Article provides that writ Court can issue directions, orders or writs to any Government/authority or person in relation to the territories within which the cause of action **‘wholly or in part’**, arises for the exercise of such power, notwithstanding that **‘the seat of such authority is not within those territories’**. It is, thus, clear that writ Court can exercise jurisdiction and issue directions even if the authority against which writ is sought is not within the territorial jurisdiction of the High Court. In the instant case, UCO Bank Head Office is located in Kolkata. It is not the case of respondent Bank that its operations are confined to State of West Bengal only and does not have branches out side that State. It has branches all over India, including in the State of Telangana. Petitioner earlier worked in Hyderabad in addition to his posting in Delhi, Lucknow, Pondicherry, Bangalore etc. Incidentally, petitioner was working in Kolkata at the time of his retirement.

After the retirement, petitioner settled in Hyderabad and has been living in Hyderabad. The retirement benefits are paid in Hyderabad and petitioner receives monthly pension in Hyderabad. Except for his working for some period in Kolkata and at the time of his retirement, there is no bondage to petitioner with Kolkata. The claim of the petitioner to grant additional gratuity is made after his retirement when he has settled in Hyderabad. That claim is rejected and communicated to the petitioner in Hyderabad.

12. The cause of action for institution of litigation is based on bundle of facts giving rise to such cause of action. In the case on hand, out of the bundle of facts, as noted above, the facts which are proximate to institution of the writ petition have arisen in Hyderabad. At any rate, even if small part of cause of action arises in Hyderabad, petitioner is entitled to institute the writ petition in this Court. The cause of action giving rise to filing this writ petition has arisen in Hyderabad and in view of provision in Article 226(2) this Court can issue directions against respondent-Bank even when its Corporate Office is located in Kolkata.

13. I, therefore, overrule the objection of the respondents on both the issues of alternative remedy and maintainability of writ petition in this Court.

14. Having dealt with the objection on maintainability of writ petition, it is necessary to note briefly the respective contentions.

15. Learned counsel for petitioner submits that earlier wage revision period was over on 31.10.1992 and new wage revision was due with effect from 01.11.1992; the gratuity component is part of

the wage revision and when wage revision is extended from 01.11.1992, the revised gratuity should be extended from the same date and denial of the same is arbitrary and illegal. He would further submit that fixing cut-off date as 01.11.1994 and applying the revised gratuity only from that date, denying the benefit to the Officers, who served the bank between 01.11.1992 and 31.10.1994, is wholly unjust, illegal and arbitrary. He would further submit that claim for right amount of gratuity flows from the Payment of Gratuity Act. The right vested by statute cannot be taken away/curtailed by way of any settlement arrived between two parties, moreover, when concerned employee, like petitioner, was not a party to the said settlement.

16. This contention of the learned counsel for petitioner is strongly opposed by the learned standing counsel representing respondent-Bank. He would submit that as part of the settlement arrived at by the Indian Banks Association and the Employees'/Officers' Unions/Associations, certain additional financial benefits are extended and in the process of such settlement, benefit of revised gratuity was restricted to 01.11.1994. This settlement is comprehensive covering various aspects of upward wage revision for Officers/ Employees of the Banks, and as part of the settlement employees have to forego some benefits to get better facilities. Petitioner is a beneficiary of pay revision, thus he cannot selectively ask revision, which benefits him. He submits that in the case of **Bank of Mysore**, though Karnataka High Court decided in favour of similarly situated person and said decision of Karnataka High Court has become final as a consequence to the dismissal of the Special Leave Petition and review petition by the

Supreme Court, several other matters preferred by the respective Banks are now pending consideration of the Supreme Court and at this stage, extending the benefit as claimed by the petitioner would have severe financial implications on all the Banks including the respondent- bank and, therefore, all the Banks have decided to await the final decision of the Supreme Court in pending matters. He would therefore submit that there is no illegality in adopting such course as there is huge financial implication, if the claims of persons, like petitioner, are accepted.

17. The issue for consideration is in very narrow compass. Whether the claim of the petitioner to pay him revised gratuity without regard to the cut-off date is valid.

18. The issue is no more res-integra. On exhaustive consideration of the respective contentions on the issue of application of revised gratuity to a person, who retired from service before 01.11.1994, the learned single Judge of Karnataka High Court rendered judgment in W.P.No.1931 of 2002.

19. At this stage, it is useful to extract the relevant portion of the judgment of Karnataka High court, which reads as under:

“Insofar as the next contention that in view of the settlement arrived at between the Indian Banks Association and the Employees’ Union being the impediment to granting the gratuity on the revised pay of the employees is concerned, that cannot be set up as a defence since as rightly pointed out by the learned counsel for the petitioner, the parties cannot contract out of statute. The Payment of Gratuity Act being applicable, it may not be possible to settle any such so

called settlement to deprive the benefit that would flow under the Statute.”

20. This decision of learned single Judge is affirmed by the Division Bench and SLP filed against the same as well as revision petition filed therein were dismissed. It is also appropriate to note that same issue was considered by the Division Bench of High Court of Kerala in the case of **Syndicate Bank and Others v. Celine Thomas and others**¹. This decision of Kerla High Court was followed by Karnataka High Court. The decision of Karnataka High Court has attained finality. This principle laid down by Karnataka High Court applies in all fours to the facts of this case. I am in respectful agreement with the view expressed by the Karnataka High Court on the scope of application of Payment of Gratuity Act and the right of an employee to seek benefit of revised gratuity in terms of the provisions of the Gratuity Act as a consequence to revision of pay scales independently, notwithstanding settlement arrived at by the Unions and the employers.

21. Since the issue stood concluded by the dismissal of SLP and review thereon, merely because some other Special Leave Petitions/appeals are pending in Supreme Court is no ground to deny the claim made by the petitioner. Refusal to grant benefits merely on the ground that some special leave petitions/appeals are pending in Supreme Court is not valid and justified.

22. Writ petition deserved to be allowed and is accordingly allowed. Since petitioner is denied gratuity as per pay revision

¹ 2006 (II) LLJ 413

when it was due, petitioner is also entitled to interest on the revised amount of gratuity at the rate of 6% p.a., from the date it was due till the date of payment.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

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