IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 9311 of 2015

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Shibatosh Dutta, Son of Bhabatosh Dutta, R/o Bahadurpur, Ward No. 29, Near Madhuri Chowk, P.S.- Samastipur, Town and District- Samastipur.

.... Petitioner/s

Versus

1. The Uttar Bihar Gramin Bank, through its Board of Directors, Head Office Kalam Bagh, P.O. & P.S. - Muzaffarpur, District- Muzaffarpur.
2. The General Manager, the Uttar Bihar, Gramin Bank, Head Office at Kalam Bagh, P.O. & P.S.- Muzaffarpur, District - Muzaffarpur.
3. The E.P.F. Officer through Regional Commissioner, E.P.F., Muzaffarpur, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. A. B. Ojha, Sr. Advocate
		Mr. Bharat Bhushan, Advocate
For the Respondent-Bank	:	Mr. Prabhakar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 20-08-2018

Heard learned counsel for the petitioner and Uttar Bihar Gramin Bank (hereinafter referred to as the 'Bank').

2. The petitioner has moved the Court for the following reliefs:

> *"(1) That this is an application for a writ of mandamus commanding the respondents to pay the amount of Gratuity, Salary for unutilized earn-leave and the amount of Group earning link policy Insurance with compensatory interest @ 12% per annum.*
>
> *(2) That withholding of the aforesaid legitimate claim by the Respondents is illegal, unconstitutional and violative of principles of nature Justice and fair play."*

3. The petitioner initially joined the Bank service on

04.10.1982 and pursuant to a departmental proceeding, he was removed from service on 15.05.2014.

4. The matter was agitated before the appellate authority and the Court by the petitioner without success and, thus, the said issue has now attained finality.

5. Learned counsel for the petitioner submitted that even as per the order of the Disciplinary Authority of removal of service dated 15.05.2014, at least, he is entitled to E.P.F. and Gratuity. It was submitted the E.P.F., amount for which deductions were made from his salary are covered by the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act') read with the Employees Pension Scheme, 1995, framed by the Central Government. Learned counsel submitted that in terms of the Uttar Bihar Gramin Bank (Officers and Employees) Service Regulations, 2010 (hereinafter referred to as the 'Regulations'), particularly Regulations No. 71 and 72 relating to Provident Fund, Pension and Gratuity, such payment is required to be made to the petitioner.

6. Learned counsel for the Bank submitted that for claim of Provident Fund, the petitioner has to fill up the required statutory forms with the Bank and then the Bank would forward it to the E.P.F.O. authority, who shall make payment of the dues of the

petitioner. He submitted that within one week of the petitioner completing the formalities, the matter would be referred to the E.P.F.O. for payment in accordance with law. With regard to Gratuity, learned counsel submitted that Regulation No. 72 of the Regulations provides for forfeiture of Gratuity for dismissal on account of misconduct where it has caused financial loss to the Bank and in the present case, there being financial loss of Rs. 4,94,00/- as well as the Encashment of Leave by the petitioner, the Gratuity also shall stand forfeited. He submitted that in terms thereof, as per the aforesaid Regulation No. 72 of the Regulations, he is not entitled to payment of any Gratuity.

7. Learned counsel for the petitioner, by way of reply, submitted that the payment of Gratuity though would stand forfeited in the case of dismissal on account of misconduct causing financial loss to the Bank but such forfeiture has to be limited to the financial loss caused and not the entire amount of Gratuity. Learned counsel further submitted that the Court may award interest on the delayed payment.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the petitioner shall be entitled to payment of E.P.F. as well as Gratuity, though limited to the extent as provided in the proviso to

sub Regulation 2 of Regulation 72 of the Regulations. The relevant Regulations No. 71 and 72 are reproduced hereinbelow for ready reference:

> *"71. Provident Fund and Pension.- (1) An officer or employee who has completed continuous minimum service as specified in the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952) shall be a member of the Employees' Provident Fund and contribution to the Provident Fund by the officer or employee and the Bank shall be in accordance with provisions of the said Act.*
>
> *(2) (a) An officer or employee covered under the provisions of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952) shall be governed by the provisions of employees Pension Scheme 1995 framed by the Central Government in exercise of the powers conferred by section 6A of the said Act;*
>
> *(b) the Pension Scheme so framed shall come into force from the 16th day of November, 1995.*
>
> *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 other 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.*
>
> *(3) The amount of gratuity payable to an officer or employee shall be one months pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 month's pay:*
>
> *Provided that where an officer or employee has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years.*
>
> *Provided further that in respect of an officer the gratuity if payable based on the last pay drawn:*
>
> *Provided also that in respect of an employee pay for the purposes of calculation of the gratuity shall be the average of the basic pay (100%), dearness allowance and special allowance and officiating allowance payable during the 12 months preceding death, disability, retirement, resignation or termination of service, as the case may be."*

9. From the above, it is clear that the Provident Fund and the Pension are to be governed by the aforesaid Act and Scheme to which admittedly the petitioner was a member. Learned counsel for the Bank is correct to the extent that for such payment, there have to be certain completion of formalities by way of filling up of statutory forms etc. which the petitioner is required to do. Thus, let the petitioner appear before the respondent no. 2 within three weeks from today. Upon doing so, the respondent no. 2 shall ensure that all required formalities are completed within four working days of the petitioner appearing before him. Thereafter, within one week, the required papers shall be forwarded to the E.P.F.O. for necessary

payment. The E.P.F.O. authorities shall also be obliged to process the matter and start payment to the petitioner of his admissible dues within one month from the date of receipt of the papers from the Bank. For such purpose, the Court deems it appropriate to implead the E.P.F.O., Muzaffarpur as respondent no. 3. Let necessary correction be made by learned counsel for the petitioner during the course of the day. He shall also serve a copy of this order on the respondent no. 3 within three weeks from today.

10. Coming to the issue of Gratuity, the Court finds that the contention of the petitioner that the amount of forfeiture of Gratuity shall, in the present case, be restricted to the amount of financial loss caused to the Bank. *Prima facie* and tentatively, the Court finds that the loss in terms of the charges framed against the petitioner is of Rs. 4,94,00/- plus the amount of encashed LTC by the petitioner. Thus, the remaining amount of Gratuity after withholding the above amount, or the amount which in the opinion of the Bank is the financial loss caused to it, shall be released in favour of the petitioner within four weeks from the date of production of a copy of this order before the respondent no. 2.

11. The writ petition stands disposed off in the aforementioned terms.

12. Having regard to the facts and circumstances of the

case, the Court directs that the amount of Gratuity shall include statutory interest from the date it became due till the date of actual payment. Similarly, the payment of E.P.F. shall also carry statutory interest, in accordance with law.

(Ahsanuddin Amanullah, J.)

P. Kumar

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