IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10448 of 2014

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The Chairman Madhya Bihar Gramin Bank, Head Office, Meena Plaza, South of Museum, Patna - 1.

.... Petitioner/s

Versus

1. The Union of India through the Ministry of Labour and Employment, New Delhi.
2. The Regional Labour commissioner (C)-cum-Appellate Authority under the payment of Gratuity Act 1972, Maurya Lok Complex, 2nd floor, Patna - 1.
3. The Assistant Labour Commissioner-1 (C)-cum-Controlling Authority under the payment of Gratuity Act 1972, 'A' Block, 2nd Floor, Maurya Lok Complex, Room No, 6/16, Patna - 1.
4. Ram Yatan Singh son of late Jagdish Singh Retired Officer, Madhya Bihar Gramin Bank, Branch Office Sarabahda, C/O Sri Vijay Kumar Singh, Gangati Niwas, Dalmia Compound, Road No. 4, Lakhibag, Manpur, Gaya - 3.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Mahesh Narayan Parbat, Sr. Advocate
Mr. Ved Prakash Srivastava, Advocate

For the Respondent No. 4 Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 02-07-2018

Heard Mr. Mahesh Narayan Parbat, learned senior advocate for the petitioner and Mr. Sanjay Kumar, learned advocate appearing for respondent no. 4

2. In the instant writ petition, the petitioner has prayed for following reliefs :-

"(a) To issue a writ of certiorari for quashing the judgment and order dated 16.09.2011 (Annexure-5) passed by the learned Assistant Labour commissioner-1 (C)-cum- Controlling Authority under the payment of Gratuity Act 1972, to the extent through which the private respondent has been found entitled to get amount of gratuity as calculated by him for the entire period of his service i.e., rupees 7,04,309/- and direction has been issued to the petitioner Bank to pay rupees 64,031/- after deducting rupees 6,40,278/- already paid, along with interest @ 5% on rupees 7,04,309/- i.e., rupees 31,356/- and further @ 10% on rupees 64,031/- for the period in between 25.06.2011 to 18.08.2011 i.e., rupees 580/-. Thus direction has been issued to the petitioner Bank to pay total sum of rupees 95,967/- within 30 days.

(b) To issue a further writ of certiorari for quashing the letter dated 1/6.3.2012 (Annexure-6) issued by the learned Assistant Labour Commissioner-1 (C)-cum- Controlling Authority under the Payment of Gratuity Act 1972, through which the petitioner has been asked to pay total sum of rupees 95,967/- within 10 days with threatening that in case of non-payment the same will be recovered as Land Revenue by way of filing certificate case.

(C) To issue a further writ of certiorari for quashing judgment and order dated 24.10.2013

(Annexure-7), passed by Regional Labour Commissioner, (C) – cum-Appellate Authority under the payment of Gratuity Act 1972, through which he has been pleased to affirm the said judgment and order dated 16.09.2011 in illegal and arbitrary manner, without assigning any cogent reason.

(d) To any other relief for which the petitioner may be found entitled to."

3. Mr. Mahesh Narayan Parbat, learned senior advocate for the petitioner submitted that respondent no. 4, who was working as Scale 1 officer of Madhya Bihar Gramin Bank (for short 'the Bank') and was posted in Sarbahada Branch of the Bank from where he retired on 31.07.2010 was found involved in various kinds of misconducts. Accordingly, he was suspended by the competent authority vide order dated 08.10.2001 with immediate effect. Subsequently, charge-sheet was issued against him on 03.05.2002, which followed corrigendum letter dated 22.08.2002 and a disciplinary proceeding was initiated against him for the charges mentioned in the charge-sheet. After completion of departmental enquiry, he was awarded punishment of reduction of four annual graded increments under major penalty vide order dated 30.06.2004. Simultaneously, in terms of Regulations 45 and 72 of the Madhya Bihar Gramin Bank Service Regulations, 2010 (for short

'Regulations'), an order was passed by the Disciplinary Authority that the period of suspension of respondent no. 4 shall not be treated as period spent on duty and no salary other than subsistence allowance already paid to him shall be payable for that period. After awarding said punishment, his suspension was revoked vide order dated 30.06.2004, which was made effective from the date of his joining at the new place of posting at Seotar branch of the Bank. Against the order awarding punishment, the petitioner preferred an appeal before the Appellate Authority of the Bank, who rejected the same affirming the said order of punishment and, thus, the order of punishment became final.

4. Mr. Parbat, learned senior advocate for the petitioner submitted that private respondent no. 4 continued to be under suspension in between 8.10.2001 to 14.07.2004 i.e. for a total period of two years nine months and six days. Since the suspension period was not treated as period spent on duty and no wage was payable to him except subsistence allowance, thus, this period was deducted from his total service period for the purpose of calculation of gratuity after his retirement on 31.07.2010. Against the period deducted from the payable service period for the purpose of calculation of gratuity, he filed an application on 11.07.2011 before the Assistant Labour Commissioner-1(C)-cum-Controlling Authority under the Payment

of Gratuity Act, 1972 (for short ‘Gratuity Act’) for issuance of direction to the Management of the Bank for payment of his entire gratuity amount counting his entire period of service of 33 years 20 days as an employee of the Bank. He submitted that on contest, vide impugned order dated 16.09.2011, the Controlling Authority erroneously held that respondent no. 4 is entitled to get amount of gratuity as calculated by him for the entire period. According to him, the impugned order dated 16.09.2011 passed by the Controlling Authority under the Gratuity Act is erroneous and without jurisdiction as the Authority failed to appreciate that respondent no. 4 was held guilty for several acts of irregularities committed by him while he was in service and taking that into consideration the Disciplinary Authority had passed the order holding the period of suspension to be a period for which respondent no. 4 would not be entitled to receive any salary except the subsistence allowance already paid to him. He submitted that even the Appellate Authority under the Gratuity Act failed to appreciate the facts and law in correct perspective and upheld the illegal order passed by the Controlling Authority vide impugned order dated 24.10.2013 in Case No. 36/1/12-Appeal/RLC. He submitted that the Controlling Authority and the Appellate Authority under the Gratuity Act have failed to appreciate properly the provision of law as envisaged under

Sections 2-A and 4(6)(1)(b) of the Gratuity Act.

5. Per *contra*, learned advocate appearing for respondent no.4 submitted that there is no illegality in the order passed by the Controlling Authority and the Appellate Authority. He submitted that from plain reading of Sections 4(5), 4(6), 5, 7, 13, and 14 of the Gratuity Act, it would be manifest that the employer cannot forfeit the gratuity of an employee if he has not been visited with punishment of termination. Since respondent no. 4 was not awarded punishment of termination, the petitioner could not have forfeited any part of gratuity amount payable to him.

6. I have heard learned advocate for the parties and perused the record.

7. I find force in the submissions of learned advocate for private respondent no. 4.

8. In order to appreciate the rival submissions of the parties, at this stage, it would be fruitful to reproduce the relevant Regulations of the Bank.

9. Regulation 45 of the Regulations which deals with disciplinary proceedings against an officer or employee of the Bank reads as under:-

> "**45. Disciplinary proceedings after retirement. -**
> (1) An officer or employee who is under suspension on a charge of misconduct and who

attains the age of superannuation, shall be deemed to be in service even after the age of superannuation for the specific purpose of continuation and conclusion of the disciplinary proceedings and issue of final orders thereon.

(2) The officer or employee who is under suspension shall not be eligible for any subsistence allowance for the period beyond the date of superannuation.

(3) The officer or employee against whom disciplinary proceeding has been initiated shall cease to be in service on the date of superannuation but the disciplinary proceeding shall continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof.

(4) the officer or employee against whom disciplinary proceedings has been initiated shall not receive any pay and/or allowances after the date of superannuation and also not be entitled for the payment of retirement benefits till the proceeding is completed and final order is passed thereon except his own contribution to Contributory Provident Fund (CPF).

Explanation: For the purposes of this regulation, the normal retirement benefits such as encashment of privilege leave and Gratuity may be withheld till the completion of the disciplinary proceeding and passing of final order by the Competent

> Authority and the release of benefits shall be as per the final order of the Competent Authority."

10. Regulation 72 of the Regulations which deals with payment of gratuity in case of an officer or employee of the Bank reads as under:-

> "**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,-
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> (a) retirement,
>
> (b) death,
>
> (c) disablement rendering him unfit for further service as certified by a medical officer approved by the Bank, or
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> (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 month's 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 is 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."

11. From a reading of Regulation 45 (4) of the Regulations, it would be manifest that an officer or employee against whom disciplinary proceeding has been initiated will not be entitled to receive any pay or allowances after the date of superannuation. He will also not be entitled for payment for retirement benefits till the

proceeding is completed and final order is passed thereon except his own contribution to contributory Provident Fund. The explanation given to para 4 of the said Regulation 45 further stipulates that gratuity may be withheld till the completion of disciplinary proceeding and passing of final order by the competent authority and release of benefits would depend on the final order of the competent authority.

12. Regulation 72(1) of the Regulations stipulates that an officer or employee shall be eligible for payment of gratuity either as per the provisions of the Gratuity Act or as per the sub-regulation (2) whichever is higher. Sub-regulation (2) of Regulation 72 of the Regulations stipulates 5 conditions under which an officer or an employee would be entitled to receive gratuity. The proviso to Regulation 72(2) provides that in respect of an employee, there shall be no forfeiture of gratuity for dismissal on account of misconduct, except in case where such misconduct causes financial loss to the Bank.

13. Thus, evidently the provisions of Gratuity Act have not been excluded so far as the Regulations governing the service conditions of an officer or employee of the Bank is concerned rather it makes it clear that in case the provisions of the Gratuity Act are

more beneficial/higher, the same would be applicable in case of officer/employee of the Bank.

14. Further, it is reiterated that in view of Regulation 72(2) of the Regulations, there shall be no forfeiture of gratuity of an employee even for dismissal on account of misconduct except in case where such misconduct causes financial loss to the Bank.

15. In the case of respondent no. 4, it is not the case of the petitioner that any order of dismissal has been passed against him or that the punishment awarded to him was for misconduct causing financial loss to the petitioner. Under such circumstances, even as per the Regulations of the Bank, the Bank was not empowered to make any deduction from the gratuity of the petitioner.

16 At this stage, it would also be relevant to extract Sections 4(6) and 7 of the Gratuity Act before discussing further the merits of the rival claim of the parties. They are as under:-

> "**Section 4(6)** Notwithstanding anything contained in sub-section (1),-
>
> (a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or
> loss so caused;

(b) the gratuity payable to an employee [may be wholly or partially forfeited]-

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Section 7. Determination of the amount of gratuity.- (1) A person who is eligible for payment of gratuity under this Act or any person authorized, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity, within thirty days from the date it becomes payable to the person to whom the

gratuity is payable.

(3-A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

4(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim or, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit –

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a Court, while trying a suit, under the Code of Civil

Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the 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 by 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.

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority."

17. When I look to sub-section (6) of Section 4 of the Gratuity Act, I find that the same stipulates that the pre-condition for forfeiting the gratuity is the termination of the services of the employee for the serious misconduct or termination on the ground of riotous or disorderly conduct or any other violation on his part or any act, which constitutes an offence including moral turpitude committed in course of employment.

18. Admittedly, respondent no. 4 has not been terminated from service for serious misconduct or even otherwise rather the case of the petitioner is that on completion of the disciplinary proceeding, he has been visited with the punishment of reduction of four annual graded increments under major penalty. The only ground

for denial of gratuity is that the period of suspension of respondent no. 4 has not been treated as period spent on duty and no salary other than subsistence allowance has been paid to him. Neither the Regulations of the Bank nor the Gratuity Act empowers the employer to forfeit the gratuity of an employee in absence of punishment of termination for the reason of non-payment of anything except subsistence allowance for the period of suspension. Thus, the essential requirements for withholding gratuity in case of respondent no. 4 are completely wanting in the present case.

19. I further find that sub-section (3-A) of Section 7 of the Gratuity Act prescribes that in case gratuity is not released to an employee within 30 days from the date same becomes payable under sub-section (3) of Section 7 of the said Act, the employee would be entitled to receive interest from the date on which gratuity becomes payable to the date on which it is paid.

20. Hence, in view of sub-section (3-A) of the Gratuity Act, the respondent no.4, who attained the age of superannuation on 31.07.2010 became entitled to receive the payment of gratuity on 01.08.2010. Since the payment of gratuity was not made to him within 30 days from the date gratuity became payable under sub-section (3) of Section 7 of the Gratuity Act, he became entitled to receive interest over it from the date on which the same became

payable to the date of actual payment.

21. In view of the discussions made above, I am of the considered opinion that there is no merit in challenge to the impugned orders passed by the Controlling Authority and the Appellate Authority under the Gratuity Act.

22. Accordingly, the writ petition, being devoid of any merit, is hereby dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.07.2018
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