NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4277 of 2018

Jila Sahakari Kendriya Bank Mydt. Bilaspur, Nehru Chowk, Bilaspur, Represented By Its Chief Executive Officer.

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary to the Government Department of Co-operatives, Mantralaya, Naya Raipur Chhattisgarh.
2. Chhattisgarh State Co-operative Tribunal, Through Its Registrar, Bilaspur Chhattisgarh.
3. Registrar, Co-operative Societies, Govt. of Chhattisgarh, Naya Raipur Chhattisgarh.
4. Deputy Registrar, Co-operative Societies, Janjgir, District Janjgir Champa, Chhattisgarh
5. Madhab Prasad Mittal, S/o Late Bhomsen Mittal, R/o Chakhiyar Gali, P.O. Bazar Para, P.S./Tehsil And District Janjgir Champa, C.G. Retired Senior Branch Manager, Jila Sahakari Krushi And Gramin Vikash Bank Maryadit, Janjgir.

----Respondents

For Petitioner	:	Mr. Dilip Swain, Advocate
For State	:	Mr. Shashank Thakur, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy
Order on Board

03/07/2018

1. The challenge in the present writ petition is to the order passed by the Chhattisgarh State Cooperative Tribunal, Bilaspur dated 28.03.2018, in Appeal Case No. 5/2017. Vide the said impugned order the learned Tribunal has set-aside the order passed by the Deputy Registrar, Cooperative Societies and also order passed by the Registrar, Cooperative Society dated 20.05.2014 and 08.06.2016 respectively.

2. The facts of the case is that the respondent No.5 was an employee of Jilla Sahkari Krushi and Gramin Vikas Bank, Janjgir. He retired from

service on 31.08.2012 after putting in about 36 years of service. At the time of his retirement the maximum ceiling as per the Payment of Gratuity Act was Rs.10 lakhs and the petitioner was entitled for payment of gratuity of an amount of Rs.10 lakhs. However, the then employer of the respondent No.5 i.e. the Jilla Sahkari Krushi Gramin Vikas Bank, Janjgir paid an amount of only Rs.3.5 lakhs towards gratuity on account of the financial crises, which the then employer was facing. The employee thereafter raised a dispute before the Deputy Registrar, Cooperative Societies, who vide its order dated 20.05.2014 dismissed the application stating that if the financial condition of the bank was bad, they have decided to pay the reduced amount of gratuity, the employee cannot have any grievance.

3. The said order dated 20.05.2014 was put to challenge before the Registrar, Cooperative Societies in an appeal and the Registrar also rejected the appeal preferred by the employee vide its order dated 08.06.2014. Thereafter both these orders i.e. the orders dated 20.05.2014 and 08.06.2016 passed by the Deputy Registrar and the Registrar, Cooperative Societies were put to challenge before the State Cooperative Tribunal by way of an appeal under Section 78(2) of the Chhattisgarh Cooperative Societies Act. The State Cooperative Tribunal vide the impugned order allowed the second appeal of the respondent No.5 holding that once when the statute provides for an amount of gratuity to be paid and which in the instant case was Rs.10 lakhs as per the limit under the Act, the employee cannot be denied of the same. The Tribunal also was of the view the financial constraint of the employer cannot be a reason to deny the employee the benefit

of gratuity. It is this order of the Tribunal, which is under challenge in the present writ petition.

4. The contention of the counsel for the petitioner is that the present petitioner was not the employer of the employee. That the employee respondent No.5 retired on 31.08.2012 when the concerned employee was working under the Jilla Sahkari Krushi and Gramin Vikas Bank, Janjgir, the bank which subsequently got merged with the petitioner bank somewhere in year 2014. According to the petitioner, the liability of payment of gratuity was firstly upon the erstwhile employer and who at that point of time had decided to pay its employee the gratuity of Rs.3.5 lakhs. The subsequent merger has brought the petitioner into the litigation and that the present petitioner cannot be forced to pay all the dues which were otherwise to be paid by the earlier bank before merger. According to the petitioner the very reason for merging the earlier bank with the petitioner bank was taking into consideration the financial constraint, which the Jilla Sahkari Krushi and Gramin Vikas Bank, Janjgir was facing and if the present petitioner is now required or directed to pay gratuity @ Rs.10 lakhs to all those employees who were working with the erstwhile bank, who had retired under them, the petitioner itself would become non-functional because of the huge financial burden, that they may incur. He further submits that the employee at that point of time had not questioned the receiving of Rs.3.5 lakhs from the said bank and subsequent to the merger have now moved an application under the Cooperative Societies Act seeking for gratuity and as such the proceedings is hit by the doctrine of estoppel, as since he did not challenge it then, he is precluded from challenging it now.

5. Counsel for the petitioner further submits that if at all, if the employee is to be paid the difference of gratuity amount the State Government may be directed to pay the difference amount to the petitioner bank so that the petitioner bank does not face any financial loss or goes into financial crises.

6. Having heard the counsel for the petitioner and on perusal of record, the fact which stands undisputed is that the respondent No.5 was an employee of the Jilla Sahkari Krushi and Gramin Vikas Bank, Janjgir. He stood retired from service on 31.08.2012. At that point of time, the Payment of Gratuity Act prescribed the maximum payment of gratuity to an employee at Rs.10 lakhs. The respondent No.5 was also between the slab way, he was entitled for Rs.10 lakhs of gratuity. However, the Jilla Sahkari Krushi and Gramin Vikas Bank, Janjgir paid the respondent No.5 gratuity of only Rs.3.5 lakhs. This forced the employee to raise a dispute before the Deputy Registrar, Cooperative Societies.

7. The law so far as the payment of gratuity is concerned is by now well settled. It has been repeatedly held in a catena of decisions that the payment of gratuity is no longer a bounty or a charity being shown by the employer to the employee. It is a matter of right that the respondent No.5 is entitled for gratuity. Moreover, gratuity is payable to the employee under the statute. The financial constraint of the employer is not a ground which has been envisaged in the Payment of Gratuity Act, by which the amount could either be withheld or reduced.

8. Once when the employee retires, he is entitled for the gratuity as per the calculation provided under the Payment of Gratuity Act. In the instant case, the petitioner bank though was not a principle employer at any point of time, but the fact remains that they had inherited or had received the entire assets and liabilities of the Jilla Sahkari Krushi and Gramin Vikas Bank, Janjgir and as such any liability further in respect of employees working with the said Jilla Sahkari Krushi and Gramin Vikas Bank, Janjgir would have to be borne by the petitioner establishment.

9. The petitioner establishment cannot take the stand of they going into financial crises, if the payment of gratuity is released to an employee. They cannot escape the liability, which otherwise is provided to an employee under the statute. Moreover, except for the ground of there being a financial constraint, which the petitioner bank may face, there is no other strong ground raised by the petitioner so far as the order under challenge i.e. the order of the Cooperative Tribunal to be either erroneous or a perverse. Nor is it the stand of the petitioner that the finding arrived is contrary to the law or for that matter contrary to the evidence which have come on record.

10. Given the said facts and circumstances of the case, this Court does not find any strong case on the part of the petitioner calling for an interference with the impugned order dated 28.03.2018.

11. The writ petition thus being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved