

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.18558 of 2009

ORDER :

The petitioner seeks a Writ of Mandamus declaring the action of the respondents in not paying provident fund and gratuity payable to him pursuant to his termination from service by the 3rd respondent vide proceedings No.SZ:VIG:F147:30:383 dated 15.05.2003 as illegal, arbitrary and violative of the provisions of the Public Provident Fund Act, 1968 and the Payment of Gratuity Act, 1972 and also Articles 14 and 21 of the Constitution of India. A consequential direction is sought to the respondents to pay him the entire terminal benefits.

The petitioner states that he worked as a Branch Manager in the Bank of Baroda at Vijayawada, Uppuluru and Gudiwada and while he was working as such, respondents 1 to 3 initiated disciplinary proceedings against him and the 3rd respondent passed an order dated 15.05.2003 vide proceedings No.SZ:VIG:F147:30:383 holding that the charges levelled against him were proved and imposed the penalty of dismissal from service and that the said order became final and ultimately, he was terminated from service.

The petitioner's further case is that he contributed money towards provident fund and, therefore, he made a representation dated 30.12.2004 requesting the 4th respondent to settle his claims for provident fund and gratuity payable to him but the same were not settled. He claims that there is a statutory duty cast upon the respondents to pay provident fund and gratuity as contemplated under the relevant enactments viz, the Provident Fund Act, 1968 and the Payment of Gratuity Act, 1972. Hence, this writ petition.

Heard Sri Nimmagadda Satyanarayana, learned counsel for the petitioner.

Respondent No.4 filed a counter-affidavit opposing the writ petition.

Ms.V.Uma Devi, learned Standing Counsel for respondents 1 to 3, would submit that so far as the petitioner's claim for gratuity amount of Rs.3,50,000/- is concerned, the said amount was appropriated towards the financial loss caused to the bank by the petitioner due to his misconduct, and so far as his claim for provident fund contribution of Rs.3,65,449.80 ps. is concerned, out of the said amount, a sum of Rs.3,16,799/- was appropriated towards the loans obtained by the petitioner and the balance amount of Rs.48,650.80 ps. was credited to his Savings Bank Account and, therefore, there were no dues payable towards the provident fund. Learned counsel would further submit that so far as the claim for gratuity is concerned, the petitioner approached the Controlling Authority i.e the Assistant Labour Commissioner (Central), Vijayawada and the said claim was dismissed and, therefore, the petitioner has to prefer an appeal as prescribed under the Payment of Gratuity Act, 1972, if he is so aggrieved by the said order, and he cannot file a writ petition straight away. Learned counsel, thus, prayed to dismiss the writ petition.

Learned counsel for the petitioner would request this Court to give an opportunity to the petitioner to approach the concerned Appellate Authority under the Payment of Gratuity Act, 1972 so far as his claim for gratuity is concerned.

In view of the aforesaid submission, this Court is of the considered view that the petitioner is not entitled to make any claim so far as the provident fund is concerned. So far as his claim for gratuity is concerned, as the said claim was dismissed by the Controlling Authority, liberty can be granted to the petitioner to prefer an appeal against the said order before the concerned authority.

In the result, the writ petition is disposed of holding that the petitioner is not entitled to any provident fund amount but so far as his claim for gratuity is concerned, he is granted liberty to prefer an appeal, against the order of the Controlling Authority, before the concerned authority within a period of four weeks from the date of receipt of a copy of this order.

As a sequel, the miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

(U.DURGA PRASAD RAO, J)

28th September, 2018.
JSU



THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO



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Date: 28.09.2018

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