

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7139 of 2019

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The Chairman, Madhya Bihar Gramin Bank (Now known as Dakshin Bihar Gramin Bank) Head Office, Sri Vishnu Commercial Complex, Asochak Chowk, New Bypass Road, (N.H. 30), Patna- 800016.

... .. Petitioner/s

Versus

1. The Union of India through the Ministry of Labour and Employment, New Delhi.
2. The Assistant Labour Commissioner-1 (C)-cum- Controlling Authority under the payment of Gratuity Act 1972, A Block, 2nd Floor, Roon No.- 17, Maurya Lok Complex, Dak Bunglaw Road, Patna- 800001.
3. Sadaruzzaman Khan Son of Late Badruzzaman Khan At and P.O.- Cherki Bazar, P.S.- Cherki, District- Gaya- 824237.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ved Prakash Srivastva
For the Respondent/s : Mr.S.D.Sanjay (ADSG)

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 09-04-2019

Heard learned counsel for the parties.

The matter relates to grant of payment of gratuity to the respondent no.3 in whose favour an amount of Rs. 11,11,660/- has been awarded by the Assistant Labour Commissioner (C) -cum- Controlling Authority under the Payment of Gratuity Act, 1972 whereafter the petitioner has filed a review application pointing out the defect in the order leveling the same to be procedural review which has been rejected vide order dated 15-17/01/2019 having held that the review application is not maintainable. Against that, the petitioner directly filed the writ application



challenging the order of review as well as the order of original one.

It is a fact that the proceeding was concluded in presence of both the parties, they have participated in the proceeding which was initiated by the Assistant Labour Commissioner (Central) and he was given an opportunity to place his case and, after due consideration, the Controlling Authority has declared that the respondent no.3 is entitled to the amount of Rs. 11,11,660/-. Instead of challenging this order in appeal, the review petition was filed and rightly the authority has rejected the review as there is no such provision for review of the order passed by the Controlling Authority on its merit, whereafter, in turn, the petitioner should have approached to the appellate authority raising his grievance.

Learned counsel for the petitioner submits that he has not approached to the appellate authority under the apprehension that the amount deposited will be released in favour of the respondent, then it would remain academic discussion before the appellate authority.

It goes without saying that the appeal is the creation of the statute, when the forum of appeal has been created under the statute, the party aggrieved should first exhaust the alternative



remedy of appeal and only when the order goes against him, he can challenge the same before the writ court but, he cannot be allowed to ignore the provision of appeal and directly come to the writ court.

In that view of the matter, this Court holds that this writ application is not maintainable in view of the availability of the forum of appeal and, thus, he must exhaust the alternative remedy which is available to him.

It is made clear that if the petitioner files an appeal along with the amount which has been assessed by the Controlling Authority, the same will not be released but, will be dependent on the outcome of the appeal.

If any limitation petition is filed by the petitioner, in such circumstances, the appellate authority, while deciding the issue of limitation, will consider the pendency of this case before this Court.

With the aforementioned observation, this application is disposed of.

(Shivaji Pandey, J)

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CAV DATE	NA
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