

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3457 of 2018

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Arvind Kumar Sinha Son of Late Rajeshwar Prasad, Resident of Mohalla-Indrapuri, North of Airport, Bara Telpa, P.S. Chapra, Town, District- Saran.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Cooperative Department, Government of Bihar, Patna.
2. The Registrar Cooperative Societies, Bihar, Patna.
3. District Magistrate, Saran cum Liquidator of the chapra District Central Cooperative Bank Ltd. Chapra, Saran.
4. The Joint Registrar, Cooperative Societies, Saran cum Joint Liquidator of the Chapra District Central Cooperative Bank Ltd. Chapra, Saran.
5. District Cooperative Officer, Saran cum Assistant Liquidator of the Chapra District Central Cooperative Bank Ltd. Chapra, Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Naresh Chandra Verma, Adv.
For the Respondent/s : Mr.Uday Shankar Saran Singh- GP 19

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

4 29-07-2019 The learned counsel for the parties are in agreement that the present writ petition can be disposed of in light of the order dated 23.12.2014 passed by a coordinate Bench of this Court in CWJC No. 10215 of 2010, in the cases of similarly situated employees of the respondent Cooperative Bank. The operative portion of the aforesaid order dated 23.12.2014 is reproduced herein below:-

“ On account of poor financial health, the Bank has been put to liquidation on 2nd February 2002 and since then it is under the control of the Official Liquidator. After the order passed for liquidation, services of all employees would be dispensed with.



Petitioners have claimed that they have not been paid their Gratuity and Leave encashment and have also claimed that they have worked upto 2005 but they have been paid their salary upto 31st January 2004.

Section 44 (3) (e) of the Bihar Co-operative Societies Act, 1935 is as follows:

“to pay claims against society the (including interest) up to the date of the publication in the official Gazette of the notification ordering the winding up of the society according to their respective priorities, if any, in full or rateably as the assets of the society permit; and to apply the surplus, if any, remaining after payment of the claims in full, in payment of interest from the said date of a rate fixed by him but not exceeding in any case the rate agreed to be paid by the society;”

On reading of the aforesaid Section, it is apparently clear that up to the date of order of the winding up of the Co-operative, all claims of Ex-employees would be paid from the asset of the society.

The counsel for the Bank submits that petitioners do not fall in the category mentioned in Section 4 of the Payment of Gratuity Act, 1972 and, as such, they will not be entitled to the benefit of Gratuity. This argument is not sustainable, as the petitioners had continued in service and their services have been dispensed with on account of liquidation of the Co-operative Society, they cannot be deprived of the Gratuity. If an employee has worked for five years, termination on account of winding up will lead to cessation of his work and he cannot be deprived of gratuity. If his case falls in the category mentioned in sub-Section 6 of Section 4 of the Payment of Gratuity Act, the employee will not be entitled to gratuity but from the record it does not appear that the case of the petitioners falls in any of the category mentioned



in sub section 6 of Section 4 of the Payment of Gratuity Act.

It is well known principle of law that any charge with respect to the employees have primacy over any other charge on the assets of the Company or the Co-operative Society. In such view of the matter, the Official Liquidator is directed to compute the amount of Gratuity and Leave encashment and pay the same to the petitioners within a period of six months from the date of receipt/production of a copy of this order.”

Accordingly, the present writ petition stands disposed of with a direction to the Official Liquidator to compute the amount of gratuity and leave encashment as also the other retiral benefits and pay the same to the petitioner herein within a period of six months from the date of receipt/ production of a copy of this order.

(Mohit Kumar Shah, J)

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