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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 4092 of 2018

Yatendra Kumar Tamrakar S/o Late Shri Banshilal Tamrakar, Aged About 65 Years Retired Senior Branch Manager, Zila Sahkari Kendriya Bank Maryadit, Durg- 491001. Tahsil And District Durg, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Principal Secretary Co-Operative Societies Department, Govt. Of Chhattisgarh, Mahanadi Bhawan, Naya Raipur, Tahsil And District Raipur, Chhattisgarh.
2. The Registrar, Co- Operative Societies, Block -B IInd And IIIrd Floor Indravati Bhawan Naya Raipur, Tahsil And District Raipur, Chhattisgarh.
3. The Chief Executive Officer, Jila Sahkari Kendriya Bank Maryadit, Durg, 491001 Tahsil And District Durg, Chhattisgarh.

---Respondents

AND

WPS No. 4157 of 2018

Khedan Singh Rajput S/o Late Shri Nanku Singh Rajput Aged About 64 Years D O B 08/05/1954, Retired Branch Manager, Zila Sahkari Kendriya Bank Maryadit, Durg - 491001, Tahsil And District Durg Chhattisgarh. Mob. No. 09907742725

---- Petitioner

Versus

1. State Of Chhattisgarh Through Principal Secretary Co - Operative Societies Department Government Of Chhattisgarh, Mahanadi Bhawan Naya Raipur Tahsil And District Raipur Chhattisgarh.
2. The Registrar Co - Operative Societies , Block, IInd And IIIrd Floor Indravati Bhawan Naya Raipur Tahsil And District Raipur Chhattisgarh.
3. The Chief Executive Officer Jila Sahkari Kendriya Bank Maryadit, Durg 491001 Tahsil And District Durg Chhattisgarh.

---Respondents

AND

WPS No. 4096 of 2018

Vishnu Prasad Chandrakar S/o Late Shri Bhuwanlal Chandrakar, Aged About 64 Years D.O.B. 04/04/1954, Mob. No. 07987363368, Ex - Branch Manager, Zila Sahkari, Kendriya Bank Maryadit, Durg - 491001, Tahsil And District Durg Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Principal Secretary Co - Operative Societies Department, Govt. Of Chhattisgarh, Mahanadi Bhawan, Naya Raipur, Tahsil And District Raipur Chhattisgarh.
2. The Registrar Co - Operative Societies, Block - B, IInd And IIIrd Floor Indravati Bhawan, Naya Raipur, Tahsil And District Raipur Chhattisgarh.
3. The Chief Executive Officer Jila Sahkari Kendriya Bank Maryadit, Durg - 491001 Tahsil And District Durg Chhattisgarh.

---Respondents

AND

WPS No. 4160 of 2018

Bahadur Singh Yadav S/o S/o Late Shri Baratilal Yadav, Aged About 64 Years D. O. B. 10/04/1954, Mo No. 094241-12465, Ex- Supervisor, Zila Sahkari Kendriya Bank Maryadit, Durg- 491001, Tahsil And District- Durg, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Principal Secretary Co Operative Societies Department, Govt. Of Chhattisgarh, Mahanadi Bhawan, Naya Raipur, Tahsil And District Raipur, Chhattisgarh.
2. The Registrar, Co- Operative Societies, Block- B, IInd And IIIrd Floor Indravati Bhawan, Naya Raipur, Tahsil And District Raipur, Chhattisgarh.
3. The Chief Executive Officer, Jila Sahkari Kendriya Bank Maryadit, Durg- 491001 Tahsil And District Durg, Chhattisgarh.

---Respondents

For Petitioners	:	Mr. V.G. Tamasker, Advocate
For State	:	Mr. Sameer Behar, Panel Lawyer Mr. Arvind Dubey, Panel Lawyer
For Respondent No.3	:	Mr. Manish Uapadhyay, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/05/2019

1. Since the dispute in all these four writ petitions are identical in nature, all these writ petitions stands disposed of by a common order passed by this Court with the consent of the parties.
2. The core issue to be decided in the present writ petitions is whether the petitioners would be entitled for the gratuity, which they have been paid or whether they would be entitled for gratuity, which they should have been paid under the Payment of Gratuity Act, 1972.

3. The common fact running through all these writ petitions is that the four petitioners, who are before this Court, were initially an employee of Zila Sahkari Krishi and Gramin Vikas Bank Maryadit, Durg and all these petitioners stood retired from service in the year 2015 and 2016. So far as all the petitioners are concerned, they have been given a fixed amount of gratuity of Rs.1,70,000/- each.
4. The contention of the petitioners herein is that since the Payment of Gratuity Act stood amended vide notification dated 17th of May, 2010 and the amendment was brought into force w.e.f. 24.05.2010 to the extent of the upper age limit of gratuity being enhanced from Rs.3 lakhs to Rs. 10 lakhs, the petitioners became entitled for much more gratuity than what has been paid to the petitioners by the respondents.
5. According to the counsel for the petitioners, all these petitioners had put in more than 30 years of service and some of them had put in more than 40 years of service and they should have been paid gratuity as per the Payment of Gratuity Act, but the same has been denied to them. According to the petitioner since it is a beneficial legislation, the petitioners' entitlement cannot be in any manner less than what is provided under the statute and therefore, the decision of the respondents in paying less gratuity to the petitioners becomes violative of the provisions of the Payment of Gratuity Act itself.
6. Counsel for the respondent No.3-Bank submits that it is a case where the respondent No.3-Bank has come into picture by virtue of merger of the Zila Sahkari Krishi and Gramin Vikas Bank with the Zila Sahkari Kendriya Bank w.e.f. 2017. Thereafter, the respondent No.3 should not be saddled with the liability of payment of gratuity, what ought to had been paid by

the Zila Sahkari Krishi and Gramin Vikas Bank, who were the employer of the petitioners at the time when the petitioners stood retired. Counsel for the respondent No.3 further submits that if at all if this Court passes an order directing the respondent No.3 to pay the gratuity as per the Payment of Gratuity Act, then appropriate direction be given to the State Government to financially support the respondent No.3, so that the respondent No.3 could be paid the gratuity to the petitioners as per the Act.

7. According to the State counsel, since the entire liability has been accepted by the respondent No.3-Bank on the merger of the Zila Sahkari Krishi and Gramin Vikas Bank with the Zila Sahkari Kendriya Bank, the liability of payment of gratuity also stands transferred to the respondent No.3 automatically and the State would not have much role to play in this regard.
8. Having heard the contentions put forth on either side and on perusal of record, what is undisputed is that the petitioners were admittedly working with the Zila Sahkari Krishi and Gramin Vikas Bank and stood retired from service during the period between the year 2015-2016. The fact that the petitioners were entitled for payment of gratuity is not in dispute. It is also not in dispute that so far as payment of gratuity for the employees of the Zila Sahkari Krishi and Gramin Vikas Bank or the Zila Sahkari Kendriya Bank is concerned, the provisions of the Payment of Gratuity Act, 1972 is applicable upon both these establishments. As such on retirement the petitioners were entitled for gratuity in accordance to the Payment of Gratuity Act, 1972 as amended or as is stood on the date of retirement.

9. So far as the contention of the respondent No.3 that the petitioners have been paid gratuity of Rs.1,70,000/- each in accordance with the then prevailing scheme for gratuity for the employees working under the Zila Sahkari Krishi and Gramin Vikas Bank, this Court finds that there is no such provision under the Payment of Gratuity Act, which permits an employer to have a parallel scheme for gratuity made applicable unless the parallel scheme so made is more beneficial than the benefits that is envisaged under the Payment of Gratuity Act itself.
10. So far as payment of gratuity under the Payment of Gratuity Act is concerned, it is undisputedly 15 days of salary for each completed year of service. In the instant case, 15 days of salary, which the petitioners were drawing at the time of their retirement, calculated with the total number of years of service that they have rendered would bring the amount of gratuity to be far more than Rs.1,70,000/- that has been paid to the petitioners.
11. The counsel appearing for the respondent No.3 was not in a position to show that the scheme that was applicable when the petitioners had retired had the approval of any statutory authority or that it was more beneficial than the benefits provided under the Act itself. The counsel for the respondent No.3 also was not in a position to show that the provisions of the Payment of Gratuity Act would not be applicable upon the employees working either under the Zila Sahkari Krishi and Gramin Vikas Bank or for that matter under the Zila Sahkari Kenkriya Bank.
12. In view of the aforesaid factual matrix of the case, this Court is of the firm view that so far as the petitioners are concerned, they are entitled for gratuity as per the provisions of the Payment of Gratuity Act as is

provided under Section 4 of the said Act, which would be 15 days of salary for each completed years of service rendered with the respondents. With an upper cap of Rs.10 lacs as per the notification dated 17.05.2010 and 24.05.2010.

13. So far as the liability part is concerned, since undisputedly the respondent No.3 has received the entire assets and liability of the Zila Sahkari Krishi and Gramin Vikas Bank, all liabilities of the employees who had retired from the service of the Zila Sahkari Krishi and Gramin Vikas Bank automatically falls upon the respondent No.3 from the date of merger onwards. As regard the claim of the respondent No.3 for appropriate financial assistance from the State Government is concerned, that would not be an issue in the present writ petition as that is an inter-se dispute between the respondent No.3 and the State Government, which can be suitably redressed between the respondent No.3 and the State Government and for which the petitioners as such should not suffer.
14. Considering the entire facts and circumstances of the case, the present writ petitions deserves to be and is accordingly allowed and the respondent No.3 is directed to calculate the payment of gratuity payable to the petitioners in accordance with the provisions of Section 4 under the Payment of Gratuity Act keeping in view the amendments made to the said Act that was applicable on the date of retirement. The petitioners be paid the difference or balance of gratuity that they are entitled for after adjusting the amount of Rs.1,70,000/- already paid by calculating the gratuity payable to the petitioners as per Section 4 of the Payment of Gratuity Act.

15. With the aforesaid observations, the present four writ petitions stand allowed and disposed off. It is expected that the respondent No.3 shall ensure that the petitioners are paid the gratuity amount in accordance with the provisions of the Payment of Gratuity Act at the earliest preferably within a period of 4 months from the date of receipt of the copy of this order.

Sd/-
(P. Sam Koshy)
Judge

Ved