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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Judgment: 09.05.2019

+ LPA 45/2019

RAM KUMAR GUPTA

..... Appellant

Through: Mr. Ashok Kumar & Ms. Beena
Verma, Advocates

versus

DY LABOUR COMMISSIONER & ORS

..... Respondents

Through: Ms. Biji Rajesh & Mr. Aman S.
Bakhshi, Advocates for Mr. Gaurang
Kanth, Advocate for R-1 & 2
Ms. Jasbir Bidhuri & Mr. Shashwat
Sharma, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. Aggrieved by the order dated 03.07.2018 passed by the learned Single Judge, the present appeal has been filed by the appellant. The appellant herein had approached this Court by filing a writ petition under Article 226 of the Constitution of India impugning the order of the appellate authority which dismissed the appeal filed against the order of Controlling Authority under Payment of Gratuity Act. The appellate authority had rejected the appeal on the ground that question of payment of gratuity stood settled by the Hon'ble High Court of Delhi in W.P.(C). No.9237/2015 which was

preferred by the petitioner/appellant herein. The writ petition was dismissed on the ground that while deciding RSA.135/2004, the High Court had held that the appellant is not entitled to payment of gratuity. Counsel for the appellant submits that in the suit filed by the appellant, the relief was not with regard to the payment of gratuity and any observations so made would not bind the appellant and would not deprive him of his fundamental right to claim gratuity under the Payment of Gratuity Act.

2. It is submitted that in W.P.(C). No.9237/2015, the learned Single Judge did not examine the matter on merits but declined to entertain the writ petition, which was for payment of gratuity, only in view of the orders passed in the RSA. Learned counsel for the appellant submits that till date, there has been no adjudication with regard to the relief pertaining to gratuity in any court. The RSA had arisen out of a suit for declaration filed by the appellant herein. Without any discussion and without any prayer, in a passing reference, the court observed that the appellant herein would not be entitled to gratuity. He submits that when a substantive writ petition was filed, the learned Single Judge in W.P.(C) 9237/2015 relied on the order passed in the RSA and dismissed the writ petition. He submits that the appellant has met with the same fate before the Assistant Labour Commissioner, the controlling authority as also before the Appellate Authority established under Payment of Gratuity Act as well as before the Single Judge, and which orders have been impugned in this appeal. Counsel for the respondent has opposed this appeal on the ground of delay and also on the ground that when a matter has attained finality, the same issue cannot be allowed to be reagitated by the appellant.

3. We have heard the learned counsel for the parties. We have called for

the records of the RSA as well as the writ petition. A reading of the order in RSA No. 135/2004 would show that the appellant had filed a suit seeking a declaration to the effect that he be treated to be in continuous service w.e.f. the date of his termination i.e. 18.06.1984, and further sought a decree in the sum of Rs. 13,218.57 along with subsistence allowance to be paid in his favour. A reading of the order does not show that the relief qua the Payment of Gratuity Act was urged. In fact, since the appellant was seeking continuity in service, he could not have claimed gratuity. However, in para 15, the Single Judge in the RSA has held, "The prayer in the plaint also did not seek any compensation. This submission is accordingly rejected. Gratuity is also not payable." This observation has been made without any pleading, prayer or discussion.

4. When W.P.(C) 9237/2015 was filed the following order was passed:

"Petitioner was working as Junior Officer with respondent No.1- Bank and his services were terminated in June, 1984. By way of a civil suit, petitioner had challenged the termination order, which was dismissed by the learned Civil Judge and petitioner had also lost in first appeal as well in the second appeal, which was decided in March, 2011.

After waiting for about four years, petitioner had got served legal notice of 22nd April, 2015 (Annexure P-9) upon respondent-Bank and in the reply of 15th May, 2015 (Annexure P-10), the stand taken by respondent-Bank is that petitioner had agitated the claim for gratuity in the second appeal, which already stands negated and the records are also not available and so, petitioner is not entitled to any payment whatsoever.

Upon hearing and on perusal of legal notice (Annexure P-9) and reply thereto (Annexure P-10) and decision of 15th March, 2011 rendered in the second appeal (which has attained finality), I find that the

claim made by petitioner in this petition already stands negated in the second appeal and so, rejection of petitioner's claim by respondent vide reply (Annexure P-10) is justified.

This petition and application are accordingly dismissed.”

5. Having heard the counsel for the parties, we are of the view that the issue with regard to the Payment of Gratuity Act, has not been adjudicated in any Forum. Single Judge of this Court in W.P.(C) 9237/2015 has mechanically relied on the observation in the RSA, where this issue was not even raised. There being no lis, the judgment in RSA cannot be res judicata. Thus, in our view, the Authorities under the Payment of Gratuity Act has erred in relying on the order in RSA and the writ petition to decide against the appellant.

6. Leaving all legal objections of the respondents open, we set aside the order passed by the Single Judge, Appellate Authority and the Labour Commissioner. The matter is remanded to the Labour Commissioner, who will hear the matter on merits, unaffected by any observation made by this Court. Legal objections, rights and contentions of both parties are kept open. The Labour Commissioner will decide the matter expeditiously having regard to the fact that this is an old matter.

7. With these observations, the LPA is disposed of.

G.S.SISTANI, J

JYOTI SINGH, J

MAY 09, 2019pst/rd