IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5546 of 2020

==

Nityanand Prasad Singh, S/o Tilakdhari Singh R/o Aadarsh Colony, Patelnagar, Sahebganj, Post- T.N.B. College, Bhagalpur-812007

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Labour Resource Department, Government of Bihar, Patna
2. The Deputy Labour Commissioner-cum-Controlling Authority, Bhagalpur under the Payment of Gratuity Act, 1972, Radha Rani Sinha Road, Adampur, Bhagalpur-812001
3. The Collector-cum-Certificate Officer, Bhagalpur District, Collectorate Campus, Bhagalpur-812001 (under Bihar and Orissa Public Demand Recovery Act, 1914)
4. The Bhagalpur Central Co-operative Bank Ltd. , through its Managing Director, Jageshwar Mandal Bhawan, Red Cross Road, Aadampur, Bhagalpur-812001

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr.Alok Kumar Sinha, Advocate
\		Mr. Indrajeet Bhushan, Advocate
For the State	:	Mr.AC to (Paag2)
For Co-Op. Bank	:	Mr. RakeshKumar Jha, Advocate

==

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

4 15-10-2020 Heard Mr. Alok Kumar Sinha, learned counsel appearing on behalf of the petitioner, Mr. Rakesh Kumar Jha, learned counsel appearing on behalf of the Bhagalpur Central Cooperative Bank Limited and the State.

The petitioner was employee of Bhagalpur Central Cooperative Bank Limited and after rendering his services for more than 3 decades he retired on attaining the age of superannuation on 31st December, 2014. On retirement the petitioner was entitled to payment of Gratuity in terms of

Payment of Gratuity Act, 1972 but the Bank withheld payment of Gratuity on the ground of pendency of a Court case.

On 27.8.2018 it was held out that withholding of gratuity was illegal and the Bank was accordingly directed to pay the Gratuity of Rs. 8,30,769/- to the petitioner within a period of one month from the date of the order. The Bank as a model employer has failed to make payment even after determination of the liability to pay. The petitioner was constrained to approach the authority under the Public Demand Recovery Act. Under Section 8 of the Payment of Gratuity Act the Bank would be liable for payment of gratuity along with compound interest @ 15% per annum, but the Bank failed to make payment as provided under Section 8 of the Act which speaks about compound interest payable after one month of superannuation. In the instant case 31st January, 2015.

On the previous occasion statement was made on behalf of the Bank that the grievance of the petitioner has been redressed. The aforesaid stand of the Bank was disputed by Mr. Alok Kumar Sinha. The Court under the aforesaid circumstances, directed the Bank to file a detailed calculation chart showing payment of dues to the petitioner.

On behalf of the Bank a counter affidavit has been filed. For ready reference the statements made in paras 4 to 8 of the counter affidavit is quoted below:-

> “4. That the subject matter of the instant writ is with regard to claim of the petitioner under the head gratuity. In this regard, at the outset, it is submitted that in compliance of the order dated 20.06.2020 passed by this Hon’ble Court in this matter and acting upon the application of the petitioner dated 16.07.2020, the answering respondent has made admitted dues to the petitioner under the head gratuity.
>
> 5. That it is submitted that against the petitioner, for committing offences under Crop Insurance Scheme, Shahkund P.S. Case No. 135/09 under Sections 419, 420, 467, 468 and 471 IPC was registered and the proceeding arising therefrom is still pending. So far as the departmental action in this regard is concerned, the Board of Directors of the Bank vide its meeting dated 17.03.2010 resolved that the petitioner would not get any other benefits of service except regular salary till the conclusion of the aforesaid criminal proceeding. It was also resolved to withheld the retirement benefits if, prior to conclusion of the said criminal proceeding, the petitioner is superannuated from the service.
>
> 6. That without opposing or challenging the aforesaid decision of the employer, the petitioner worked in the bank till his superannuation in the

year 2014 on the condition as resolved in the meeting dated 17.03.2010 (Annexure-R 4/B). But, after retirement, contrary to the agreed posit8ion, he made demand for payment under the head gratuity which was denied by the management in view of resolution as contained above vide Annexure- R-4/B. Thereafter, the petitioner involed the remedy in terms of the Payment of Grautity Act, 1972. The controlling authority under the said Act vide Annexure-5 to the writ petition passed order in favour of the petitioner directing the respondent Bank to make payment of gratuity amount of the tune of Rs. 830769 to the petitioner. Now, in view of the application of the petitioner as contained in Annexure-R-4/A (supra), payment has been made to the petitioner, thus it is submitted that his grievance has been redressed.

7.That it is submitted that payment under the head gratuity as claimed and instructed in the application dated 16.7.2020 (Annexure-R-4) has been paid. But, in the writ petition, the petitioner is claiming for statutory interest from 31.01.2015 (the date calculated after expiry of 30 days from the date of his retirement on 31.12.2014). It is submitted that such claim of interest is unjustified for firstly, the bank was justified while withholding the gratuity in view of admitted and unopposed decision of the board dated 17.03.2010 by the petitioner while he was in service, secondly, the learned controlling officer vide letter dated 27.08.2018 (Annexure-5 to the writ petition) not granted relief of interest and for this the petitioner had not availed remedy of appeal or review, thirdly, the petitioner himself, as it transpires from application dated 16.07.2020 (Annexure-R-4/A) that he has withdrawn and waived the claim of interst and lastly, such a claimed interest will affect the financial status of the respondent bank which is a private cooperative bank registered under the provisions of the Bihar Cooperative Societies Act, 1935.

8. That it is relevant to mention that the respondent bank which is a cooperative society having an elected managing committee is not a state within meaning of Article 12 of the Constitution of India. It has its own service law in terms of Section 44 AV of the Bihar Cooperative Societies Act, 1935."

From scrutiny of the counter affidavit it appears that the Bnk is claiming that its financial position is not sound and petitioner has made his claim for payment of interest.

The Court is unable to understand the stand taken by the bank that the bank in its meeting dated 17.3.2010 resolved not to grant any other benefits of service except regular salary and claiming waiver of interest which is statutory in nature. The law is well settled that there is no estoppel against the Statute. Similarly, the law is also well settled that no person can be subjected to the terms and conditions which amount to unconscionable contract. The Bank being employer is under obligation to pay the benefit of statutory interest which is otherwise admissible in terms of the Payment of Gratuity Act. Accordingly, the submission made on behalf of the Bank is held to be bogus and baseless and as such it is rejected. If the law is required to be followed in particular manner, it is to be done. The Chancery Court in the case of **Taylor Vs. Taylor: (1875) 1 Ch D 426** had occasion to held out that when the law requires a thing to be done in the manner prescribed then it has to be done in the manner prescribed. Any other mode of performance is forbidden by necessary implication. It is also settled that if statutory authority professes its action to be judged as per the professed norm, then any departure from the professed norms is only at the pain of invalidation as held out by Justice Frankfurter in Viteralli v. Seton which has been followed by series of judgment of the Supreme Court of India and other Courts.

The submission of the Bank that the petitioner has waived his right is unsustainable and it is accordingly rejected.

In the aforesaid circumstances if the facts are admitted that the petitioner retired on 31st of December, 2014,l he is entitled to payment of compound interest on gratuity after a month of superannuation i.e. 31st of January, 2015 in terms of the Payment of Gratuity Act.

Accordingly, the writ petition succeeds. The respondent-bank is directed to ensure payment of compound interest at the rate of 15% in terms of Payment of Gratuity Act and the Rules framed thereunder within a period of three months from the date of receipt/production of a copy of this order and if the respondents fail to make payment, they have to pay 5% further interest over and above the compound interest @ 15% payable to the petitioner in terms of the Payment of Gratuity Act.

With the aforesaid, the writ petition stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

U			