

14.12.20**MAT 464 of 2019****IA No: CAN 1 of 2019
(Old No. CAN 3657 of 2019)
and
CAN 2 of 2019
(Old No. CAN 3658 of 2019)****Smt Arati Rani Roy Chowdhury
vs.
The State of West Bengal & Ors.**

Mr. K.M. Hossain

...for the Appellant/Petitioner

Mr. Raja Saha
Mr. Amit Kumar Ghosh

...for the State

Party/parties is/are represented in the order of
their name/names as printed above in the cause-title.

This appeal arises from the order dated November
20, 2018 passed in W.P. No. 10146(W) of 2015 .

In preferring the appeal there has been a delay of
about 127 days.

Perused the application for condonation of delay
being CAN 2 of 2019 (Old No. CAN 3658 of 2019).

Considering the averments made in the said
application this Court is satisfied that there are sufficient
and cogent causes as to why there was a delay in filing
the appeal.

In such a view of the matter, we are satisfied that the delay should be condoned for the ends of justice.

Accordingly, CAN 2 of 2019 (Old CAN No. 3658 of 2019) filed in MAT 464 of 2019 is **allowed**. The appeal is taken on board.

CAN 2 of 2019 (Old No. CAN 3658 of 2019) stands thus **disposed of**.

MAT 464 of 2019
with
CAN 1 of 2019 (Old No. CAN 3657 of 2019)

Next this appeal arising from the impugned order dated November 20, 2018 wherein the writ petition being W.P. 10146(W) of 2015 filed by the writ petitioner/appellant stood dismissed.

The petitioner's husband was employed with one Dakshin Dinajpur District Central Co-operative Bank Limited (hereinafter referred to as the said Co-operative Bank). On the allegation of long, unexplained and unauthorised absence for a period of about twenty months immediately before his superannuation, a portion of the service benefits was withheld and not paid by the said Co-operative Bank.

Challenging such action the appellant/writ petitioner in the year 2011 filed the first writ petition, being W.P. 22305(W) Of 2011. By an order dated July 25,

2012 the said writ petition of 2011 was disposed of directing the said Co-operative Bank to ensure immediate disbursal of all statutory dues accrued in favour of the deceased employee, if not already disbursed earlier. So far as payment of his salary for last twenty months' service rendered by the deceased employee was concerned, the Hon'ble Writ Court was of the view that it was entirely a matter of humanitarian consideration to be considered by the said Co-operative Bank and accordingly such issue was left upon for the conscience of the bank to take a final decision in that regard.

Pursuant to and in terms of the said direction passed by the Hon'ble First Court dated 25th July, 2012, the Co-operative Bank released the necessary amounts. However, the appellant/writ petitioner claims that a portion of gratuity amount was then still due and payable. It is also informed to this Court that slightly more than a sum of Rs.4,00,000/- had already been paid to the deceased employee on account of gratuity and the writ petitioner/appellant contends that this was only a part of the total gratuity payable.

Challenging the said action of the Co-operative Bank by not paying the entire gratuity as per the claim made on behalf of the deceased employee, the second writ petition being W.P. 10146(W) of 2015 was filed.

By the order dated November 20, 2018, the said second writ petition was dismissed by, *inter alia*, holding that the bank had indeed considered the service and dues payable to the deceased employee on humanitarian grounds by its order dated February 7, 2013. The Hon'ble Writ Court was of the view that from the said decision of the Co-operative Bank dated February 7, 2013 the bank had already considered the amount payable to the deceased employee and allowed the maximum possible amount in favour of the deceased employee and the sum was made over to the writ petitioner/appellant, who is the widow of the deceased employee. The Hon'ble First Court was thus of the view that there was no scope for further interference in this matter. However the impugned order does not speak of as to the claim of the appellant/writ petitioner on account of gratuity of the deceased employee.

Being aggrieved by the said order dated November 20, 2018, the present appeal has been carried out. The learned Counsel for the appellant/writ petitioner drew the attention of this Court to the averments made in paragraph 4(g) of the stay petition. He also drew the attention of this Court to the pleadings made in paragraph 19 of the writ petition, which is also part of the stay petition and submitted that the final claim that was made on behalf of the deceased employee was for a total

sum of Rs.7,12,546/- on account of gratuity out of which a sum of Rs.4,28,100/- had already been paid to the widow of the deceased employee and as such the second writ petition was filed, *inter alia*, for release of a sum of Rs. 2,84,446/- which the appellant/writ petitioner claims to be still due and payable.

From a close perusal of the order impugned it appears to this Court that the learned Judge had proceeded on the basis of the consideration made by the Co-operative Bank pursuant to the order dated July 25, 2012 passed in the first writ petition and was pleased to hold that the entire dues payable to the deceased employee was considered by the Co-operative Bank. From a perusal of records it appears to us that the unpaid gratuity portion as claimed by the writ petitioner/appellant was not considered by the Co-operative Bank in its decision dated February 7, 2013, which was a relief claimed in the second writ petition. In so far as the issues relating to other monetary benefits of the deceased employee are concerned, the same are already decided.

In view of the above, this Court is of the considered view that the said unpaid gratuity portion of the deceased employee needs to be considered by the Co-operative Bank.

In view of the above discussion, the order impugned dated November 20, 2018 stands modified to the extent directing the concerned Co-operative Bank, namely, the respondent No. 3 in the writ petition, to consider the case of the deceased employee on account of the said unpaid portion of the gratuity as mentioned above by granting an adequate opportunity of hearing to the writ petitioner/appellant either through herself or through her authorised representative by giving at least seven days prior notice and will inform the decision of such hearing to the writ petitioner/appellant with reasons in accordance with law.

The entire exercise has to be carried out by the concerned Co-operative Bank within a period of eight weeks from the date of communication of this order.

In view of the above, both the appeal and the connected application being **MAT 464 of 2019** and **CAN 1 of 2019 (Old No. CAN 3657 of 2019)** stand **disposed of**.

There will be no order as to costs.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Aniruddha Roy, J.)

(Subrata Talukdar, J.)