

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18597 of 2019

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Suresh Kumar Shrivastava Son of Raghu Nandan Prasad, R/o Vikramaditya Bhawan, Garibnath Road, Opp. Garibanath Temple, Chhata Bazar, Barhanpura, Muzaffarpur 842001

... .. Petitioner/s

Versus

1. Central Bank of India Chandermukhi, Nariman Point, Mumbai
2. Managing Director and CEO Central Bank of India, Central Office, Chandermukhi, Nariman Point, Mumbai 400021
3. General Manager HRD, Central Bank of India, Central Office, Nariman Point, Mumbai 400021
4. The Assistant General Manager Retiral Benefits Department, Mumbai Main Office Building, 4th Floor, M.G. Road, Fort, Mumbai-400023
5. Chief Manager Retiral Benefits Department, Mumbai Main Office Building, 4th Floor, M.G. Road, Fort, Mumbai-400023

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Priyank Samdarshi, Adv.

For the Respondent/s : Mr.Ajay Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

5 04-02-2021 The present writ petition has been filed seeking a direction upon the respondent- Bank to pay the differential amount of gratuity to the petitioner as per the service regulation and the provisions of the Payment of Gratuity Act, 1972 along with interest.

After the matter was heard for a while, it has become clear that the petitioner has opted for the applicability of the Central Bank of India (Officers') Service Regulations, 1979 where the mode of calculation and payment of gratuity has been mentioned in Regulation 46 and the definition of pay has been



given in Regulation 3(k). It appears that the definition of pay as mentioned in the aforesaid regulations is at variance with the definition of wages under the payment of gratuity Act, 1972. It has also come to the notice of the Court that the amount of gratuity, payable to the petitioner, as stipulated under the payment of Gratuity Act, 1972, carries a ceiling to the tune of Rs. 3, 50,000/-, considering the fact that the petitioner had superannuated from the service of the Bank on 31.07.2009, however, under the service Regulation of the respondent Bank, the petitioner has been paid a sum of Rs. 6,39,641/- on the head of gratuity. It is further apparent that either the petitioner can opt for payment of gratuity as per the provisions contained in Payment of Gratuity Act, 1972 or as per the provisions contained in the service Regulations of the respondent Bank and as far as the present case is concerned, the petitioner has admittedly opted for the applicability of the Service Regulations of the respondent Bank, hence, the Bank has accordingly computed and paid gratuity to the petitioner in accordance with the mode of calculation provided for under the Service Regulations of the respondent Bank, resulting in greater benefit to the petitioner herein than what he would have got on the head of gratuity, in case calculation was made in accordance with the



provisions contained in Payment of Gratuity Act, 1972. It is also clear that either the gratuity scheme provided for, under the service Regulations of the respondent Bank can be adopted or the applicability of the Payment of Gratuity Act, 1972 can be opted, for the purposes of calculation of gratuity amount, but the provisions of both cannot be applied in part simultaneously for calculating the amount of gratuity. Thus, the gratuity amount has to be computed, either by applying the provisions contained in Service Regulation of the respondent Bank or by only considering the provisions contained in Payment of Gratuity Act, 1972.

At this juncture, the learned counsel for the petitioner submits that the issue as to whether the beneficial provisions of both i.e. the service Regulations of the respondent Bank and the Payment of Gratuity Act, 1972, should be clubbed and applied for the purposes of calculating the gratuity amount, is pending adjudication before various Courts including the Hon'ble Rajasthan High Court, as such the petitioner seeks to withdraw the present writ petition with liberty to approach this Court, as and when any judgment is rendered in his favour on the issue that though computation of gratuity shall be made as per the provisions contained in the Regulations of the Respondent



Bank, but by substituting the definition of ‘pay’, as defined under the regulations of the Respondent Bank by the definition of ‘wages’, as provided for in the Payment of Gratuity Act, 1972.

Accordingly, the present writ petition stands disposed of as not pressed, however, with the aforesaid liberty.

(Mohit Kumar Shah, J)

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