

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2722 of 2021

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The Chairman, Madhya Bihar Gramin Bank (Now known as Dakshin Bihar Gramin Bank) Head Office, Sri Vishnu Commercial Complex, Asochak Chowk, New Bypass Road, (N.H. 30), Patna- 800016.

... .. Petitioner/s

Versus

1. The Union of India through the Ministry of Labour and Employment, New Delhi.
2. The Assistant Labour Commissioner (C)- cum- Controlling Authority under the payment of Gratuity Act 1972, A Block, 2nd Floor, Room no.- 17, Maurya Lok Complex, Dak Bunglaw Road, Patna- 800001.
3. Sri Vinay Kumar Dubey Son of Late Kalika Prasad Dubey resident of Mohalla- Fazalganj, P.O.- Sasaram, District- Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Praveen Prabhakar
For the Respondent/s : Mr.Dr. K. N. Singh (Asg)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

ORAL JUDGMENT

Date : 30-11-2022

Heard learned counsels for the parties.

2. In the instant petition, petitioner has prayed for following reliefs:-

"(a) To issue a writ of certiorari for quashing the judgment and order dated 09.06.2020 (Annexure-5), passed by learned Assistant Labour Commissioner (C)-cum-Controlling Authority under the Payment of Gratuity Act, 1972, through which the private respondent erroneously and in without jurisdiction manner has been found entitled for payment of total amount of his Gratuity to the tune of rupees 13,60,412/- by him, on the basis of calculation done taking note of his Basic Pay, Special Allowance and D.A. and also for rupees 2,88,572/- for excess 7 years additional period of his service beyond



period of 30 years, in terms of provisions of Regulation 72 of Madhya Bihar Gramin Bank (Officers & Employees Service Regulations, 2010) and direction has been issued to the petitioner to pay the private respondent his rest Gratuity amount of total rupees 4,53,518/- including interest of rupees 93,106/ at the rate of 10% per annum for the period of delay in between 29.2.2016 to 25.9.2019 on due amount of rupees 3,60,412/-, after deducting amount of rupees 10,00,000/- already paid to him.

(b) To any other relief or reliefs for which the petitioner may be found entitled to."

3. Perusal of the records it is evident that petitioner has not exhausted statutory remedy of appeal before the appellate authority under Payment of Gratuity Act, 1972.

Apex Court in the case of State of *Jammu and Kashmir V. R.K. Zalpuri* reported in *AIR 2016 SC 3006* at para 20 held as under:

"20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation V. Dosu Aardeshir Bhiwandiwalla and Others, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

"The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all



material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.”

4. In the light of these facts and circumstances, present petition is not maintainable in not exhausting statutory remedy of appeal before the appellate authority under Section 7 of payment of Gratuity Act.

5. Accordingly, the present petition stands disposed of reserving liberty to the petitioner to invoke remedy of appeal. Appellate authority is hereby directed to take note of Section 14 of Limitation Act for the purpose of condonation of delay, if any.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	06.12.2022
Transmission Date	NA

