

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12851 of 2022

Baleshwar Giri

... .. Petitioner/s

Versus

The Union of India

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rabindra Prasad Singh

For the Respondent/s : Mr.Additional Solicitor General

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL ORDER

2 23-11-2022 In the instant petition, petitioner has prayed for following relief(s):-

"(I) That this Writ Petition is being filed on behalf of the petitioner for issuance of an appropriate order/orders/direction/directions writ in the nature of Mandamus directing and commanding to the Respondents to pay gratuity, arrears of increment dues in the year 2009 and arrears of grade pay scale as well as quarter seniority to the petitioner for the ends of Justice."

(II) And further be pleased to grant other relief/reliefs as the petitioner is entitled for;"

prima facie, the present writ petition is not maintainable in view of Section 7 of the payment gratuity Act, 1972. The petitioner is required to approach competent authority for determination of gratuity in filing an application before the competent authority. Further it is to be noticed that in the event of non-determination of gratuity by the controlling



authority/competent authority, petitioner had statutory remedy before the appellate authority under Section 7 of gratuity Act, 1972.

Apex Court in the case 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.”



One of the principle laid down in the aforementioned decision is that writ court is required to examine whether petitioner has exhausted the statutory remedy available to him/her or not?

Obviously in the present case, petitioner has not exhausted the remedy under the payment of gratuity Act for the purpose of determination and extending payment of gratuity.

Accordingly, writ petition stands dismissed.

Reserving liberty to the petitioner to invoke appropriate remedy before the competent authority. The competent authority is hereby directed to examine the grievance of the petitioner in the event of submission of application/petition, and in accordance with law.

(P. B. Bajanthri, J)

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