

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 16222 of 2021

**State Bank of India
Vs.
Sri Ravi Shankar Malani & Others.**

For the Petitioners: Mr. Susanta Pal, Adv.,
Mr. S. Pal Chaudhari, Adv.

For the Respondent: Mr. Soumya Majumder, Adv.

Hearing concluded on: 23.02.2022

Date: 02-03-2022

SUVRA GHOSH, J. :-

1. Under challenge in this writ petition are the order of the Controlling Authority passed on 31st July, 2018 and the order of the Appellate Authority passed on 31st July, 2019. In the order impugned the Controlling Authority has allowed the prayer of the private respondent and has held that the private respondent is entitled to payment of gratuity along with interest to be determined up to 31st July, 2018. In the appeal preferred against the said order the Appellate Authority has affirmed the order of the Controlling Authority and has allowed the private respondent to receive gratuity with interest of 10% per annum from 1st July, 2017 till the actual

date of disbursement of the gratuity amount. The observation of the Appellate Authority in the said order is set out:-

“1. It is a fact that the respondent was appointed in the appellant organization as a contractual Chartered Accountant and he rendered uninterrupted service for more than 8 years.

2. Such appointment will be deemed to be an employee under the provision of the Payment of Gratuity Act even if he is appointed on contractual basis.

3. The law does not distinguish that a contractual employee will be excluded from the provision of the Act as enshrined under section 2(e) of the P.G. Act.

4. The circular issued by the appellant on 18.02.2011 does not indicate that the contractual employee will be disentitled to receive gratuity. The circular is silent in this regard. It cannot be interpreted to the disadvantage of an employee. Gratuity being a beneficial legislation will always uphold liberal interpretation of law.

5. The appellant's statement that the respondent is not covered under bank's Gratuity Fund/scheme is irrelevant as it is contrary to law and inconsistent as per Section 14 of the P.G. Act. Such non-inclusion will not take a statutory right of the respondent.

6. It seems apparently clear if such kind of contractual employee are not covered under any regulation of the appellant organisation, they cannot receive gratuity in any other form or mode.

7. By such negative means, the employer cannot outrightly deprive an employee from receiving gratuity in the guise of non-inclusion in their scheme/fund.

8. Further the appellant contention that respondent employee was in receipt of higher salary and he will not receive gratuity, sounds absurd. The definition of an employee does not stipulate any ceiling on salary/wage of an employee under the PG Act as per Ministry of Labour & Employment SO No. 1080 dated

03.04.1997 read with The Payment of Gratuity (Amendment) Act of 2009.

9. The respondent having worked for more than five years, is entitled to receive the gratuity as per Section 4 of the P.G. Act.”

2. Learned counsel for the petitioner submits that the appointment of the respondent was purely contractual in nature. The first contract was for a period of three years from 14th November, 2008 to 13th November, 2011 and subsequent appointments continued on the basis of fresh contracts entered into between the employer and the employee. The earlier contracts were not renewed and fresh contracts were executed on fresh terms and conditions. A consolidated package was allowed to the incumbent in each of the contracts. Referring to Clause 9 of the offer of appointment as Chartered Accountant Junior CA-S 1 on contract and CTC basis issued on 19th September, 2008, learned counsel submits that it was stipulated therein that service of Management Trainees/Executives would be on contract basis and they not being the permanent employees of the Bank will not be entitled to become members of SBI employees provident fund/pension fund/gratuity fund. Though the respondent worked with the petitioner company for more than five years, the said period cannot be termed as continuous service for the reason that fresh contracts were executed on new terms and conditions after expiry of the earlier contract, which does not amount to renewal of the earlier contract. It was indicated in clear terms in the contracts that the contracts would expire upon expiry

of the period stated therein. There being no employer-employee relationship between the parties, the respondent is not entitled to payment of gratuity in terms of the Payment of Gratuity Act, 1972. The respondent is governed by “contract for service” which is for a particular period and not by “contract of service” which is permanent in nature.

3. Learned counsel has placed reliance on a judgment of a coordinate Bench of this Court delivered on 16th July, 2014 in W.P. 15864(W) of 2014 which demonstrates that the Regulations of the State Bank of India of 1979 shall prevail over the provisions of the Payment of Gratuity Act, 1972 in view of the special nature of the Regulations.
4. Per contra, learned counsel appearing for the respondent has submitted that in terms of clause 2 of the offer of appointment issued in favour of the respondent on 19th September, 2008 the contract of appointment is renewable on completion of contractual period depending on the performance, suitability and need of the Bank. In the offer letter dated 26th February, 2011 it is clearly spelt out that the respondent is not entitled to claim any provident fund, pension, new pension scheme or bonus during the period of contract or thereafter. The letter does not indicate that the respondent is not entitled to claim gratuity. The work experience certificate issued by the Bank in favour of the respondent on 30th June, 2017 indicates that the respondent joined the Bank as Credit Analyst on 14th November, 2008 on contract basis and was engaged till 30th June, 2017 until he was relieved as Vice President. This certificate accepts continuous service of the respondent from 14th November, 2008 to 30th June, 2017.

5. Learned counsel has drawn the attention of the Court to section 2(e) of the Payment of Gratuity Act, 1972 which defines “employee” as “any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity”. According to the learned counsel, the respondent was in service with the Bank for about 9 years upon periodical renewal of his contracts and is therefore entitled to gratuity.

6. Learned counsel has placed reliance on a judgment of the Hon’ble Supreme Court in Allahabad Bank and Another v/s. All India Allahabad Bank Retired Employees’ Association reported in (2010) 2 Supreme Court Cases 44. In dealing with section 5 of the Act of 1972, the Hon’ble Supreme Court has held that “there is no escape from payment of gratuity under the provision of Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government.” The Hon’ble Court has also held that gratuity payable to an employee being a statutory right cannot be taken away except in accordance with the provisions of the Act. The same proposition of law is reiterated by an Hon’ble Division Bench of this Court in a judgment delivered on 29th September, 2016 in M.A.T. 1298 of 2012.

7. The appointment of the respondent was admittedly on contractual basis. The letter of appointment issued on 12th November, 2008 for a period of 3 years from 14th November, 2008 to 13th November, 2011 indicates that the contract will be renewable on completion of the contractual period. Clause 4 of the letter suggests that the service of the respondent shall be governed by the Management Trainees/Executives Service and Conduct Rules, 2004, amendments thereof and instruction/guidelines to be issued/other Rules and Regulations framed by the Bank from time to time. Clause 9 of the 2004 Rules demonstrates that the services of the Management Trainees/Executives being on contract basis and they not being permanent employees of the Bank will not be entitled to become members of the SBI employees' provident fund/pension fund/gratuity fund. The said Clause of the 2004 Rules was within knowledge of the respondent since inception of his service and remains uncontroverted. The terms and conditions of engagement of officers on contract of the State Bank of India as on 1st April, 2011 has laid down in no uncertain terms that contractual officers may be engaged on a fresh contract after successful completion of the earlier contract. Though there was a renewal clause in the initial appointment offer dated 19th September, 2008, the subsequent contracts do not speak of renewal of the earlier contract and as such, the said clause was not acted upon. Each time a fresh contract has been executed on fresh terms and conditions after expiry of the earlier contract. True, the contract dated 26th February, 2011 states that the respondent shall not be entitled to claim any provident fund, pension, new pension scheme or bonus during the period of

contract or thereafter and does not include gratuity. Nevertheless, the petitioner being admittedly governed by the rules framed by the State Bank of India cannot under any circumstance, raise any claim de hors the rules. The work experience certificate issued by the petitioner on 30th June, 2017 certifies engagement of the respondent with the Bank from 14th November, 2008 to 30th June, 2017 but does not for once demonstrate that the respondent was engaged in continuous service with the Bank for the said period. On the contrary, the offer letters issued in favour of the respondent reveal that a fresh contract was executed after expiry of the earlier one.

8. The judgments cited on behalf of the respondent deals with section 5 of the Act of 1972 which enables the appropriate Government to exempt any establishment to which the Act applies from operation of the provision of the Act. In the judgment in Allahabad Bank and Another (supra) the Hon'ble Supreme Court has held that gratuity being a statutory right cannot be taken away except in accordance with the provisions of the Act.
9. There is no quarrel with the said proposition of law as enumerated in the judgments in Allahabad Bank and Another (supra) and UCO Bank and Others (supra). But the fact situation in the present case is distinguishable. In the case in hand, the rules of the Bank do not entitle the respondent to claim gratuity as he is not termed as a permanent employee of the Bank. In the judgment in Union Bank of India (supra) a coordinate Bench of this Court has decided that in view of the special nature of the Regulations of the Bank, the Regulation shall prevail over the provisions of the Act of 1972.

10. It is a fact that section 14 of the 1972 Act states that the provisions of this Act or any rule made thereunder shall have overriding effect over anything inconsistent therewith contained in any other enactment, instrument or contract. Section 4 of the Act entitles an employee to gratuity on termination of his employment after he has rendered continuous service for not less than 5 years.
11. In the present case, the respondent was appointed for an initial period of 3 years and fresh contracts were issued in his favour subsequently after expiry of every 2 years. In absence of continuation/renewal of the initial contract during the entire period, it cannot be said that the respondent rendered continuous service for 5 years or more. In the premise, the respondent is not governed by the provisions laid down under section 4/5 of the Act of 1972 and is not entitled to reap the benefits offered by the same.
12. In view of the 2004 Rules of the Bank and the terms and conditions of engagement of contractual officers of the Bank as on 1st April, 2011, which govern the service of the respondent, the respondent is not entitled to claim gratuity for the service rendered by him.
13. In the result, the writ petition being 16222 of 2021 is allowed.
14. The order passed by the Deputy Chief Labour Commissioner (Central) Kolkata and Appellate Authority under the Payment of Gratuity Act, 1972 passed on 31st July, 2019 in Appeal No. 48/(09)/2019. E.DY CLC(C) is set aside/quashed following which the order passed by the Assistant Labour Commissioner (Central) and Controlling Authority under The Payment of

Gratuity Act, 1972 on 31st July, 2018 in Case No. 48/(01)/2018/E.3 is also set aside/quashed.

15. The petitioner is at liberty to withdraw the amount deposited before the Appellate Authority by demand draft as per letter dated 25th September, 2018.

16. There shall however be no order as to costs.

17. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)