

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18632 of 2022

MD, Odisha State Co-Operative Petitioner
Bank Ltd., BBSR

-versus-

Appellate Authority under Opposite Parties
Payment of Gratuity Act, BBSR
& Ors.

CORAM:
JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER
24.09.2022

Order No

- 05.** 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. K.P. Nanda, learned counsel for the Petitioner and Mr. A.K. Mohapatra, learned counsel appearing for the Private O.P. No. 3.
3. The present writ Petition has been filed by the Petitioner-Bank challenging the order dtd.27.06.2022 passed by the Appellate Authority under the Payment of Gratuity Act –cum- Joint Labour Commissioner, Bhubaneswar in P.G. Appeal No. 14 of 2021 under Annexure-1.
4. It is the main contention of the Petitioner that since the Petitioner while continuing under the Bank was discharged from service vide order dtd.28.07.2014 under Annexure-3, in view of the provision contained under Section 4(6)(a) of the Payment of Gratuity Act, 1972, the Private Opp. Party is not eligible and entitled to get the gratuity as due and admissible.

5. It is also submitted that even though the Private Opp. Party was discharged from service w.e.f.28.07.2014, but he moved an application claiming the benefit of gratuity before the Competent Authority only on 29.07.2019. It is also submitted that even though all the materials were placed before the Competent Authority as well as before the Appellate Authority, but the Competent Authority allowed the claim of the Private Opp. Party by directing the Bank to pay a sum of Rs.11,89,227/- (Rs. Eleven lakh eighty nine thousand two hundred twenty seven) towards gratuity and interest in favour of the Private Opp. Party. The said order passed by the Competent Authority on 20.10.2020 under Annexure-5 was confirmed by the Appellate Authority vide his order under Annexure-1.

6. Mr. Nanda accordingly submitted that since the Petitioner is a discharged employee, he is not eligible and entitled to get benefit of gratuity and both the Authorities without due appreciation of the provision contained under Sec. 4(6)(a) of the Payment of Gratuity Act has allowed the claim in favour of the Private Opp. Party. Accordingly, Mr. Nanda prayed for interference of this Court.

7. Mr. A.K. Mohapatra, learned counsel appearing for Private O.P. No. 3 made his submission basing on the stand taken in the preliminary counter affidavit filed. It is submitted that even though the Petitioner was discharged from his service vide order dtd.28.07.2014, but basing on his application made for release of pension, the Petitioner-Bank in terms of the decision taken by the Managing Committee in its meeting held on 06.01.2017 allowed pension to the extent of 2/3rd in favour of the Petitioner and the said also fact is reflected in the communication dtd.25.01.2017 of the

Petitioner-Bank. The said letter dtd.25.01.2017 produced by Mr. Mohapatra in Court be kept on record.

8. In view of the fact that in spite of his order of discharge the Bank has allowed 2/3rd pension in favour of the Private Opp. Party No. 3, this Court feels that the ground of challenge with regard to payment of gratuity that the Petitioner is a discharged employee is not justified. Since the Bank in spite of the fact that the Petitioner is a discharged employee has allowed 2/3rd pension in his favour, this Court is of the opinion that out of the awarded amount of Rs.11,89,227/- (Rs. Eleven lakh eighty nine thousand two hundred twenty seven), a sum of Rs.6,00,000/- (Rs. Six lakhs) be released in favour of O.P. No. 2. O.P. No. 2 is accordingly directed to release a sum of Rs.6,00,000/- (Rs. Six lakhs) in favour of the Private Opp. Party No. 3 within a period of t (two) weeks from today. The balance amount so deposited by the Bank be kept in a fixed deposit by the O.P. No. 2 and release of the same shall be subject to the final outcome of the surcharge proceeding initiated against the Petitioner in Surcharge Proceeding Case No. 27 of 2012.

9. The writ Petition is disposed of with the aforesaid observation and directions.

(Biraja Prasanna Satapathy)
Judge

Sneha