

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1541 of 2021

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The Chairman, Madhya Bihar Gramin Bank (Now known as Dakshin Bihar Gramin Bank) Head Office, Sri Vsihnu Commercial Complex, Asochak Chowk, New Bypass Road, (N.H. 30), Patna 8000016.

... .. Petitioner

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. Shri Anil Kumar Pandey Son of Sri Sukhdev Pandey, resident of Village-Kurusa, P.O.- Doiyan Via Kochak, District - Rohtas at present resident of Awaleshhpur, Amra Chauraha, Near Pancham Katra, B.H.U. Road, P.O. - Kandawa, P.S. - Rohania, Varanasi - 221106.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. M. N. Parwat, Sr. Advocate. Mr. Ved Prakash, Advocate.
For the Respondent No.3	:	Mr. Ajay Kumar Prasad, Advocate.
For the UoI	:	Ms. Kanak Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 18-01-2023

Heard Mr. M. N. Parwat, learned senior counsel duly assisted by Mr. Ved Prakash, learned counsel for the petitioner, Mr. Ajay Kumar Prasad, learned counsel for the respondent no.3 and Ms. Kanak Verma, learned counsel for the Union of India.

2. By invoking the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner seeks quashing of the order dated 02.06.2020 as contained in Annexure-4, passed by learned Assistant Labour



Commissioner(C) -cum- Controlling Authority under the Payment of Gratuity Act, 1972 (for short the 'Act of 1972') by which the respondent no.3 has been found entitled to get his gratuity amount of Rs.10,00,000/- only without any amount of interest and further direction has been issued to the petitioner Bank to pay a total sum of Rs.10,00,000/- within a period of 30 days from the date of receipt of order.

3. Learned senior counsel appearing on behalf of the petitioner gave a brief facts of the case stating that the private respondent no.3 had joined the service of the erstwhile Bhojpur Rohtas Gramin Bank as Clerk-cum-Cashier on 09.06.1979 and thereafter, he was promoted to the post of Field Supervisor and later on designated as Officer Junior Management (Grade-I). He further submits that while the petitioner was working as Branch Manager, in Kashichak Branch of the Bank, he was apprehended in connection with a trap case and accordingly a Vigilance P. S. Case no. 100 of 2009, under Section 7/13(2) and 13(i)(d) of the Prevention of Corruption Act, was instituted against him. He also submits that on account of the aforesaid charges, the petitioner was put to a departmental proceeding, which culminated into the dismissal with further direction that the same shall ordinarily be a disqualification for further



employment. He next submits that the respondent no.3 had assailed the order of punishment in appeal, however, the same also stood dismissed. In the meantime, the private respondent had filed an application under the Act of 1972 for payment of his gratuity amount before the Assistant Labour Commissioner(C)-cum-Controlling Authority on account of his alleged superannuation from the services of Bank w.e.f. 31.12.2014 resulting into registration of Case No. 48/1(33)/2018/ALC-PT. The petitioner appeared and filed its reply as well as supplementary reply denying all the allegation and also raised objections, *inter alia*, the claim being not maintainable and time barred. The Assistant Labour Commissioner(C)-cum-Controlling Authority after hearing the parties, allowed the said application vide order dated 02.06.2020 which is impugned herein.

4. Learned senior counsel further drawn the attention of this Court to the Service Regulations for Regional Rural Banks as framed by the Central Government in exercise of power vested in it under Section 17(1) second proviso of Regional Rural Bank Act, 1976 and Madhya Bihar Gramin Bank (Officers and Employees) service Regulation, 2010 and submits that these regulations were applicable and binding on



all the Officers and Employees of the Bank and, in fact, in terms of Section 32 of the said Regional Rural Banks, Act, 1976, the provisions of Regional Rural Banks Act, 1976 has overriding effect over the provisions of other laws. He next submits that the Regulation 3 of Chapter II of the Madhya Bihar Gramin Bank (Officers and Employees) Service Regulations, 2010 deals with the classification of “Officers” and “Employees” and the word employee does not cover Officers of the Bank. It is evident from the contents of proviso of Regulation 72(2) above that it keeps rider on the forfeiture of Gratuity of employee only in the circumstances mentioned therein and not on the forfeiture of Gratuity of the Officers. He also relied upon one of the judgments rendered by the Hon’ble Apex Court in the case of **P. Rajan Sandhi Vs. Union of India and others in Civil Appeal No. 4095 of 2006**. Further reliance has also been made on the judgment rendered by the Hon’ble Kolkata High Court in the case of **United Bank of India vs. Sri Pranab Kumar and others in WP No. 15864 (w) of 2014**.

5. Learned senior counsel further submits that in any view of the matter, the order impugned is wholly without jurisdiction and, as such, relegating the matter to take recourse of alternative remedy does not arise. He lastly submits that in



identical matter in C.W.J.C. No. 24585 of 2018 filed by the Bank, notice has been issued and stay has been granted by learned co-ordinate Bench vide order dated 22.06.2020.

6. On the other hand, Mr. Ajay Kumar Prasad, learned counsel appearing on behalf of the respondent no.3 submits that the order passed by the Assistant Labour Commissioner (C) -cum- Controlling Authority under the Act of 1972, is in consonance with the terms of Section 72 of the Madhya Bihar Gramin Bank (Officers and Employees) service Regulation, 2010. He submits that the petitioner has not exhausted statutory remedy of appeal before the Appellate Authority under Section 7(vii) of the Payment of Gratuity Act. He has also drawn the attention of this court towards various orders passed by the learned co-ordinate Bench of this Court, including the case of **the Chairman, Madhay Bihar Gramin Bank Vs. Union of India and others** in CWJC No. 7139 of 2019 and further in CWJC No. 14919 of 2018 [**The Chairman Uttar Bihar Gramin Bank and Anr Vs. The Union of India and Others**] and CWJC No.3796 of 2019 [**Uttar Bihar Gramin Bank and Another Vs. The Assistant Labour Commissioner (Central) and Others**]. A supplementary affidavit has also been filed on behalf of the respondent no.3 bringing on record the order



passed by the different learned co-ordinate Benches of this Court, which has been annexed as Annexure R3 series, wherein, the learned Court having found the writ not maintainable, relegated the matter to the Appellate Authority to exhaust the alternative remedy. While concluding his submissions, he submits that Section 72 of the Madhya Bihar Gramin Bank (Officers and Employees) service Regulation, 2010, would be applicable to all the officers or employees which reads as follows:

“72. Gratuity,-(1) An officer or employee shall be eligible for payment of gratuity either as per the provisions of the Payment of Gratuity Act, 1972 (39 of 1972) or as per sub-regulation (2), whichever is higher.

(2) Every officer or employee shall be eligible for gratuity on,-

(a) retirement,

(b) death,

(c) disablement rendering him unfit for further service as certified by a medical officer approved by the Bank, or

(d) resignation after completing 10 years of continuous service or

(e) termination of service in any other way except by way of punishment after completion of 10 years of service:

Provided that in respect of an employee there shall be no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only.”

He lastly submits that the employee includes the officer also, otherwise it would be unjust discrimination while



granting benefit of gratuity.

7. Having heard the parties at length and considering the materials available on record including the Regulations brought on record by the learned counsel for the petitioner as also the different orders passed by this Court relegating the matter to the Appellate Authority under Section 7(viii) of the Payment of Gratuity Act, this Court is of the opinion that issue of jurisdiction can be raised at any time even in appeal or execution. This Court thinks it apt and proper to quote paragraphs 22 and 23 of the judgment rendered by the Apex Court in the case of **Kanwar Singh Saini Vs. High Court of Delhi reported in (2012) 4 SCC 307** which reads as follows:

“22. There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decreed having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be



permitted to defeat the legislative animation. The court cannot derive jurisdiction apart from the statute. [Vide United Commercial Bank Ltd. v. Workmen [1951 SCC 364 : AIR 1951 SC 230] , Nai Bahu v. Lala Ramnarayan [(1978) 1 SCC 58 : AIR 1978 SC 22] , Natraj Studios (P) Ltd. v. Navrang Studios [(1981) 1 SCC 523 : AIR 1981 SC 537] , Sardar Hasan Siddiqui v. STAT [AIR 1986 All 132] , A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602 : 1988 SCC (Cri) 372 : AIR 1988 SC 1531] , Union of India v. Deoki Nandan Aggarwal [1992 Supp (1) SCC 323 : 1992 SCC (L&S) 248 : (1992) 19 ATC 219 : AIR 1992 SC 96] , Karnal Improvement Trust v. Parkash Wanti [(1995) 5 SCC 159] , U.P. Rajkiya Nirman Nigam Ltd. v. Indure (P) Ltd. [(1996) 2 SCC 667 : AIR 1996 SC 1373] , State of Gujarat v. Rajesh Kumar Chimanlal Barot [(1996) 5 SCC 477 : AIR 1996 SC 2664] , Kesar Singh v. Sadhu [(1996) 7 SCC 711] , Kondiba Dagadu Kadam v. Savitribai Sopan Gujar [(1999) 3 SCC 722 : AIR 1999 SC 2213] and CCE v. Flock (India) (P) Ltd.]

23. *When a statute gives a right and provides a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act. When an Act creates a right or obligation and enforces the performance thereof in a specified manner, “that performance cannot be enforced in any other manner”. Thus for enforcement of*



a right/obligation under a statute, the only remedy available to the person aggrieved is to get adjudication of rights under the said Act.”

This Court also gone through the orders passed by the different Benches of this Court and in order to maintain the uniformity, the present writ application stands disposed of granting liberty to the petitioner to avail the remedy of appeal as provided under the Act.

8. It is needless to say that in case, any appeal is filed before the Appellate Authority, the Appellate Authority shall take note of Section 14 of the Limitation Act for the purposes of condonation of delay, if any, and it would also be under obligation to consider all the points including the point of jurisdiction, as would be raised by the petitioner.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.01.2023
Transmission Date	NA

