Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 11196 of 2023

Ravi Shankar Malani
Vs.
State Bank of India & Ors.

For the petitioner	:	Ms. Sanjukta Dutta
For the respondent nos.1 & 2	:	Mr. S. Pal Chowdhury
Heard on	:	16.05.2023
Judgment on	:	16.05.2023

Raja Basu Chowdhury, J:

1. Affidavit of service filed in Court today is taken on record.

2. The present writ application has been filed, *inter alia*, praying for disbursal of interest in favour of the petitioner, consequent upon determination of gratuity payable to the petitioner under the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act").

3. The petitioner claims to be a Chartered Accountant and was appointed in the respondent bank on contractual basis vide appointment letter dated 12th November, 2008. Although, the initial appointment of the petitioner was for the period from 14th

November, 2008 to 13th November, 2011, the same was, however, subsequently renewed from time to time by the respondent bank.

4. On 30th June, 2017, the petitioner had submitted his resignation to the respondent bank after having rendered a continuous service for a period of 8 years 7 months and 16 days i.e. between 14th November, 2008 to 30th June, 2017. Following such resignation, the petitioner applied in Form 'I' under the provisions of the said Act for disbursal of gratuity in his favour.

5. Since the respondent bank did not disburse the gratuity, the petitioner had applied in Form 'N' before the Controlling Authority under the said Act, on 10th November, 2017. On contested hearing, the Controlling Authority was, *inter alia*, pleased to determine the gratuity payable to the petitioner and by a notice in Form-R dated 31st July, 2018, while calling upon the respondent bank to make payment of the gratuity so determined, also enclosed a copy of the order dated 31st July, 2018, to the aforesaid Form-R.

6. Being aggrieved, the respondent bank had filed a statutory appeal by making a pre-deposit as required under the provisions of the said Act. Such appeal appears to have been filed on 25th September, 2018. The Appellate Authority by its order dated 31st July, 2019, disposed of the said appeal, *inter alia*, by upholding the order passed by the Controlling Authority. The respondent

bank, however, chose to challenge both the orders passed by the Controlling Authority as well as by the Appellate Authority by filing a writ application, which was registered as WPA 16222 of 2021, *inter alia*, on the ground that the petitioner did not render continuous service for a period of five years or more. By order dated 2nd March, 2022, a co-ordinate Bench of this Court was, *inter alia*, pleased to set aside the orders passed both by the Controlling Authority as well as by the Appellate Authority on the ground that the petitioner had not rendered continuous service for five years or more.

7. Being aggrieved, the petitioner had filed an appeal which was registered as MAT 451 of 2022. By an order dated 18th April, 2022, the Division Bench of this Court by observing that the order passed by the Controlling Authority dated 31st July, 2018, was tested for its correctness by the Appellate Authority and after re-examining the facts, the Appellate Authority by an order dated 31st July, 2019, having affirmed the said order, was of the view that the order passed by the Controlling Authority and the Appellate Authority is just and proper and ought not to be interfered with by the writ Court. Consequent upon the same, the Division Bench of this Hon'ble Court was pleased to affirm and restore the orders passed by the Controlling Authority and the Appellate Authority and had also permitted the petitioner to withdraw the amount together with interest, lying in deposit

before the Controlling Authority on production of a server copy of the judgment.

8. The petitioner had since applied before the office of the Controlling Authority and had withdrawn the money lying in deposit amounting to Rs.4,72,020/- on 24th August, 2022. Since according to the petitioner, the petitioner was also entitled to additional interest for failure on the part of the respondent bank to comply with the direction given by the Controlling Authority and the Appellate Authority, the petitioner had applied in Form 'T' on 5th September, 2022, for issuance of a certificate in terms of Section 8 of the said Act.

9. Consequent upon receipt of such application, the Controlling Authority had by a communication in writing dated 2nd December, 2022, called upon the General Manager of the respondent bank to follow the order passed by the Controlling Authority and the Appellate Authority and pay simple interest for delayed payment at the rate of 10 per cent per annum on the gratuity amount as determined by the Controlling Authority in favour of the petitioner.

10. Upon receipt of such communication, the respondent bank appears to have responded to the same by a communication in writing dated 14th December, 2022, and had brought to the notice of the Controlling Authority the judgment passed by the Division

Bench of this Hon'ble Court dated 18th April, 2022. It was further, *inter alia*, represented that in terms of the judgment delivered by the Hon'ble Court, no further payment was required to be made to the petitioner.

11. It appears that by a communication in writing dated 25th January, 2023, the Controlling Authority upon receipt of the response from the respondent bank has concluded that in terms of the direction issued by the Division Bench of this Hon'ble Court on 18th April, 2022, the petitioner having been disbursed the money lying in deposit, along with the accrued interest with the Controlling Authority, no further action is required to be taken at their end and the dispute at their end is treated as closed.

12. Ms. Dutta, learned advocate representing the petitioner, submits that the Controlling Authority ought not to have rejected the petitioner's application in Form 'T' on the basis of the response given by the respondent bank. By drawing attention of this Court to the judgment and order dated 18th April, 2022, it is submitted that the Hon'ble Division Bench of this Court had, in fact, restored the orders passed by the Controlling Authority and the Appellate Authority. Consequential direction passed by the Hon'ble Court, was only to expedite the payment for disbursal of the gratuity lying with the Controlling Authority and not to interfere with the petitioner's statutory right as provided under the said Act.

13. It is submitted that the Payment of Gratuity Act, is a social welfare legislation and the respondent bank cannot be permitted to deny the petitioner's entitlement to the interest, as directed to be disbursed in favour of the petitioner, both by the Controlling Authority and the Appellate Authority. She says that the respondent bank should be directed to make payment of interest in terms of the direction passed by the Controlling Authority and the Appellate Authority in their respective orders. She prays for disbursal of compound interest in favour of the petitioner.

14. *Per contra*, Mr. Pal Chowdhury, learned advocate representing the respondent bank, on the other hand, submits that the bank cannot be faulted for delayed disbursal of the gratuity in favour of the petitioner. It is submitted that immediately upon being notified vide notice dated 31st July, 2018, issued in Form 'R', the respondent bank while preferring an appeal, which is recognized by the statute, deposited with the Controlling Authority the amount of gratuity so determined by the Controlling Authority under the said Act. The respondent bank has a statutory right and cannot be faulted for having exercised its right as provided under the statute. It is submitted that immediately upon the Division Bench of this Hon'ble Court, restoring the orders passed by the Controlling Authority and the Appellate Authority that the amount deposited by the respondent bank with the Controlling

Authority was disbursed in favour of the petitioner on 24th August, 2022.

15. It is submitted that in this case, admittedly, no certificate under Section 8 of the said Act, has been issued and as such no further interest is payable by the respondent bank. In support of the aforesaid contention, he has placed reliance on an unreported judgment delivered by the Hon'ble High Court of Chhattisgarh at Bilaspur, in the case of ***Secretary, Board of Trustees, NTPC Employees Gratuity Fund v. Shri S. N. Bhojasiya & Ors***. in **WP No. 17141 of 2002**. He submits that the present writ application is unmeritorious and the same should be dismissed.

16. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case, I find that the respondent bank had challenged the order passed by the Controlling Authority, initially before the Appellate Authority and subsequently by filing a writ application when the appeal failed. Both the aforesaid orders dated 31st July, 2018 and 31st July, 2019, passed by the Controlling Authority and the Appellate Authority respectively under the said Act were challenged by filing a writ application.

17. The respondent bank ultimately did not succeed. By a judgment and order delivered by the Hon'ble Division Bench of this Court on 18th April, 2022, the order passed by the Controlling Authority which had been set aside by the learned Single Judge

was restored upon the same being affirmed. Since the order passed by the Controlling Authority and the Appellate Authority was affirmed by the Division Bench, in my view, the writ petitioner is entitled to the benefit of the aforesaid orders in the mode and manner as directed therein.

18. Although Mr. Pal Chowdhury, learned advocate, has strenuously argued by relying on an unreported judgment delivered in the case of ***S. N. Bhojasiya*** (supra), to, *inter alia*, contend that unless a certificate is issued under Section 8 of the said Act, no interest is payable, I am afraid, and am unable, to accept the same. A perusal of the provisions of the said Act, *inter alia*, including Section 8 thereof, would in no uncertain terms demonstrate the right of an employee as defined in the said Act, to enforce an order passed by the Controlling Authority in the manner provided therein. To morefully appreciate the aforesaid provisions, Section 8 of the said Act is extracted hereinbelow:-

> ***"8 Recovery of gratuity: -*** *If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the Controlling Authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon [at such rate as the Central Government may, by notification specify], from the date of expiry of the prescribed time, as*

arrears of land revenue and pay the same to the person entitled thereto.

[Provided that the Controlling Authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall in no case exceed the amount of gratuity payable under this Act].”

19. It would further appear from the provisions of Payment of Gratuity (Central) Rules, 1972 (hereinafter referred to as the “said Rules”), that elaborate procedure had been laid down not only with regard to the direction for payment of gratuity but also for appeal. Procedure has also been made regarding application for recovery of gratuity. Rule 19 of the said Rules in particular, provides for application for recovery of gratuity. To morefully appreciate the aforesaid provision, the same is extracted hereinbelow:-

“19 Application for recovery of gratuity:- *Where an employer fails to pay the gratuity due under the Act in accordance with the notice by the controlling authority under rule 17 or rule 18, as the case may be, the employee concerned, his nominee or legal heir, as the case may be, to whom the gratuity is payable may apply to the controlling authority in duplicate in Form ‘T’ for recovery thereof under section 8 of the Act.”*

20. It would, thus, appear from the above that in the event an employer fails to pay gratuity due under the said Act in accordance with the notice by the Controlling Authority under Rule 17 or under Rule 18, as the case may be, the employee concerned, his nominee or legal heir, as the case may be, to whom the gratuity is payable may apply to the Controlling Authority in duplicate, in Form 'T' for recovery thereof under Section 8 of the Act.

21. In this case the first notice under Rule 17 was issued in Form-R on 31st July, 2018. Since the Appellate Authority upheld the order passed by the Controlling Authority, the respondent bank was required to immediately comply with such direction. The respondent bank had stood in the way of the petitioner receiving the amount of gratuity and had challenged the orders passed both by the Controlling Authority and the Appellate Authority, by invoking the extraordinary writ jurisdiction of this Court.

22. The challenge ultimately did not succeed and the Division Bench of this Court was, *inter alia*, pleased to uphold the orders passed by the Controlling Authority as well as the Appellate Authority. Once the orders were upheld, the respondent bank cannot be permitted to take advantage of the delay caused in disbursing the gratuity in favour of the petitioner. As such, the petitioner cannot be faulted for applying before the Controlling Authority for issuance of certificate under Section 8 of the said

Act. I, also do not subscribe to the view that unless a certificate is issued no interest can be claimed. The judgment relied on by Mr. Pal Chowdhury, also does not assist him and is distinguishable on facts. In that particular case, as is recorded in paragraph 11 of the said judgment, no such application was made before the Controlling Authority for issuance of certificate under Section 8 of the said Act. Such is not the case here. The respondent bank had taken a chance by filing the writ petition which ultimately did not succeed. As such the respondent bank is bound to face the consequence for its action. In view thereof, the communication dated 25th January, 2023, issued by the Controlling Authority at pages 91 and 92 cannot be sustained and the same is accordingly set aside and quashed.

23. The Controlling Authority under the said Act is directed to decide the petitioner's application in Form 'T' in accordance with law on the basis of the observations made hereinabove after giving an opportunity of hearing to the parties and after further issuing a fresh show cause on the respondent bank.

24. With the above observations and/or directions, the writ application is disposed of without any order as to costs.

25. Since I have not called for any affidavits, the allegations contained in the writ application are deemed to have been denied by the respondents.

26. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance with requisite formalities.

(Raja Basu Chowdhury, J.)

S.B.
Assistant Registrar (Court)