Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 23522 of 2022

Burdwan Co-operative Agriculture
And Rural Development Bank Ltd.
Versus
The State of West Bengal & Anr.

For the petitioner	:	Mr. Saikat Banerjee Mr. Arnab Ray
For the State	:	Mr. Jayanta Samanta Mr. Manas Kumar Sadhu
For the respondent No. 4	:	Mr. Indranath Mitra Mr. Saukha Biswas
Heard on	:	25th August, 2023.
Judgment on	:	25**th September, 2023**.

Raja Basu Chowdhury, J:

1. The present writ application has been filed, *inter alia*, challenging the order passed by the Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act").

2. The petitioner claims that the petitioner is a Primary Co-operative Agriculture and Rural Development Bank which is having co-operative credit structure entity within the meaning of Section

134B(1)(a) of the West Bengal Co-operative Societies Act, 2006. The respondent no.4 was employed by the petitioner on 4th May, 1979. After serving the petitioner for approximately 33 years 8 months and 27 days, the respondent no.4 retired from service as Head Assistant and Loan Officer on 31st January, 2013.

3. It is the petitioner's case that immediately upon the respondent no.4 having retired, the petitioner had disbursed the retiral benefits to the respondent no.4, which, *inter alia*, included gratuity amounting to Rs.6,00,000/-.

4. Despite the respondent no.4, having accepted the said amount, on the following day, the respondent no.4 had applied before the petitioner for disbursal of the balance amount, *inter alia*, complaining short payment.

5. By a communication, in writing, dated 11th February, 2013, the petitioner while rejecting the respondent no.4's claim had clarified that the payment of gratuity was made as per the guidelines provided in the agreement governing the parties.

6. Feeling aggrieved, the respondent no.4 had filed a writ petition before this Hon'ble Court which was registered as WP No.5916 (W) of 2013.

7. By an order dated 2nd April, 2013, a Co-ordinate Bench of this Hon'ble Court while granting liberty to the respondent no.4 to

accept all payments made by the petitioner without prejudice to his rights and contentions, directed both the respondent no.4 and the petitioner to approach the Competent Authority under the provisions of the said Act.

8. The petitioner, however, did not accept the said order and had filed an intra-court appeal, which was registered as MAT 1330 of 2013.

9. In the interregnum, the respondent no.4 had, however, in compliance of the directions passed by the Co-ordinate Bench of this Court had applied before the Controlling Authority under the said Act for determination of the amount payable to him towards gratuity. The said proceeding was contested by the petitioner. By an order dated 21st November, 2013, the Controlling Authority after determining the quantum of gratuity payable to the respondent no.4 by a notice in Form 'R' of the even date, had called upon the petitioner to make payment of the differential amount of gratuity to the respondent no.4, along with interest.

10. Challenging the aforesaid order, an appeal was filed by the petitioner before the Appellate Authority within the meaning of the said Act, by complying with the provisions as regards the mandatory pre-deposit for filing of the appeal.

11. In the meantime, by an order dated 5th October, 2015, the Hon'ble Division Bench of this Court was, *inter alia*, pleased to set

aside the order passed by the Co-ordinate Bench and remanded the matter with a request to expeditiously dispose of the same, if possible.

12. Pursuant to the aforesaid direction, a Co-ordinate Bench of this Court was, *inter alia*, pleased to hear out the said matter and by an order dated 11th March, 2019 was pleased to dismiss the said writ petition.

13. Being aggrieved, the respondent no.4 had filed an intra-court appeal, being MAT 534 of 2019. By an order dated 3rd July, 2019, the Division Bench of this Hon'ble Court while granting liberty to the respondent no.4 to approach the Controlling Authority within the meaning of the said Act, disposed of the said appeal.

14. Pursuant to the aforesaid order, the respondent no.4 once again applied in Form 'N' before the Controlling Authority under the said Act. Such application was filed on 30th July, 2019.

15. The aforesaid proceeding was once again contested by the petitioner whereupon by an order dated 7th September, 2021, the Controlling Authority was pleased to determine the gratuity payable in favour of the respondent no.4 and by a notice in Form 'R' of even date had called upon the petitioner to make payment of the balance amount towards unpaid gratuity with interest.

16. Being aggrieved, an appeal was filed before the Appellate Authority by complying with the provisions as regards mandatory pre-deposit. The Appellate Authority, by an order dated 31st August, 2022, which is impugned in the present writ application, was, *inter alia,* pleased to dispose of the said appeal by observing that the matter had been rightly decided by the Controlling Authority and by such order also directed the Controlling Authority to initiate the process of recovery from the appellant taking into account the interest due on principal amount, which has accrued, by making a fresh calculation.

17. By an order dated 21st November, 2022, this Hon'ble Court while entertaining the said petition and while recording that a sum of Rs.3,48,620/- and a sum of Rs.2,99,527/- had been deposited by the petitioner with the Controlling Authority, restrained the respondent no.4 from realizing the balance amount till disposal of the present writ application.

18. Mr. Ray, led by Mr. Banerjee, learned advocate appearing in support of the aforesaid application, by placing reliance on the provisions of Section 5 of the said Act submits that the petitioner is competent to enter into an agreement or contract with its employees with regard to payment of gratuity. By drawing attention of this Court to an agreement dated 30th November, 2011, it is submitted that the respondent no.4 had been paid

gratuity in terms of the agreement, executed between the petitioner on one hand and the employees' association on the other. The respondent no.4 is a signatory to the said agreement in his capacity as the Secretary of the Co-operative Employees' Association. The respondent no.4 cannot be permitted to retract from the said agreement. The amount of gratuity had been computed on the basis of the said agreement, which is not only binding on the respondent no.4 but other employees of the petitioner as well.

19. By placing reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***Beed District Central Coop. Bank Ltd. v. State of Maharashtra and Others***, reported in **(2006) 8 SCC 514**, he submits that the employer has a right to make payment of gratuity in terms of the scheme/agreement entered into by and between the employees and the employer.

20. By placing reliance on another judgment delivered by the Hon'ble Supreme Court in the case of ***High Court of Punjab & Haryana v. Jagdev Singh***, reported in **(2016) 14 SCC 267**, he submits that the petitioner having accepted the gratuity in terms of the agreement to which he is the signatory, cannot be permitted to disown the said agreement. The Hon'ble Supreme Court in paragraph 11 of the judgement has recognized that once, an officer furnished an undertaking while opting for revised pay

scale, he is bound by such undertaking. In this case, the respondent no.4, having accepted the agreement and having opted out the provisions of the Payment of Gratuity Act, is bound by the said agreement. This aspect was not taken into consideration either by the Controlling Authority or by the Appellate Authority. The maximum permissible gratuity, payable to the respondent no.4, under the said agreement had already been disbursed. No further amount is payable to the respondent no.4.

21. In the given facts, this Court may be pleased to quash the orders passed both by the Controlling Authority as also by the Appellate Authority and direct the refund of the amount lying in deposit with the Controlling Authority.

22. *Per contra*, Mr. Mitra, learned advocate representing the respondent no.4, has taken this Court through the provisions of the West Bengal Cooperative Societies Act, 2006, (hereinafter referred to as the "2006 Act"), and the Rules framed thereunder and submits that Section 84 of the 2006 Act, mandates payment of gratuity to be made to the employees of the cooperative societies in accordance with the provisions of the Payment of Gratuity Act, 1972.

23. By referring to Section 157 of the said 2006 Act, he submits that the statute empowers the State Government to make rules.

In terms of the powers conferred by Section 157 of the 2006 Act, rules have been framed. By placing reliance on Rule 106(19)(2) of the West Bengal Cooperative Societies Rules, 2011 (hereinafter referred to as the "said Rules"), it is submitted that the said Rule 106(19)(2) categorically provides that the employees of the Cooperative Society shall be eligible for payment of gratuity as per the provisions of the Payment of Gratuity Act, 1972.

24. By referring to the said agreement dated 30th November, 2011, it is submitted that the said agreement is not a settlement within the meaning of Section 2(p) of the Industrial Disputes Act, 1947 and is not binding on the workmen since, the said agreement has not been arrived at as per the provisions set forth in Section 2(p) of the Industrial Disputes Act, 1947.

25. In the factual backdrop as aforesaid, it is submitted that there is no irregularity on the part of the respondent no.4 in claiming gratuity in terms of the provisions contained in the Payment of Gratuity Act, or in the Controlling Authority and the Appellate Authority directing the disbursal of the gratuity in terms of the provisions contained in the said Act.

26. While distinguishing the judgment delivered by the Hon'ble Supreme Court in the case of ***Beed District Central Coop. Bank Ltd*. (supra)**, it is submitted that the Hon'ble Supreme Court in the said case was considering a scheme whereby the employees of

the concerned cooperative bank were required to be paid gratuity. In this case, there is no such scheme, excepting the agreement providing for an upper limit. The aforesaid agreement was entered into on 30th November, 2011 when admittedly the upper limit of the payment of gratuity as per the provisions of the said Act had already been amended so as to raise it to Rs.10,00,000/-. He says that the aforesaid agreement is contrary to the provisions of the said Act as also Section 23 of the Indian Contract Act, 1872 and is not lawfully enforceable, in the light of the provisions contained in the said Act. The orders impugned do not call for interference and the writ petition deserve to be dismissed with cost.

27. In reply, Mr. Ray submits that since, the petitioner is a primary cooperative credit structure entity, Rule 106 of the said Rules is not applicable to the petitioner. By referring to the provisions of the Industrial Disputes Act, 1947, it is submitted that the agreement may not partake the character of a settlement within the meaning of Section 2(p) of the said Industrial Disputes Act, 1947, however the same can certainly be enforced by and between the parties.

28. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case, it is noticed that the admitted facts are that the respondent no.4 was employed by the petitioner on 4th May, 1979. The said respondent

after serving the petitioner for approximately 33 years 8 months and 27 days, retired from service as Head Assistant and Loan Officer on 31st January, 2013. Immediately on his retirement, the petitioner disbursed the retiral benefits in favour of the respondent no.4, which, *inter alia*, included gratuity amounting to Rs.6,00,000/-. Despite the respondent no.4 accepting the said amount, on the following day the respondent no.4 applied before the petitioner for disbursal of the balance amount, *inter alia*, complaining short payment. By communication in writing dated 11th February, 2013 the petitioner while rejecting the respondent no.4's claim had clarified that the payment of gratuity was made as per the guidelines provided in the said agreement. Feeling aggrieved, a writ application was filed and ultimately by an order passed by the Division Bench of this Hon'ble Court on 3rd July, 2019, the respondent no.4 was granted liberty to approach the Controlling Authority within the meaning of the said Act.

29. Pursuant to the aforesaid order, the respondent no.4 had applied in Form 'N' before the Controlling Authority under the said Act on 30th July, 2019. On contest the Controlling Authority by an order dated 7th September, 2021 was pleased to determine the gratuity in favour of the respondent no.4 and by a notice of even date in Form 'R' had called upon the petitioner to make payment of the balance amount towards unpaid gratuity with interest.

30. Being aggrieved although an appeal was filed under the said Act, by an order dated 31st August, 2022, which is impugned in the writ application, the Appellate Authority had dismissed the said appeal. By placing reliance on the provisions of Section 4(5) of the said Act, it is submitted that the employer has a legal right to enter into an agreement with the employees for payment of gratuity. However, a perusal of the Section 4(5) of the said Act would make the position clear. To morefully appreciate the same, the aforesaid Section is extracted herein below:

> ***"4. Payment of Gratuity.-*** *(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-*
>
> *(a) on his superannuation, or*
>
> *(b) on his retirement or resignation, or*
>
> *(c) on his death or disablement due to accident or disease:*
>
> *Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:*
>
> *[1][Provided further that in case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is minor, the share of such minor, shall be deposited*

with the Controlling Authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority].

...

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

..."

31. As would appear from the above, the right is not with the employer but with the employee to receive better terms of gratuity under any award or agreement or contract with the employer. However, a perusal of the memorandum of settlement dated 28th November, 2007 and the subsequent settlement dated 30th November, 2011 in no uncertain terms provides the upper limit for payment of gratuity to be Rs.6,00,000/-. Incidentally, when the aforesaid agreement was entered into, in terms of the said Act, the upper limit for payment of gratuity was Rs.10,00,000/-. Although, by placing reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***Beed district Central Coop. Bank Ltd.*** (supra), it has been submitted that the employer has a right to make payment of gratuity in terms of the scheme/agreement, I am, however, unable to subscribe to the reasoning given by the petitioner that notwithstanding the

Payment of Gratuity Act providing for upper limit of gratuity to be Rs.10,00,000/-, the petitioner could have entered into any settlement, dehors the provisions of the said Act, so as to reduce the upper limit for payment gratuity to its employees. The aforesaid agreement, in my view, is contrary to Section 4(5) of the said Act and cannot override the provisions of the said Act. The judgment delivered in the case of ***Beed district Central Coop. Bank Ltd,*** (supra) cannot assist the petitioner as in the said case the Hon'ble Supreme Court was concerned, as has been rightly pointed out by Mr. Mitra, with regard to implementation of a particular scheme for payment of gratuity. In the settlement/ agreement at hand, there is no such scheme, only the upper limit for payment of gratuity has been provided. The said agreement, thus, cannot override the said Act. The only other point canvassed by the petitioner is that although, the aforesaid agreement might not partake the character of a settlement within the meaning of Section 2(p) of the Industrial Disputes Act, 1947, yet the said agreement is binding insofar as the respondent no.4 is concerned, since, the respondent no.4 is signatory to the same.

32. I am, however, unable to accept the aforesaid contention, in as much as the aforesaid settlement/agreement only provides for a upper limit for payment of gratuity. The said agreement is directly contrary to and is in conflict with Section 4(5) of the said Act. The said agreement does not provide for any better terms, on the

contrary the same provides for inferior terms than provided for in the said Act. The case of ***Jagdev Singh*** **(supra)**, thus, does not assist the petitioner. The same is clearly distinguishable on facts and cannot assist the petitioner.

33. Having regard to the aforesaid, I am of the view that the petitioner cannot be permitted to deny payment of gratuity in terms of the provisions contained in the said Act, by citing in the aforesaid agreement/settlement, which also is not in consonance with the provisions of Section 4(5) of the said Act. Independent of the provisions of the 2006 Act, gratuity is payable as per the said Act.

34. In the facts as noted hereinabove, no case for interference has been made out. The writ petition fails and the same is accordingly dismissed.

35. There shall, however, be no order as to costs.

36. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

sb.