IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12172 of 2021

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The Chairman, Dakshin Bihar Gramin Bank (Erstwhile Bihar Gramin Bank), Head Office, Sri Vishnu Commercial Complex, Asochak Chowk, New Bypass Road (N.H.-30), Patna.

... ... Petitioner

Versus

1. The Union of India through the Ministry of Labour and Employment, New Delhi.
2. The Assistant Labour Commissioner (Central), Pakur and Controlling Authority under the payment of Gratuity Act, 1972 At and Distt-Pakur (Jharkhand).
3. Sri Anand Kishore Sinha, Son of Late Mahendra Prasad Singh, R/o Moh-Bartalla, Surajgarha College Road, P.O.-Surajgarha, District-Lakhisarai.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar Pandey, Advocate.
For the Respondent/s	:	Dr. K. N. Singh, ASG.
For Resp. No. 3	:	Mr. Binod Kumar Sinha, Advocate.
		Mr. Ajay Kumar Prasad, Advocate.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL JUDGMENT

Date : 01-10-2024

Heard learned counsel for the parties.

2. The present Writ Petition has been filed for the following reliefs:-

> *"For issuance of writ/writs, order/orders or direction/directions in the nature of Certiorari for setting aside decision dated 30.03.2021 passed in PG Application No. 48/50/2020-ALC/PKR by Sri Aman Toppo, Controlling Authority under the Payment of Gratuity Act, 1972*

> *and Assistant Labour Commissioner (Central), Pakur whereby and whereunder it has been held that the applicant is entitled to get the amount of gratuity as calculated by him for the entire period of his service i.e Rs. 7,07,296/ on the basis of his last payable wage i.e Rs. 35,028/- and further directed to make payment of interest for the period from 01- 02-2017 to till the date of payment of gratuity amount along with simple interest @ 10% only upon the amount of gratuity due i.e 7,07,296/-. The total amount including interest should be paid to the applicant within 30 days from the receipt of the order. The decision was communicated to the Bank vide notice for payment of gratuity dated 30.03.2021."*

3. The facts in brief for the purpose of disposal of the present writ petition which are necessary are that the petitioner is a Bank and the Respondent No. 3 herein had initially joined the services of the one Munger Kshetriya Gramin Bank in the year 1981 as an officer and thereafter, the Munger Kshetriya Gramin Bank was merged with Bhagalpur Banka Kshetriya Gramin Bank and Begusarai Kshetriya Gramin Bank to form Bihar Kshetriya Gramin Bank. The said Bihar Kshetriya Gramin Bank was later merged with the Samastipur Kshetriya Gramin Bank to form Bihar Gramin Bank Bhagalpur w.e.f. October, 2012. Thereafter, the Bihar Gramin Bank and

Madhya Bihar Gramin Bank was also got amalgamated to form Dakshin Bihar Gramin Bank w.e.f. January, 2019. That when the Respondent No. 3 was posted as Branch Manager at Malipur Branch, he had disbursed loans in the name of some fictitious persons contrary to the rules and regulations, abusing his power. That the act of the Respondent No. 3 in defrauding the Bank and having committed criminal acts for his wrongful gains, have resulted in the Bank lodging an F.I.R. being Garhpura P. S. Case No. 4 of 2011. The loss sustained by the Bank was to the tune of Rs. 30,40,378/-. The police after investigation of the criminal case registered against Respondent No. 3, have filed charge-sheet and the case is pending adjudication before the Criminal Court. That the Bank authorities with a view to take the necessary disciplinary proceedings against the Respondent No.3 initiated departmental proceedings and the charges levelled against the Respondent No. 3 were held to be proved by the Disciplinary Authority. That a major penalty of "Dismissal from Banks service" was passed under regulation 39(1)(b) of the Bihar Gramin Bank (Officers & Employees) Services Regulation, 2010 w.e.f. 20.06.2014 vide order dated 19.06.2014. That the Respondent No. 3 aggrieved by the order passed by the disciplinary authority dated 19.06.2014 has then preferred an appeal before the Appellate Authority. The Appellate Authority vide order dated 24.02.2015 has reduced the punishment awarded by the disciplinary authority from “Dismissal from Bank service” to “Lowering his post to officer at the lowest scale of pay Officer JMG scale-I”. Thereafter, the Respondent No. 3 was reinstated and was posted at Regional Office (RO), Begusarai as Branch Manager, Garhi Bishanpur Branch. However, the Respondent No. 3 instead of conducting himself in an honest and fair manner has again committed gross misconduct for which the disciplinary proceedings were initiated. After following the procedure, the charge-sheet dated 30.11.2015 was filed and, thereafter, second charge-sheet dated 05.12.2015 was filed. That in the departmental enquiry all the charges levelled against the Respondent No. 3 were held to be proved and the Respondent No. 3 was awarded penalty in terms of Regulation 39 of the erstwhile Bihar Gramin Bank (Officers & Employees), Service Regulation, 2010 with amendment 2013. That in respect of the charge-sheet dated 30.11.2015 as against the Charge No. 1; the petitioner was awarded ‘Compulsory retirement from the Bank’s service’, as against the Charge No. 2; ‘Penalty of Rs. 1,00,000/- (Rupees one lakh)’ was fixed. That in respect of charge-sheet dated 05.12.2015 all the charges were held to be proved, as against the Charge No. 1, ‘Dismissal’ was awarded, as against the Charge No. 2; again ‘Dismissal’ was awarded and as against Charge No. 3; ‘Penalty of Rupees two lakhs (Rs. 2,00,000/-)’ was imposed, both the above said orders were passed on 06.01.2017. The Respondent No. 3, thereafter, preferred an appeal before the Appellate Authority. The Appellate Authority vide order dated 17.04.2017 has passed the order as under; as against the Charge No. 2; reduced the penalty of Rs. 1 Lakh to Rs. 80,000/- and confirmed the award of ‘Dismissal’ from service in respect of Charge No. 1 for the charge-sheet dated 30.11.2015 and as against the appeal filed against the charge-sheet dated 05.12.2015, the Appellate Authority in respect of Charge No. 1 has reduced the penalty from ‘Dismissal’ to ‘Reduction of two increments in time scale of pay’ and in respect of Charge No. 3; the ‘Penalty of Rs. 2 Lakhs’ was reduced to ‘Penalty of Rs. 1 Lakh’, the Appellate Authority confirmed the penalty of ‘Dismissal’ awarded by the Disciplinary Authority in respect of Charge No. 2. As a result of which the Respondent No. 3 was dismissed from service w.e.f. 06.01.2017. Thereafter, the Respondent No. 3 has filed an application before the Respondent No. 2 herein under the Payment of Gratuity Act, 1972 for payment of Gratuity. The petitioner herein has filed its reply to the said application filed by the Respondent No. 3, however, the authority contrary to the provisions of the Act and the Judgments of this Hon'ble Court has passed the impugned order in a mechanical manner and directed the petitioner to pay an amount of Rs. 32.35 Lakhs. Though the petitioner had taken specific stand that the employees of the petitioner's Bank were governed by the Bihar Gramin Bank (Officer & Employees) Service Regulation, 2010 with amendment, 2013, the authority did not take the same into consideration and granted the relief sought for by the petitioner. Further, the authority did not take into consideration the fact that the Respondent No. 3 was terminated from service and, therefore, the question of paying any Gratuity does not arise.

4. Learned counsel appearing on behalf of the petitioner has vehemently argued that the impugned order passed by the authority is liable to be set aside as the same is contrary to the provisions of the Act, the Judgments of this Hon'ble Court. The authority did not take into consideration the fact that the petitioner was terminated from service and that the Payment of the Gratuity Act is not applicable to the employees of the petitioner's Bank. That the Controlling Authority has passed an order in a mechanical and cryptic manner without

considering the submissions made by the petitioner, therefore, prayed for setting aside the impugned orders. Learned counsel has relied on the following judgments to support his case.

5. Per contra, the learned counsel appearing on behalf of the Respondent No. 3 has vehemently opposed the very maintainability of the present writ petition and stated that the petitioner has an alternative and efficacious remedy of filing a statutory appeal under Section 7(7) of the Payment of Gratuity Act, 1972. That in case, the petitioner is aggrieved by the order passed by the Controlling Authority in fixing the Gratuity of the Respondent No. 3, the petitioner has to file and appeal. That the petitioner without availing the remedy of appeal has straightaway approached this Hon'ble Court under Article 226 of the Constitution of India and the same is impermissible.

6. Learned counsel for the Respondent No. 3 has further stated that the Respondent No. 3 was wrongly terminated from service, that the decision of the Appellate Authority has already been challenged in this Hon'ble Court by way of two separate writ petitions i.e. CWJC No. 17480 of 2019 and CWJC No. 20616 of 2019 and the same are pending adjudication. Learned counsel has further stated that the question of dismissal of Respondent No. 3 after attaining the age of superannuation

cannot be permitted. Learned counsel has relied on the judgment of the learned Single Judge of this Hon'ble Court passed in CWJC No. 1541 of 2021 dated 18.01.2023 to buttress his contentions.

7. Admittedly, in the present case as seen from the record, the Respondent No. 2 i.e. Controlling Authority has directed the petitioner herein to pay an amount of Rs. 7,07,296/- on the basis of his last payable wage i.e. Rs. 35,028/- with payment of interest for the period from 01.02.2017 to till the date of payment of Gratuity amount along with simple interest @ 10% only to the Respondent No. 3 (Annexure 1).

8. The question as to whether the Payment of Gratuity Act is applicable to the employees of the petitioner's Bank or whether they are governed by the provisions of the Bihar Gramin Bank (Officer & Employees) Service Regulation, 2010 with amendment, 2013 is the issue involved in the present writ petition.

9. A Learned Single Judge of this Hon'ble Court in the judgment dated 23.02.2024 passed in CWJC No. 24585 of 2018 has held as under:-

> *"28. It is pertinent to mention here that Respondent No. 4. who was an officer of the Madhya Bihar Gramin Bank and his service condition was subject to Bank (Officers and*

Employees) Service Regulations, 2006 and thereafter Regulations, 2010, framed in exercise of power conferred by Section 30 of Regional Rural Banks Act, 1976 and duly notified in the Extraordinary Gazette of India. The Regulations, 2010 deals with payment of gratuity in Clause 72 of regulation 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.*
>
> *(emphasis supplied)*

29. Sub clause (e) of regulation 72(2) clearly says that an officer or employee shall be eligible for payment of gratuity. either as per the provisions of Payment of Gratuity Act or as per sub regulation 2, whichever is higher. It further says that every officer or employee shall be eligible for gratuity even on termination of *service in any other way, except by way of punishment after completion of 10 years of service. The proviso thereof however further clarifies 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. From bare reading of the aforesaid regulation 72, there is no doubt that in any case where the termination of service is on account of punishment after completion of 10 years of service. the Bank is empowered to forfeit the gratuity of an officer of the Bank.*

30. Now coming to the point as to whether in the case of petitioner, the case of the petitioner shall be dealt with under the provisions of Gratuity Act, 1972 or the regulation framed by the Board of Directors of the Bank under the Regional Rural Banks Act, 1976. At the cost of repetition, this Court observed that the Regulations, 2010 has been framed by the Board of Directors of the Bank in exercise of power conferred by Section 30 of the Regional Rural Banks Act, 1976 which empowers the Board of Directors to make the regulation in consultation with the Punjab National Bank, namely, the sponsor bank with the previous sanction of the Central Government. These regulations are brought in force after its gazette publication. Nonetheless. Section 14 of the Payment of Gratuity Act, 1972, has overriding effect, if anything found inconsistent therewith in any enactment or any instrument or control, and it reads as under:

> *"Section: 14*
>
> *Act to override other enactments, etc.*
>
> *The provisions of this Act or any rule made there under shall have effect*

notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act"

31. It would be apposite to observe in the premise of settled legal position that the special law would prevail over the general act, more so, when it has not been found to be inconsistent. It would be worth noting that Section 4 (6) of the Gratuity Act, 1972 prescribes that situation, where the gratuity payable to an employee, may be forfeited, wholly or partially The similar issue has cropped up before the Hon'ble Apex Court in the case of ***P Rajan Sandhi Vs. Union of India & Anr. reported in 2010(10) SCC 338*** *wherein dealing with similar issue in paragraph nos. 11 and 12 it has been held as follows:*

"11. It may be seen that there is a difference between the provisions for denial of gratuity in the Payment of Gratuity Act and in the Working Journalists Act. Under the Working Journalists Act gratuity can be denied if the service is terminated as a punishment inflicted by way of disciplinary act, as has been done in the instant case. We are of the opinion that Section 5 of the Working Journalists Act being a special law will prevail over Section 4(6) of the Payment of Gratuity Act which is a general law. Section 5 of the Working Journalists Act is only for working journalists, whereas the Payment of Gratuity Act is available to all employees who are covered by that Act and is not limited to working journalists Hence, the Working Journalists Act is a special law, whereas the Payment of Gratuity Act is a general law. It is well

> *settled that special law will prevail over the general law, vide G.P. Singh's Principles of Statutory Interpretation, 9th Edn., 2004, pp. 133 and 134*
>
> *12. The special law i.e. Section 5(1) (a)(i) of the Working Journalists Act, does not require any allegation or proof of any damage or loss to, or destruction of, property, etc as is required under the general law i.e. the Payment of Gratuity Act. All that is required under the Working Journalists Act is that the termination should be as a punishment inflicted by way of disciplinary action which is the position in the case at hand. Thus, if the service of an employee has been terminated by way of disciplinary action under the Working Journalists Act, he is not entitled to gratuity."*

10. Admittedly, as held by this Hon'ble in the above mentioned case, the Respondent No. 3 is governed by the Bihar Gramin Bank (Officer & Employees) Service Regulation, 2010 with amendment, 2013 and once the petitioner is dismissed from service, Clause 72 will kick in and the Respondent No. 3 will not be entitled to any any benefits under the Payment of Gratuity Act.

11. That in so far as the contention of the counsel for the Respondent No. 3 that the present writ petition is liable to be dismissed on the sole ground that the petitioner is having an alternative and efficacious remedy of filing an appeal is

concerned, there is no quarrel with the above propositions of law. However, certain exception having being carved out.

12. The Hon'ble Supreme Court in the case of ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors.*** reported in ***(1998) 8 SCC 1*** has held as under:-

> *"**14.** The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".*
>
> ***15.** Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. **But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.** There is a plethora of case-law on this point but to cut*

> *down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”*
>
> *(Emphasis supplied)*

13. The Hon’ble Supreme Court in the case of ***Harbanslal Sahnia & Anr. Vs. Indian Oil Corpn. Ltd., & Ors.*** *r*eported in ***(2003) 2 SCC 107*** has held as under:-

> *“**7.** So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. **In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1]).** The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need*

of initiating arbitration proceedings."

14. Having regard to the fact that the order impugned dated 30.03.2021 passed by the Respondent No. 2 is wholly unsustainable, contrary to the provisions of the Act. The relief sought for by the petitioner cannot be denied on this ground alone.

15. In view of the above mentioned facts and circumstances, the impugned order dated 30.03.2021 passed by the Assistant Labour Commissioner (Central), Pakur & Controlling Authority under the payment of Gratuity Act, 1972, at & District-Pakur (Jharkhand) i.e. Respondent No. 2 is set aside. However, it is made clear that the result of the present judgment is subject to the final judgment likely to be passed by this Hon'ble Court in CWJC No. 17480 of 2019 and CWJC No. 20616 of 2019.

16. With the above directions, the present writ petition stands **allowed** to the extent indicated.

(A. Abhishek Reddy, J)

shakir/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.10.2024
Transmission Date	NA