

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**MAT 457 of 2024
With
CAN 2 of 2024**

***VIDYASAGAR CENTRAL
CO-OPERATIVE BANK LIMITED AND ORS.***

Vs.

DIPANWITA BOSE AND ORS.

For the Appellant : Mr. Pabitra Charan Bhattacharjee, Adv.

For the State : Mr. Suman Sengupta, Adv.
Mr. S. Dutta, Adv.

For the respondent no. 1: Mr. Rajdeep Bhattacharya, Adv.

For the respondent no. 3: Mr. Srijan Nayak, Adv.
Mr. Partha Sarathi Pal, Adv.

Heard & Judgment on : November 29, 2024

Md. Shabbar Rashidi, J.

1. Appeal is directed against the judgment and order dated January 15, 2024 passed in WPA 12642 of 2021. The writ petition was filed against the present appellant claiming release of gratuity amount.
2. The case of the writ petitioner is that the gratuity payable to the writ petitioner was not paid. It was communicated by the appellant organization to the writ petitioner by a writing dated September 21, 2022 that since the writ petitioner had not completed 10 years of service, she was not entitled to payment of gratuity. It was also stated that the Service Rules governing the employees of the appellant organization prescribes a period of 10 years for entitlement of the gratuity amount.
3. In the impugned order, learned trial Court relied upon Section 4 of the Payment of Gratuity Act, 1972 which prescribes qualifying period of five years for entitlement for payment of gratuity. On such basis, learned single Judge was pleased to allow the writ

petition directing the appellant to pay gratuity to the writ petitioner.

- 4.** It is evident from the materials on record that the writ petitioner was an employee working with the Vidyasagar Central Co-operative Bank, Midnapore as a Grade-II clerk. She was engaged there on and from January 2, 2013. Her appointment letter was confirmed and ultimately the writ petitioner resigned from the said post with effect from March 21, 2020. As such, the writ petitioner served in the appellant organization for more than 7 years. Meanwhile, the petitioner was served with a writing dated September 21, 2020 informing her that she was not entitled to gratuity since she had not served the appellant organization for a minimum of 10 years as prescribed in the Service Rules of the appellant.
- 5.** The Service Rules of the organization is a subordinate legislation which cannot override the provisions under the Payment of

Gratuity Act, 1972. Section 4 of the said Act of 1972 prescribes a minimum of 5 years for entitlement for payment of gratuity.

6. In such circumstances, we do not find any merit in the present appeal.
7. MAT 457 of 2024 along with the connected application are **dismissed**.
8. Time to comply with the impugned order is extended for a period of four weeks from date.
9. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Md. Shabbar Rashidi, J.)

10. I agree.

(Debangsu Basak, J.)

Dd