

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 4197 of 2012

The Howrah District Central Co-operative Bank Limited
Versus
The State of West Bengal & Ors.

For the petitioner	:	Mr. Dhiman Sengupta Ms. Sweta Saha
For the respondent	:	Mr. Subhojit Mukherjee
Heard on	:	3 rd January, 2024
Judgment on	:	3rd January, 2024.

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, inter alia, challenging the determination made by the Controlling Authority vide order dated 29th December, 2011 under the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act").
2. The petitioner is a Cooperative Society, carrying out banking functions in the name and style of Howrah District Central Cooperative Bank Limited (hereinafter referred to as "the Bank").
3. The respondent no.5 is an ex-employee of the bank. The said respondent had admittedly joined the bank on 19th April, 1969 and

after serving the bank for a period of 33 years and 8 months, had been superannuated from service.

4. According to the petitioner, immediately after the retirement of the respondent no.5 all his terminal benefits, *inter alia*, including gratuity was disbursed in favour of the respondent no.5 and at the relevant point of time the gratuity and other terminal benefits of the employees of the bank were calculated on the basis of the recommendation of Krishnamurthy Committee. Unfortunately for the petitioner, the respondent no.5 despite appropriating the gratuity had filed an application in Form N before the Controlling Authority for determination of the gratuity payable to him. The said application was filed belatedly after two and a half years from the date of receipt of gratuity. The aforesaid proceeding was contested by the petitioner before the Controlling Authority and the petitioner had raised the following objections:-

1. *The instant application is barred by limitation.*
2. *The applicant, being the respondent no.5 was given the entire amount of gratuity for which he was entitled and the amount was calculated on the basis of the recommendation of the Krishnamurthy Committee.*

5. The records reveal, that the Controlling Authority by an order dated 29th December, 2011 had determined a sum of Rs.1,68,181.47 as due and payable to the respondent no.5, by overruling the objections raised by the petitioner. Following the aforesaid determination, a notice in Form R dated 29th December, 2011 was issued, calling upon the petitioner to make payment of the said sum

which not only included the principal sum but also the statutory interest @ 10% per annum.

6. Being aggrieved by the said order, the present writ petition has been filed.
7. Mr. Sengupta, learned advocate ably assisted by his junior Ms. Saha representing the petitioner submits that the computation of gratuity was made on the basis of the recommendation of the Krishnamurthy Committee. By referring to the copy of the proceeding of the Board of Directors dated 23rd September, 2004 it is submitted that the Board of Directors of the Cooperative Society had decided to implement the provisions of Payment of Gratuity Act with effect from 1st July, 2003. As such, there is no irregularity on the part of the bank in computing the gratuity on the basis of the recommendation of Krishnamurthy Committee. This aspect was overlooked by the Controlling Authority. The order passed by the Controlling Authority is perverse and should be set aside.
8. *Per contra*, Mr. Mukherjee, learned advocate representing the respondent no.5 submits that the order impugned in the present writ petition is an appealable order. The writ petitioner has a statutory remedy in the form of an appeal. The writ petitioner without availing such statutory remedy has applied before this Court. This Court ordinarily ought not to entertain the writ petition of this nature. Without prejudice to the above, it is submitted that there is no irregularity on the part of the Controlling Authority in

directing the petitioner to make payment of the amount so determined. Despite the aforesaid determination the respondent no.5 is yet to receive his rightful entitlements.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case it is noticed that the bank had computed the amount of gratuity payable to the respondent no.5 based on the recommendation made by Krishnamurthy Committee by ignoring the provisions of the said Act. Admittedly, Section 14 of the said Act provides for overriding effect. The same is extracted hereinbelow: -

“14. Act to override other enactments, ect..- The provisions of this Act or any rule made thereunder 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”.

10. It appears that the Controlling Authority had duly taken into consideration the provisions of Section 14 of the said Act. Although, Section 4 sub-Section (5) of the said Act offers an opportunity to the employee to receive better terms of gratuity under any award or agreement or contract with the employer, however, in the present case, it appears that the bank had computed the gratuity, which is no way better than the amount of gratuity payable under the said Act.
11. Having regard to the aforesaid and taking into consideration the provisions of Section 14 of the said Act, and the computation being made by the Controlling Authority in terms of the Act, I am of the

view that there is no irregularity on the part of the Controlling Authority in determining Rs. 1,68,181.47 towards differential amount of gratuity payable to the respondent no.5 inclusive of statutory interest.

12. Insofar as point of limitation is concerned, ordinarily, gratuity is payable immediately after cessation of employment/retirement. In the instant case, the petitioner was obliged to compute the gratuity and make payment thereof. Despite the respondent no.5 applying before the petitioner for disbursal of gratuity in respect of shortfall, the same was not disbursed which initially prompted the respondent no.5 to approach this Hon'ble Court. As is reflected from the order passed by the Controlling Authority, in terms of the liberty granted by a Coordinate Bench of this Court, by an order dated 5th December, 2007, the respondent no.5 had filed the application in form 'N' before the Controlling Authority for determination of gratuity.

13. In view thereof, the objection raised by the petitioner on the ground of limitation, cannot be sustained. The challenge in writ petition fails.

14. Before parting I may note that by reasons of pendency of this writ petition for over a decade I have examined the matter of merits, despite alternative remedy being available. Since, it appears that the writ petitioner by reasons of pendency of the writ petition had held back the differential amount of gratuity, I am of the view that

the petitioner should be and in accordingly is directed to disburse the aforesaid sum of Rs.1,68,181.47 to the respondent no.5 within a period of four weeks from the date of communication of this order. The respondent no.5 shall be entitled to accept the same in pro tanto satisfaction of his claim.

15. With the aforesaid observations and directions, the writ petition stands disposed of.
16. There shall be no order as to costs.
17. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Raja Basu Chowdhury, J.)

sb.