

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 7959 of 2023

**Canara Bank & Anr.
Versus
Deputy Chief Labour Commissioner
(Central), Kolkata & Ors.**

For the petitioners	:	Mr. Pratip Mukherjee Ms. Tutul Das Singh
For the respondent no.3 (in-person)	:	Mr. Asis Mukhopadhyay
Heard on	:	01.02.2024
Judgment on	:	1st May, 2024

Raja Basu Chowdhury, J:

1. The present writ petition seeks to challenge the order dated 21st December, 2022 passed by the Appellate Authority within the meaning of Payment of Gratuity Act, 1972. The petitioners also challenge the consequential relief granted in favour of the respondent no. 3. To appreciate the controversy, it is necessary

to summarise the facts leading to the determination made by the Appellate Authority.

2. The respondent no.3 was an employee of the petitioner no.1, which is a public sector undertaking incorporated under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970.
3. In exercise of powers conferred by Section 19 read with Sub-section (2) of Section 12 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, a service regulation, namely, The Canara Bank (Officers') Service Regulations, 1979 (hereinafter referred to as the "said Regulation") was framed by the Board of Directors of the Canara Bank in consultation with the Reserve Bank of India and with previous sanction of the Central Government. The said Regulation has a statutory force. Both the petitioners as well as the respondent no.3 are governed by such Regulation.
4. The respondent no.3 had joined the service of petitioner no.1 (hereinafter referred to as the "Bank") sometimes on 2nd June, 1980 and was superannuated from service on 31st August, 2017, after completion of 37 years, 2 months and 29 days.
5. Consequent upon the retirement of the respondent no.3, as per the said Regulation, the Bank had computed gratuity both under the provisions of Payment of Gratuity Act, as also as per

the provisions of the said Regulation, and also by taking note of the stipulations contained in Section 4(5) of the Payment of Gratuity Act, 1972 (hereinafter referred to as the “said Act”), the maximum permissible amount under the said Act was considered to be beneficial to the respondent no.3 and accordingly, a sum of Rs.10,00,000/- was paid to the respondent no.3 on 1st September, 2017. However, since according to the respondent no.3, despite the said Regulation being far more beneficial the same had been wrongly interpreted so as to deny the benefits thereunder to the said respondent, an application in Form-N was filed before the Controlling Authority on 3rd December, 2021, *inter alia*, praying for determination of the amount of gratuity and for payment of the shortfall.

6. The Controlling Authority by interpreting the provisions of the said Act, the said Regulation and having found that in terms of the said Regulation, a sum of Rs.9,52,380/- was payable, while in terms of the said Act, the respondent no.3 was entitled to maximum of Rs.10,00,000/- and the respondent no. 3 having been disbursed the maximum permissible amount under the said Act, did not find any infirmity on the part of the bank in disbursement of Rs.10,00,000/- in favor of the respondent no. 3 and accordingly, disposed of such proceeding.
7. Being aggrieved the respondent no.3 had preferred a statutory appeal. The appellate authority, however, having found that the

provisions of the said Regulation having been wrongly interpreted, there being a computation error, determined an additional sum of Rs.3,12,740/- to be due and payable to the respondent no.3 and accordingly, directed disbursal thereof, along with prevalent rate of interest on the said amount from the due date till actual payment. Challenging the said order, the present writ petition has been filed.

8. Mr. Mukherjee, learned advocate representing the writ petitioners, by drawing attention of this Court to the said Regulation and in particular Regulation 46, submits that in terms of the said Regulation an officer is entitled to one month pay for every completed year of service subject to maximum of 15 months pay. Provided, however, when the officer has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of month's pay for each completed year of service beyond 30 years. Having regard to the aforesaid, it is submitted that since, the respondent no. 3 had put in 37 years of service he became entitled to gratuity for 15 months pay for the first 30 years and on completion of 30th year upto the 37 years, he became entitled to an additional half month pay. According to Mr. Mukherjee, one half of a months' pay is equivalent to a half month's pay. The Controlling Authority had duly considered the provisions of the said Regulation and had on the basis thereof, determined

that a sum of Rs.9,52,381/- due and payable as per the said Regulation. On the contrary, as per the said Act, although, the entitlement of the respondent no.3 was Rs 16,09,379, however, by reasons of the prevailing ceiling limit, the respondent no.3 was at best entitled to a sum of Rs.10,00,000/- (Rupees Ten Lacks) only, which had duly been disbursed.

9. There is no irregularity in this regard. No other interpretation apart from the interpretation noted by the Controlling Authority is permissible in the facts of the case. By referring to an unreported judgment delivered by the High Court of Madhya Pradesh at Jabalpur in **W.A. No. 1318 of 2018, Madhyanchal Gramin Bank and another v. All India Gramin Bank Pensioners Organisation Unit**, he submits that in similar set of facts concerning an identical clause, the benefit of half month's additional pay was directed to be disbursed to the employee concerned. Reliance has also been placed on a decision rendered by the appellate authority being the Deputy Chief Labour Commissioner (Central), Dhanbad & the Appellate Authority under the Payment of Gratuity Act, 1972 in Gratuity Appeal No.15 of 2020. Having regard to the aforesaid, he submits that the order passed by the appellant authority cannot be sustained and should be set aside.
10. Mr. Mukhopadhyay, appearing in person by placing reliance on the provisions of the said Act, submits that right to

be entitled to gratuity and the manner in which such gratuity shall be payable has been clearly identified in the said Act. By referring to Section 4(5) of the said Act, it is submitted that the said section provides for an exception so as to entitle an employee to receive better terms of gratuity under any award or agreement or contract with the employer. Admittedly, the petitioners have service regulations and in terms of the said Regulations, provision has been made for payment of gratuity. The employees have proceeded to accept the same since, the same are better than the terms provided for in the Payment of Gratuity Act. He submits that as per provision of the said Act, an employee is entitled to 15 days of salary for each completed year of service. On contrary, an employee in terms of the said Regulation is entitled to a month's salary subject to a maximum of 15 months pay. Having regard to the aforesaid, for all practicable purpose the employee concerned would be receiving better terms of gratuity. However, as per the proviso to Regulation 46(2) once, the said employee completes the service age of 30 years, a provision has been made for making available an additional 1 ½ months' salary for each completed year of service, which would again make the same far more beneficial than the terms provided for in the said Act. On the contrary, if the argument of the learned advocate for the petitioners is accepted then the same puts an employee who had completed

30 years of service to no greater advantage, as the employee will be entitled to the same amount of gratuity payable under the provisions of the said Act, and accordingly the same would no longer be beneficial to the employee concerned. He submits that the interpretation offered by the petitioners goes contrary to the scheme of the Act itself. As such, the same should not be accepted. He further submits that there is no irregularity on the part of the appellate authority in determining the gratuity payable to the respondent no.3.

11. Heard the learned advocates appearing for the respective parties and considered the materials on record.
12. The only question falls for consideration in the present petition is with regard to the interpretation of the provisions of Regulation 46, which provides for the entitlement of gratuity payable to an employee of the bank. To morefully appreciate the aforesaid contention, relevant provision of Regulation 46 is extracted herein below:

“46. Gratuity

(1) Every Officer 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.

(d) Resignation after completing ten 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.

(2) The amount of Gratuity payable to an Officer shall be one month's pay for every completed year of service, subject to a maximum of 15 months pay.

Provided that where an Officer has completed more than 30 years of service, he shall be eligible by way of Gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years.

Provided further that pay for the purpose of Gratuity for an Officer who ceased to be in service during the period 01.07.1993 to 31.10.1994 shall be with regard to scale of pay as specified in Sub Regulation (1) of Regulation 4.

Provided also that pay for the purpose of Gratuity of an Officer who ceased to be in service during the period 01.04.1998 to 31.10.1999 shall be with regard to scale of pay as specified in Sub Regulation (2) of Regulation 4.

NOTE

If the fraction of service beyond completed years of service is 6 months or more, Gratuity will be paid pro-rata for the period."

13. Before proceeding further it must be remembered that ordinarily right to receive gratuity is recognised under the said Act. The manner of computation of gratuity is also provided therein. In terms of the said Act, ordinarily gratuity is computed on rendering continuous service for not less than 5 years and for each completed year of service or part thereof, in excess of six months, the employer is obliged to pay gratuity to an

employee at the rate of 15 days wages based on the rate of wages last drawn by the employee concerned. In case of monthly rated employee, 15 days wages are calculated by dividing the monthly rate of wage last drawn by 26 and multiplying the quotient by 15.

14. In this context, I may note that section 4 (5) of the said Act, offers an option to the employee to receive better terms of gratuity under any award or agreement or contract with the employer. Admittedly, the Canara Bank (Officers') Service Regulations, 1979 is a statutory document and Regulation 46 provides for payment of gratuity. While there is no dispute as regards payments of gratuity to an employee for every completed year of service subject to maximum of 15 months, pay for each completed year of service for the first 29 years, there appears to be two different interpretations offered one, by the petitioners and the other by the respondent no.3 insofar as the first proviso to Regulation 46(2) is concerned. If the contention of the petitioners is accepted, the employee who has completed 30 years of service would be entitled to the gratuity which would be at par with the Gratuity Act. On the other hand, if the contention of the respondent no.3 is accepted, the same would at the first blush constitute better terms. To morefully appreciate the above, a break-up of the gratuity payable to the respondent no.3 on the basis of the said Regulation, the

Gratuity Act, and the interpretation given by the petitioners including the interpretation given by the respondent no.3 are disclosed in the form of a chart:

	As per Gratuity Act	As per regulation as interpreted by petitioner	As per regulations as interpreted by the respondent no.3	Remark
1 st year upto 15 years	15 days	30 days for each completed year.	30 days for each completed year.	Computation is beneficial to the employer.
16 year upto 29 years	15 days	NIL	NIL	
On completion of 30 years	15 days	15 days for each completed year	45 days for each completed year	

15. It would, thus, be apparent from the aforesaid, the interpretation of the petitioners if accepted, the same would no longer offer any better terms to an employee who had worked in excess of 30 years. On the contrary, if the interpretation given by the respondent no.3 is accepted, the same would constitute better terms of gratuity payable under the aforesaid Regulation.

16. Having regard to the aforesaid, it would appear that although, the said Regulation initially provides for much better terms of gratuity payable to the employees of the bank for the first 15 years, yet by reasons of no gratuity being payable from the 16th year till the end of the 29th year, by reasons of the

celling limit the same only remains marginally better at the end of the 29th year. The introduction of first proviso to Regulation 46 (2) if interpreted in favour of the employee, might have the effect of reviving the continuity to the better terms offered to the employees of the bank. At the same time, it must also be borne in mind that unless, the first proviso to Regulation 46 (2) introduces any ambiguous or absurd effect, the literal meaning of such proviso is required to be applied in consonance with the golden rule of interpretation of statutes. Thus, applying the golden rule of interpretation of statutes the question that should be considered in the light of Section 4(5) of the said Act, is whether the scheme of the said Regulation and the plain meaning offered by the first proviso to Regulation 46(2) has the effect of negating the benefits of the better terms and whether the same creates any absurd or unreasonable result.

17. A conjoint reading of Regulation 46 of the said Regulation and the said Act would show that for short term service the same is more beneficial to an employee that is for the first 15 years of service, thus, the benefits offered are far superior than are available under the said Act. However, once, the employee completes 16 years of service, for each completed years thereafter, the benefits get progressively reduced until the employees completes 30 years of service, when he starts enjoying additional benefits once again. Although, a lot of stress

has been laid by the respondent no. 3 to the term 'one half of a months pay' as appearing in the first proviso to regulation 46 (2) to interpret the same as '*one and a half month pay*', I may a note that regulation 46 starts with the words '*The amount of gratuity payable to an officer shall be one month's pay for every completed year of service, subject to maximum of 15 months pay.*' Having regard to the same, the additional benefit offered in the first proviso to Regulation 46 (2), in my view, cannot be read to be *one and half month's pay* in the light of the clear and unambiguous language used therein.

18. Although, ordinarily, the interpretation offered by the petitioners appears to be oppressive as the person who has offered his entire life in the service of an institution would be entitled to inferior terms, then what is payable to an employee who puts in service upto 29 years of completed service, yet the same does not appear to be absurd or incongruous and the respondent no.3 always has an option to choose from. He can either choose his entitlement towards payment of gratuity in terms of the said Act or the Regulation which ever provides for better terms.

19. In view thereof, and in the light of the judgement delivered in the case of ***Beed District Central Coop. Bank Ltd. (supra)*** and the observations made by the Hon'ble Supreme Court in the case of ***Beed District Central Coop. Bank Ltd. (supra)*** in

paragraphs 15 and 16 thereof, I am of the view interpretation offered by the petitioners is far more acceptable than the one offered by the respondent no.3. Thus, applying the golden rule of interpretation, when the language is clear and explicit, and the words are plain and unambiguous, the Court is bound to construe them in their ordinary sense, with reference to the other clause or regulations, as the case may be, so far as possible to make a consistent enactment of the whole statute/rules and in doing so inconvenience and hardship arising out of such interpretation should do not form the basis for consideration. In view of the above the order dated 21st December, 2022 passed by the Appellate Authority in appeal case no.15 of 2020 cannot be sustained, the same is accordingly set aside.

20. The Learned Registrar General is directed to return the differential amount already deposited by the petitioners along with interest accrued thereon to the petitioners by encashing the fixed deposit prematurely, if necessary.
21. There shall be no order as to costs.
22. 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.)