

15.1.2024
Ct.35,sl.71
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WPA 12642 of 2021

Dipanwita Bose-vs-State of W.B.& Ors

Mr. Rajdeep Bhattacharya
Mr. Debashis Banerjee
...for the petitioner.

The petitioner is represented on call whereas no one is representing the respondents.

It is appearing from record that in spite of direction upon the respondents no affidavit has been preferred by any of the respondents, till date.

Hence, the matter is taken up for hearing and disposal in absence of the respondents.

The petitioner has been an employee of Vidyasagar Central Co-operative Bank, Midnapore as a Grade-II, Scale-III Officer. She was engaged there on January 2, 2013 and subsequently her appointment was confirmed. The petitioner had resigned on March 21, 2020 from the said bank. The dispute relates to non-payment of her gratuity by the respondent bank/respondent no. 3.

Learned advocate appearing for the petitioner has been communicated a letter issued by the respondent no. 2/bank, dated April 30, 2021 which reads as follows:-

“Dear Madam,

We have already sent our reply relating to your letter dated 21st September, 2020 vide our Memo No. PD/609 dated 09/10/2020 in connection with final Gratuity. No, the Bank Authority further informs you that

payment of Final Gratuity after resignation is paid according to the Bank's own Service Rules vice Chapter-XVI, Clause(d), where it is clearly mentioned that employee shall be eligible to get gratuity if he/she completes 10(Ten) years of continuous service.

As your tenure of service in this Bank (from 29/01/2013 to 02/04/2020) is less than 10 years, in this connection your are not eligible to get final Gratuity as per Bank's own Service rules".

Thus the petitioner's claim of gratuity was rejected on the ground that the bank's own service rules has provided minimum period of ten years of completed service as the criteria to be eligible for payment of gratuity.

This appears to be in gross hostility of the statutory provision under the Payment of Gratuity Act, 1972.

The relevant provision of the statute may be quoted as hereinbelow:

Section: 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":*

In view of the statutory provision as above which has prescribed for five years of minimum qualifying service for an employee to be eligible for gratuity, the concerned rule in the bank service rules i.e. Clause (d) in Chapter (XVI) appears to be dehors the statute.

The impugned order dated April 30,2021 appears to be in gross violation of the statutory provision as mentioned above. Hence, the same would not be maintainable in the eye of law. The same is liable to be dismissed, being illegal. Instead, it is found that, the writ petitioner, having completed continuous service for more than 5 years with the respondent Bank, would be eligible for payment of gratuity, in accordance with the statutory provisions. -

The writ petition is disposed of with the direction upon the respondent bank to immediately release the amount of gratuity to the writ petitioner, as is allowable to her, in accordance with the provisions of the statute, as mentioned above.

The writ petition being WPA 12642 of 2021 is disposed of.

Urgent photostat certified copy of this order duly downloaded from the official website of this court upon compliance all legal formalities.

(Rai Chattopadhyay, J.)

