

24.03.2025.
09
Ct.No.654.
as

WPA 5967 of 2022

Tarapada Basak
Vs.
The State of West Bengal & Ors.

Mr. Milan Ch. Bhattacharya, Ld. Sr. Adv.,
Ms. Sulagna Bhattacharya.
...for the Petitioner.

Mr. Pradip Kr. Roy, Ld. Sr. Adv.,
Mr. Jaydeep Roy.
...for the State.

Mr. Subrata Kr. Basu,
Ms. Senjuti Sengupta,
Mr. Sounak Sen.
...for the Respondent Nos.4 and 5.

Mr. Uttam Kr. Bhattacharyya.
...for the Respondent No.6.

1. The present writ petition has been preferred seeking a direction upon the concerned respondents to release and/or pay all the arrear benefits of the petitioner under the law and the service rules of the bank and bi-partite agreement on proper calculation.
2. The key facts need to be outlined for effective adjudication of this writ petition is that the petitioner initially appointed as a contingent staff of the Vidyasagar Central Co-operative Bank Limited (hereinafter referred to

as the Bank). Subsequently, he was elevated to the post of assistant (clerk)/supervisor in the bank and ultimately he was promoted to the position of Branch Manager of the Bank. While working as a Branch Manager of Gopiballavpur Branch, a show cause notice dated 31st March, 2022 issued to him and a charge sheet vide Memo.No.5162 dated 29th December, 2008 containing seven articles of charge were also served upon him.

3. Record reveals that the petitioner participated in the departmental enquiry and ultimately the said proceeding was concluded imposing a fine of Rs.3 lakhs. He retired from the said Bank as a Branch Manager of Vidyasagar Central Co-operative Bank Ltd., Midnapore on attaining the age of superannuation of 30th April, 2021. Thereafter, dispute cropped up in between the petitioner and his employer regarding payment of his retiral dues. The action of withholding all the retiral benefits of the petitioner compelled him to prefer this writ petition.

4. Record reveals that a preliminary objection regarding maintainability of this writ petition was raised on behalf of the respondents. However, by an order dated 4th May, 2022, a Co-ordinate Bench of this Court determined that since there have been irregularities in discharging the statutory duties of the respondent Nos.4 and 5, the petitioner can very well seek invocation of the jurisdiction of this Court under Article 226 of the Constitution of India more so, in view of alleged violation of Article 19 of the Constitution of

India. That order has not been challenged in any appropriate forum by the respondents. So that order has attained finality and the same will operate as an *estoppel* against the respondents in re-agitating the same point even during the main proceeding.

5. Mr. Bhattacharya, learned Senior Advocate representing the petitioner draws my attention to a Memo dated 6th May, 2022 issued by the General Manager of the bank to contend that in compliance with the order dated 4th May, 2022 whereby a Co-ordinate Bench directed the respondents to pay all the admissible retiral dues, gratuity of Rs.10 lakhs, leave encashment for 300 days amounting to Rs.12, 73,360/-, medical allowance for four months amounting to Rs.1151/-, security deposit of Rs.2076/- and a superannuation pension of Rs.5827/- was released in favour of the petitioner. However, a sum of Rs.3163/- was deducted from the retiral dues of the petitioner.

6. Mr. Bhattacharya, referring to the provision of Section 4(3) of the Payment of Gratuity Act, 1972 argues that as per the provision of Section 4(3) of the Act, the amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time. He drew my attention to a notification dated 29th March, 2018 and argues that the Central Government has specified that the amount of the gratuity payable to an employee shall not exceed Rs.20 lakhs. Referring to a memo vide PD/1555 dated 21st January, 2025 issued by the

General Manager of the Bank, he submits that the upper ceiling of the final gratuity had been enhanced by the bank itself from Rs.15 lakhs to Rs.20 lakhs. He submits that the Bank concerned illegally withheld the gratuity amount of Rs.10 lakhs and he prays that a direction be given upon the respondents to release the amount along with interest accrued thereon forthwith.

7. Mr. Basu, learned Advocate representing the respondent Nos.4 and 5 submits that this application is not maintainable in its present form and he submits that a disciplinary proceeding was initiated since the petitioner committed certain misconduct. He submits that the petitioner cannot claim any favour from this Court and he submits that in view of the provision of Section 7(4a)(b) of the Payment of Gratuity Act, 1972, this writ petition is not maintainable. In support of his contention, Mr. Basu has relied upon an unreported judgment delivered by an Hon'ble Division Bench of this Court in MAT 534 of 2019 (Ajoy Kumar Hajra Vs. The State of West Bengal & Ors.).

8. Mr. Roy, learned Advocate representing the State submits that Section 7(4a) (b) of the Act of 1972 confers a power upon the controlling authority to resolve any dispute as regards the gratuity amount payable to an employee under this Act.

9. Admittedly, the matter relating to the disciplinary proceeding is not an issue in this writ petition. Issue involve in this writ petition is payment of gratuity. Now, the scope

of this writ petition lies in a short context. The issue is whether the petitioner would be entitled to get the gratuity amount of Rs.10 lakhs along with interest accrued thereon. Admittedly, in compliance with the order dated 4th May, 2022 passed by a Co-ordinate Bench in this writ petition, an amount of Rs.10 lakhs has been released in favour of the petitioner as gratuity amount. Now, question is that whether as per the provision of Section 4(3) of Payment of Gratuity Act, 1972 read with the notification dated 29th March, 2018 issued by the Central Government and the notification issued by the General Manager of the Bank vide Memo.No.PD/1555 dated 21st January, 2025 the petitioner will be entitled to remaining amount being Rs.10 lakhs towards gratuity along with the interest accrued thereon.

10. Admittedly, the Hon'ble Division Bench of this Court while dealing with similar issue disposed of an intra court appeal by granting liberty to the petitioner to apply before the controlling authority. Additionally, a direction was given upon the controlling authority to determine the petitioner's claim in accordance with law.

11. Since the Act of 1972 has made a specific provision conferring a power upon the controlling authority to adjudicate the dispute relating to payment of gratuity to an employee governed under this Act and an Hon'ble Division Bench by an order relegated similar issue to the controlling authority. The order of the Hon'ble Division Bench is binding upon this Court.

12. Accordingly, I dispose of the writ petition in the line of the judgment passed by the Hon'ble Division Bench granting liberty to the petitioner to apply before the controlling authority ventilating his grievances regarding release of the remaining amount of the gratuity of Rs.10 lakhs along with interest accrued thereon within a period of four weeks from date.

13. In the event, if such application is received by the controlling authority, the controlling authority shall dispose of the same and resolve the issue strictly in accordance with law after affording an opportunity of hearing to the petitioner as well as the representative of the Bank within a period of eight weeks thereafter.

14. Needless to state that if the said issue is resolved in favour of the petitioner, appropriate direction shall be issued by the controlling authority for payment of the amount which will be determined by the controlling authority as gratuity amount with accrued interest thereon and if the decision goes against the petitioner, the controlling authority shall issue a reasoned order which must be communicated to the petitioner within a period of two weeks from the date of such direction.

15. It is clarified that I have not gone into the merits regarding the point raised by the petitioner in this writ petition. All issues are kept open to be decided by the controlling authority without being influenced by any of the observation made in the above orders.

16. With this observation and order, the writ petition is disposed of.
17. However, there shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)