

WPA 23016 of 2024

**Dipendu Kumar Kar
versus
The State of West Bengal & Ors.**

Mr. Saurav Mallick	
	...For the petitioner
Mr. Srijan Nayak	
Ms. Rituparna Maitra	
	...For the State
Mr. Ankit Sureka	
Mr. Biplab Das	
	...For the respondent nos. 2 &3
Mr. D.K.Sengupta	
Ms. Farhin Mustaq	
	...For the respondent no. 4

1. Although this matter was heard on 6th May 2025, however, at the instance of Mr. Nayak, learned advocate appearing for the State the matter was posted today (13.05.2025) under the heading “*to be mentioned*” .
2. Today, the matter has been extensively heard and having regard thereto, the unsigned order dated 6th May 2024 stands recalled and the following order is being passed:
3. The petitioner, by way of this instant writ petition seeks to challenge the award dated 6th August 2024 passed by the Deputy Registrar of Cooperative Societies, Kolkata Range, the respondent no. 3 herein.
4. It is the petitioner’s case that the petitioner has only been disbursed an amount of Rs.3,50,000/- on account of gratuity despite the fact that the petitioner, in terms of the provisions contained in the Payment of Gratuity Act, 1972 (hereinafter referred to as the “said Act”) is entitled to an additional amount of Rs.6,54,998/-. It is not in dispute that the petitioner has already been disbursed an amount of Rs.3.50,000/- on account of gratuity.
5. Records would reveal that by order dated 26th April 2024 a Coordinate Bench of this Court by taking into consideration the fact that despite the petitioner attaining

the normal age of superannuation from the CSTC Employees Cooperative Credit Society Limited on 31st August 2018, had not been disbursed his entire terminal dues, granted liberty to the petitioner to approach the Assistant Registrar of Cooperative Societies with his grievance. Pursuant to the aforesaid, the petitioner having approached the Deputy Registrar of Cooperative Societies, the Deputy Registrar of Cooperative Societies, Kolkata by order/award dated 6th August 2024 was, inter alia, pleased to observe and direct as follows:-

“ **AWARD**

Enhancement of limit of gratuity of employees shall not be implemented by the Defendant as

- 1) There was no resolution of the society regarding enhancement of limit of gratuity of employees to the tune of 12/20 lakh prior to date of Order dtd 26/04/2024 of Honourable High Court, Calcutta.
- 2) The Highest Designated Employee can only manage affairs of a Cooperative Society.
- 3) The liability of the society cannot be assessed till date as it is unaudited till 2012-13.

No further payment of gratuity to the Plaintiff is allowed.
The gratuity received by the Plaintiff till date is conclusive.

The award is communicated to all parties present by pronouncement.

6. In view of the above, the issue that falls for consideration before this Court is whether the petitioner is entitled to the claim gratuity in excess of Rs.3,50,000/- which has been disbursed to the petitioner having regard to the ceiling limit set forth in Section 4(3) of the said Act. Mr. Sengupta, learned advocate appearing for the respondent no. 4 would submit that due to confusion as regards applicability of the amended provision of the said Act, the

entire amount of gratuity payable in favour of the petitioner could not be computed in accordance with the said Act and accordingly, could not be disbursed. He submits that the respondents had all good intentions to make payment of gratuity in terms of the said Act. An amount of Rs.3,50,000/- has already been paid and disbursed in favour of the petitioner. Steps are being taken to recompute the balance amount and according to him a sum of Rs.6,54,998/- is due and payable in favour of the petitioner after giving credit to the sum of Rs.3,50,000/- which had already been disbursed in favour of the petitioner.

7. Mr. Nayak and Mr. Sureka, learned advocates appearing for the State and respondent nos. 2 & 3 would, however, jointly submit that in the instant case, pursuant to an order passed by a Coordinate Bench of this Court, an award has already been passed by the Deputy Registrar of Cooperative Societies, Kolkata and having regard to the said award, the petitioner is not entitled to any additional sum. According to Mr. Nayak, since there is no Board of CSTC Employees Cooperative Credit Society Limited, no decision could be taken to enhance the amount of gratuity payable in favour of the petitioner. According to him, the cooperative society is facing financial crunch and there has been no proper audit of the society. It is also submitted that at the relevant point of time when the petitioner reached his superannuation, though the ceiling limit as provided in Section 4(3) of the said Act was amended, however, according to Mr. Nayak the amendment of the ceiling limit

should be prospective and should not be given any retrospective effect.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record.

9. Prima facie as has been admitted by the parties, and as would transpire from a plain reading of the said Act that the provisions of the said Act are squarely applicable to the CSTC Employees Cooperative Credit Society Limited. Records would reveal that an amount of Rs.3,50,000/- has already been disbursed in favour of the petitioner on account of gratuity. Though, Mr. Nayak submits that since the enhancement of the ceiling limit for payment of gratuity payable to an employee under Section 4(3) of the said Act has been notified on 29th March 2018 as Rs.20 lakhs and the petitioner having superannuated on 31st August 2018, the aforesaid provision cannot be retrospectively applied to the petitioner for his entire service tenure, I, however, find that the provisions of Section 4(3) of the said Act provides that the gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time. In this case, admittedly, the date on which the petitioner had retired, the maximum amount of gratuity that shall be payable to an employee was enhanced to Rs. 20 lakhs.

10. In view thereof, there is no necessity to give any retrospective effect to such notification as the petitioner was in service on the date when the aforesaid notification had come into force. Financial condition of an employer/society cannot in my view come in the way to deny gratuity payable to an employee of the society. In any event, nothing has been placed

before this Court by the society to demonstrate that the society is not in a position to make payment of the gratuity amount. On the contrary, it has been submitted that the society is ready and willing to comply with the provisions of the said Act and that the balance amount which is due and payable to the petitioner shall be disbursed to the petitioner in due course. The order passed by the Deputy Registrar of Cooperative Societies, Kolkata dated 6th August 2024 which proceeds on the premise that in absence of concurrence of the Board the enhancement of the ceiling limit of gratuity is not permissible, in my view cannot be sustained and the same is accordingly set aside.

11. Having regard thereto, I am of the view that nothing further survives to be decided in the present writ petition and accordingly, I direct the respondent no. 4 to forthwith disburse the balance amount of gratuity payable to the petitioner in accordance with the provisions contained in the said Act.

12. With the above observations and directions, the writ petition is disposed of.

13. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)