IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. 2198 of 2023

Bangiya Gramin Vikash Bank & Ors.
vs.
Shyama Prasad Dey

For the Appellants : Mr. Baidurya Ghosal
Mr. Sourav Mukherjee
Mr. Saikat Mukherjee

For the Respondent : Mr. Soumik Ganguly

Heard and Judgment on : **January 13, 2025**

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the bank is directed against an order dated August 31, 2023 passed in W.P.A. 11169 of 2022.

2. By the impugned order, learned Single Judge allowed a writ petition filed by an employee of the bank who was compulsorily retired from service as a measure of punishment in a disciplinary proceeding.

3. Writ petitioner approached the Writ Court with the grievance that pension, gratuity and other retiral benefits were not being disbursed by the appellants.

4. By the impugned order, learned Single Judge held after considering the Service Regulation governing the writ petitioner that the writ petitioner is entitled to receive pension and other terminal benefits admissible to him.

5. During the pendency of the appeal, learned advocate appearing for the appellants submitted in his usual fairness that, the writ petitioner is entitled to pension. Court is informed that the writ petitioner is receiving his pension.

6. Appeal is now limited to whether the writ petitioner is entitled to gratuity and other terminal benefits such as leave encashment or not.

7. On the issue of gratuity, learned advocate appearing for the appellants relies upon a Notification of United Bank of India. He submits United Bank of India is the sponsor bank of the appellant no. 1, therefore, the service conditions relating to employees of United Bank of India are applicable. He submits that, in respect of employees of United Bank of India who were compulsorily retired, such employees were denied gratuity. He submits that same principle should apply so far as the writ petitioner is concerned.

8. Learned advocate appearing for the writ petitioner submits that, the writ petitioner is governed by the Bangiya Gramin Vikash Bank (Officers and

Employees) Service Regulations 2010. He draws the attention of the Court to Regulations 67 and 72 thereof. He submits that, in terms of Regulation 67, writ petitioner is entitled to leave encashment. In terms of Regulation 72, writ petitioner is entitled to gratuity.

9. Since there exists a Service Regulation by the name of Bangiya Gramin Vikash Bank (Officers and Employees) Service Regulations 2010, governing the service conditions of the writ petitioner, we are of the view that such Regulations are applicable. The Notification of concerned employees of United Bank of India is prior to the Regulations of 2010. That apart, the Regulations of 2010 are specific to an employee of the appellant no. 1 such as the writ petitioner.

10. Regulations 67 and 72 are as follows:

> "67. Lapse of Leave.--- All leave shall lapse on the death of an officer or employee or if he ceases to be in the service of the Bank:
>
> Provided that where an officer or employee dies in service, there shall be payable to his legal representatives, sums which would have been payable to the officer or employee as if he has availed of the privilege leave that he had accumulated at the time of his death subject to sub-regulation (4) of regulation 61:
>
> Provided further that where a staff retires from the service of the Bank, he shall be eligible to be paid a sum equivalent to the emoluments for the period of privilege leave he had accumulated subject to sub-regulation (4) of regulation 61:
>
> Provided also that is respect of the employee where his services are terminated owing to retrenchment, he shall be paid pay and allowances for the period of privilege leave at his credit."
>
> 72. Gratuity-----(1) An officer or employee shall be eligible for payment of gratuity either as per the provisions of the Payment of

Gratuity Act, 1972 (39 of 1972) or as per sub-regulation (2), whichever is higher.

(2) Every officer or employees 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, or

(d) resignation after completing 10 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;

Provided that in respect of an employee there shall be no forfeiture of gratuity for dismissal on account to misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only"

11. Under Regulation 67, third proviso, an employee whose services were terminated owing to retrenchment shall be paid pay and allowances for the period of privilege leave at his credit.

12. In the facts of the present case, the writ petitioner was compulsorily retired as a measure of punishment by an order dated December 5, 2013. Such order of punishment does not take way either the leave encashment benefits accruing to the writ petitioner or the gratuity receivable by the writ petitioner.

13. In such view of the Regulation 67 and more so in view of the fact, punishment does not take way the entitlement of the leave encasement of the writ petitioner, appellants will disburse the leave encashment that the writ

petitioner is entitled to, in accordance with law, preferably within a period of four weeks from date.

14. So far as the gratuity is concerned, Regulation 72 specifies that an officer or an employee of the appellant no. 1 shall be eligible for payment of gratuity either as per the provisions of the Payment of Gratuity Act, 1972 or as per Regulation (2), whichever is higher.

15. Sub-Regulation (2) of Regulation 72 specifies that every officer or employee shall be eligible for gratuity on retirement, death, disablement rendering him unfit for further service certified by a medical officer approved by the bank, resignation after completing of 10 years of continuous service or termination of service in any other way except by way of punishment after completion of 10 years of service. The proviso to Sub-Regulation (2) of Regulation 72 specifies that in respect of an employee, there shall be no further benefit of gratuity for dismissal on account of misconduct except in such cases where such misconduct causes financial loss to the bank and in that case to that extent only.

16. In the facts of the present case, the disciplinary proceeding initiated against the writ petitioner resulting in the order of punishment dated December 5, 2013 proceeded on the basis of loss of Rs.11 lakhs caused to the appellant no. 1. Court is informed that writ petitioner before us paid the sum of Rs.11 lakhs together with interest. Again as noted above, the order of

punishment dated December 5, 2013 does not quantify any loss suffered by the appellant no. 1. Such order of punishment also does not record that gratuity will be withheld as a measure of punishment.

17. Court is informed that, the writ petitioner prior to suffering the order of punishment put in qualifying service to receive gratuity.

18. In such circumstances, appellants will pay the gratuity receivable by the writ petitioner again preferably within four weeks from date.

19. Learned advocate appearing for the writ petitioner seeks a direction for payment of interest on the delayed payment of leave encashment and the gratuity. Such prayer is opposed on behalf of the appellants.

20. Writ petitioner suffered an order of punishment of compulsory retirement on December 5, 2013.

21. There is no doubt that there is a delay in paying the terminal benefits of the writ petitioner. We take note into account to the fact that the Public Sector Banks grant interest at rates slightly less than 8% for Fixed Deposits. Public Sector Banks also charge a much higher rate for home loans or other commercial loans.

22. In order to balance the equities in our view interest of justice would be sub-served by requiring the appellants to pay interest @ 8% p.a. on and from January 5, 2014 being one month from the date of the order of

punishment till the actual date of payment of the terminal benefits as directed by this order.

23. Impugned order is modified to the extent as indicated above.

24. **M.A.T. 2198 of 2023** along with connected applications, if any, are **disposed of**.

(Debangsu Basak, J.)

25. I agree.

(**Md. Shabbar Rashidi, J.**)

S.D.