

**(2019) 09 CAL CK 0318**

**In the Calcutta High Court**

**Case No : Writ Petitions (WP) No. 18488 (W) Of 2019**

Arup Kumar Basubal & Ors

APPELLANT

Vs

Bangiya Gramin Vikash Bank & Ors

RESPONDENT

**Date of Decision : 25-09-2019**

**Acts Referred:**

Bangiya Gramin Vikash Bank (Officers And Employees) Service Regulations, 2010 — Regulation 2, 2(m), 2(o), 72, 72(1)(2), 72(2)(i), 72(2)(m), 72(2), 72(3)

**Citation : (2019) 09 CAL CK 0318**

**Hon'ble Judges : Shekhar B. Saraf, J**

**Bench : Single Bench**

**Advocate : Debabrata Saha Roy, Indranath Mitra, Subhankar Das, Neil Basu, Sudeep Pal Chowdhury**

**Final Decision : Disposed Of**

## **Judgement**

Shekhar B. Saraf, J

1. Mr. Saha Roy, learned Counsel appearing on behalf of the petitioners has indicated that the Court fees for all the petitioners may not have been deposited and accordingly, prays leave to deposit the same within seven days.

2. Department is directed to take steps accordingly.

3. This is an application under Article 226 of the Constitution of India wherein the writ petitioners are retired officers of Bangiya Gramin Vikash Bank. Their grievance is that the gratuity that is being paid to them is being calculated based on a wrong assumption that dearness allowance is not to be included in the last pay received by them.

4. Mr. Debabrata Saha Roy, learned Counsel appearing on behalf of the writ petitioners has placed Regulation 72 of the Bangiya Gramin Vikash Bank (Officers and Employees) Service Regulations, 2010 (hereinafter referred to as 'the Regulation') to indicate the manner in which the gratuity is to be calculated as per the Service Rules. Placing reliance on Clause (2) of sub-Regulation (1) of

Regulation 72 he submits that the officer is entitled to payment of gratuity either as per the provision of Payment of Gratuity Act, 1972 or as per sub-Regulation (2), whichever is higher. He thereafter placed sub-Regulation (2) and sub-Regulation (3) to indicate the manner in which such gratuity is to be calculated. He specifically relied on the proviso that stated that in respect of an officer the gratuity is payable based on the last pay drawn. Thereafter, he drew the attention of this Court to the definition of 'pay' and 'emolument' as per sub-Regulation (2) clauses (i) and (m). The relevant Regulation 72 and the definitions in Regulation 2(i) and 2(m) are delineated below :-

"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 employee shall be eligible for gratuity on, -

(a) retirement,

(a) death,

(a) disablement rendering him unfit for further service as certified by a medical officer approved by the Bank, or

(a) resignation after completing 10 years of continuous service, or

(a) 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 of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only.

(3) The amount of gratuity payable to an officer or employee shall be one month's pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 month's pay;

Provided that where an officer or employee 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 in respect of an officer the gratuity is payable based on the last pay drawn;

Provided also that in respect of an employee pay for the purposes of calculation of the gratuity shall be the average of the basic pay (100%), dearness allowance and special allowance and officiating allowance payable during the 12 months preceding death, disability, retirement, resignation or termination of service, as the case may be.

(2)(i) 'Emoluments' means the aggregate of salary and allowances, if any;

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(m) 'Pay' means basic pay drawn per month by the officer or employee in a pay scale including stagnation increments and any part of the emoluments which may specifically be classified as pay under these regulations;"

5. Mr. Saha Roy submits that this issue has been dealt with in detail by the Single Bench of the Madhya Pradesh High Court and thereafter in appeal before the Division Bench of the same High Court (Madhyanchal Gramin Bank and anr. Vs. All India Gramin Bank pensioners Organization Union (W.A.1318/2018); Madhyanchal Gramin Bank & ors. Vs. Suresh Prasad Dwivedi and Ors. (W.A.1316/2018); Madhyanchal Gramin Bank and anr. Vs. R. S. Sharma (W.A.1317/2018). He placed specific reliance on paragraphs 9 and 10 of the Division Bench judgement that is provided below :-

"9. After having heard rival submissions of the parties, we do not find any merit in the present appeals. Chapter VII of regulation deals with the various provisions relating to provident fund[, pension, gratuity, domicile, transferability, lending of Regulation 72 provides that an officer or employee shall be eligible for payment of gratuity either as per the provisions of the Payment of Gratuity Act, 1972 or as per sub regulation (2) whichever is higher. Officer or employee are eligible for gratuity on retirement, death, disablement, resignation after completing 10 years of the continued service or termination of service in any other way except by way of punishment after completion of 10 years of service. Sub Section (3) provides the calculation of the amount of gratuity. The amount of gratuity payable to an officer or employee shall be one month's pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 months' pay. There is a proviso that an officer or employee who has completed more than 30 years of service, her 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. The second proviso states that in respect of an officer the gratuity is payable based on the last pay drawn. The "Pay" is defined under regulation 2(m) which means basic pay drawn per month by the officer or employee in a pay scale including stagnation increments and any part of the emoluments which may specifically be classified as pay under these aggregate of salary and allowances, if any. 'Salary' is further defined under Regulation 2(o) means aggregate of pay and dearness allowance. Thus, the learned Single Judge has rightly held after referring to the definitions of 'emoluments', 'pay' and 'salary' that a conjoint reading of definitions of 'emoluments', 'pay' and 'salary', 'the last pay drawn' under regulation 2 proviso of sub regulation (3) of Regulation 72 would include dearness allowance for computation of gratuity in respect of officers as well.

10. The judgements referred above by the learned Senior Counsel in support of his contention would not render any assistance to contend that the intention of the Rule making authority is to treat the officers differently from the employees in view of the definitions of 'emoluments', 'pay' and 'salary' and further

Regulation 72."

6. Mr. Sudeep Pal Chowdhuri, learned Counsel appearing on behalf of the respondent authorities submits that two separate provisos have been provided in sub Regulation (2) of Regulation 72 that deals with gratuity payable to officers and gratuity payable to employees in a different manner. He further relies on the definition of 'pay' as per the Regulation and stated that the 'emolument' to be included in are only those that are specifically classified as 'pay' under these regulations. However, he was unable to show any such specific classification provided for in the Regulation.

7. Mr. Pal Chowdhuri fairly submits that the judgement of Madhya Pradesh High Court was appealed against before the Supreme Court but the Special Leave Petition was dismissed in limine.

8. After hearing Counsel on behalf of the appearing parties and considering the materials on record, I find no reason whatsoever to differ from the judgement of the Single Bench and Division Bench passed by the Madhya Pradesh High court. The said judgement has dealt with the issue in extensia and the reasons enumerated therein are flawless. Keeping in mind, the beneficial nature of the regulation, a beneficial legislation is required to be interpreted in a manner that would accrue favourably to the beneficiary and not in a manner by way of an extremely strict interpretation.

9. In the present case, in fact, I find that the regulations are crystal clear and there is no room for doubt to the intention of the legislature in framing of these regulations.

10. In light of the above, I hold that the petitioners shall be entitled to gratuity based on a calculation that would include 'dearness allowance' in the "last pay". The respondents are directed to include the dearness allowance and recalculate the gratuity of the petitioners and pay the difference arising thereto to the petitioners expeditiously and preferably within 90 days from date.

11. The writ petition is, thus, disposed of.

12. Urgent photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of necessary formalities.