

(2015) 07 OHC CK 0063

In the Orissa High Court

Case No : Writ Petition (C) No. 6423 of 2012

Cuttack Central Cooperative Bank Ltd.

APPELLANT

Vs

Controlling Authority-cum- under The Payment of Gratuity Act-cum-Asst. Labour Commissioner and Others

RESPONDENT

Date of Decision : 23-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Payment of Gratuity Act, 1972 — Section 15, 15(1), 4(6), 7(7)

Citation : (2015) 147 FLR 167 : (2015) LabIC 3892

Hon'ble Judges : S.N. Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Prasad, J—In this writ petition order dated 1.2.2012 in P.G. Case No. 18 of 2009 passed by the learned Controlling Authority under Payment of Gratuity Act-cum-Assistant Labour Commissioner, Cuttack is under challenge by which it has been ordered to the opposite party to pay gratuity amount of Rs. 2,00,836.00 to the applicant i.e. workman along with interest at the rate of 10% per annum from the date of termination of his service, that is, 31.5.2006 till the date of actual payment.

2. Case of the petitioner-Bank is that the opposite party No. 2-workman was ex-employee of the Cuttack Central Cooperative Bank Limited, while he was in service he has taken house building loan on the condition to deduct installment of the loan from the pay bill till full and final liquidation of the loan and further undertaken to deduct loan outstanding from the retirement benefit like gratuity, leave salary and security deposit and the like amount at the time of superannuation. The petitioner-Bank has written letter to the opposite party No. 2-workman before his superannuation for adjustment of loan of Rs. 70,000/- from his retrial benefit and accordingly petitioner-Bank has deducted loan installments from the petitioner retrial benefit and after making deduction retrial

dues has been released in favour of opposite party No. 2-workman.

3. Case of the opposite party No. 2-workman is that after superannuation he made an application for release of entire retrial benefit including the entire amount of gratuity but when entire amount of gratuity is not released he raised a dispute before the learned Controlling Authority to adjudicate the issue under Payment of Gratuity Act. Learned Controlling Authority by well conscious judgment has passed order holding therein that there cannot be any recovery from the amount from the gratuity of an employee.

4. Gratuity is a statutory amount to be paid to workman. Sole content of the Act is that Payment of Gratuity Act, 1972 has been formulated by the Parliament prescribing rules and regulations for payment and there is provision for deduction which has been provided under section 4(6) of the Payment of Gratuity Act, 1972 which provides forfeiture of amount of gratuity, save and except the said provision there is no other provision empowering the employer to forfeit amount of gratuity.

5. So far as claim of petitioner-Bank that certain dues was to be paid by the opposite party No. 2-workman, it has been submitted that with respect to the same the bank has filed a dispute case before the Additional Registrar, Cooperative Societies which has been rejected by order dated 24.1.2009, against which no appeal was preferred.

6. According to the opposite party No. 2-workman he is entitled to get amount of gratuity in its entirety because amount of gratuity cannot be withheld without following due procedure as prescribed under the Payment of Gratuity Act. In sub and substance, it has been submitted by opposite party No. 2-workman that order passed by the authority suffers from no infirmity hence needs no interference.

7. Preliminary objection has also been raised towards maintainability of this writ petition on the ground of availability of alternative remedy of appeal to be preferred against the order passed by the authority provided under section 7(7) of the Payment of Gratuity Act, 1972 that too after depositing the amount of gratuity but the petitioner-Bank has directly approached this Court invoking writ jurisdiction without availing the same.

8. Heard learned counsel for the opposite party No. 2-workman and perused the materials on record.

9. From perusal of the impugned judgment it is evident that opposite party No. 2-workman has made an application for payment of gratuity under the provision of Rule-10(1) of Orissa Payment of Gratuity Rules, 1974. Orissa Payment of Gratuity Rules, 1974 has been notified on 12.8.1974 by the State of Orissa in exercise of power conferred under sub-section (1) of Section 15 of the Payment of Gratuity Act, 1972.

10. Admittedly opposite party No. 2-workman was an employee working under

the petitioner-Bank made application for getting entire amount of gratuity by making application under Form-N prescribed under Rule 10(1) of the Orissa Payment of Gratuity Rules, 1974. Entire amount of gratuity has not been released by the petitioner-Bank which compelled the opposite party No. 2-workman to approach the learned Controlling Authority under the Payment of Gratuity Act-cum-Assistant Labour Commissioner, Cuttack which was registered as P.G. Case No. 18 of 2009.

11. Learned Controlling Authority has passed judgment on the basis of the consideration of the fact that amount of gratuity cannot be withheld save and except provision provided under the statute. Only provision provided in this regard is section 4(6) which provides for withheld or forfeiture of amount of gratuity. For better appreciation Rule 4(6) of the Payment of Gratuity Act, 1972 is being quoted below:

"Notwithstanding anything contained in sub-section (1),-

(a) The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;

(b) The gratuity payable to an employee may be wholly or partially forfeited;

(i) If the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) If the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

12. From the entire Act save and except provision of section 4(6) of the Payment of Gratuity Act, 1972 there is no other provision for passing order of deduction or forfeiture of amount of gratuity. Learned Controlling Authority on the basis of various pronouncement of judgments by Hon"ble Supreme court held that amount of gratuity cannot be withheld, save and except, procedure provided under the relevant statutory provision, has passed judgment.

13. Learned Controlling Authority has further taking into consideration the fact that the amount which is to be paid by the opposite party No. 2-workman will come under the definition of "dues" or not, he has gone into the fact that every amount taken by the employee cannot be said to be dues in this regard the learned Controlling Authority has relied upon reported judgment of this Court reported in Manoranjan Sahoo Vs. Chandra Kumar Purohit and Others, (1995) 1 OLR 611 wherein the term "dues" has been discussed and defined and it has been held in the said judgment that the term "dues" means a sum which is legally recoverable, that is, sum which is admitted or proved to be due and cannot be extended to sum which is alleged or claimed to be due. Learned Controlling Authority has also taken note of the order passed by the Additional

Registrar, Cooperative Societies in Dispute Case No. 305 of 2007 regarding claim or dues from the Bank but said dispute has gone against the Bank, order passed by the Registrar, Cooperative Societies has not been challenged before higher forum.

14. Learned Controlling Authority after taking into consideration the fact that the opposite party No. 2-workman has rendered 29 years of service with the bank and as such the sum of Rs. 2,00,836.00 is to be paid to the opposite party No. 2-workman against gratuity amount, hence directed the petitioner-Bank to pay him along with interest.

15. So far as testing the legality of the order passed by the learned Controlling Authority it is necessary to see that what is intent of the Payment of Gratuity Act, 1972.

16. The Parliament has promulgated Payment of Gratuity Act, 1972 for the purpose of paying amount of on termination of his employment after he has rendered continuous service for not less than 5 years,

(a) On his superannuation, or

(b) On his retirement or resignation, or

(c) On his death or disablement due to accident or disease,

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of an employee is due to death or disablement.

17. The Act has been formulated to provide gratuity of employees engaged in factories, plantations, shops and establishments or other establishment so that they may get some amount for their survival after being separated from service.

18. In this case opposite party No. 2-workman has performed his duty for about 29 years, hence he became entitled to get amount of gratuity under the Payment of Gratuity Act, 1972 read with provisions of Orissa Payment of Gratuity Rules, 1974 formulated in terms of the provisions as contained under section 15(1) of the Payment of Gratuity Act, 1972.

19. Case of the petitioner-Bank that a sum of rupees is to be recovered which was taken by the opposite party No. 2-workman as loan. If anything has been taken by way of loan, same cannot be recovered from the gratuity since rule has been well settled in this regard. There are other methods of making recovery if anything is lying with an employee. Gratuity since a part of retrial benefit can be recovered only on the basis of provisions enshrined under the Payment of Gratuity Act, 1972 read with Orissa Payment of Gratuity Rules, 1974. Section 4(6) of the Payment of Gratuity Act, 1972 has been provided leading to the circumstances where amount of gratuity can be withheld or forfeited. In this case, no such ground has been raised by the petitioner-Bank cannot be for forfeiture or withheld part of the amount of gratuity rather it is admitted case

that certain amount is due with the petitioner which has been adjusted against amount of gratuity, this act of the petitioner-Bank cannot be said to be said to be justified being contrary to the Payment of Gratuity Act read with Orissa Payment of Gratuity Rules, 1974.

20. It is settled that if any due amount not be recovered from the Gratuity rather part or whole of Gratuity amount can be withheld only in pursuance to the provisions of Gratuity Act or Rules governing the pension rule.

21. Learned Controlling Authority after taking into consideration this aspect of the matter directed to release amount of gratuity in favour of the opposite party No. 2-workman.

22. In view thereof, I find no illegality in the said order.

23. So far as contention of the learned counsel for the opposite party No. 2 that the petitioner has filed this writ petition without exhausting alternative remedy as provided under section 7(7) of the Payment of Gratuity Act, 1972 read with Rule 18 of the Payment of Gratuity (Central) Rules, 1972, I find substance in the argument advanced by learned counsel appearing for the opposite party No. 2-workman that there is specific provision of appeal to be preferred before the authority which is provided under section 7(7) of the Payment of Gratuity Act, 1972. It is settled that if statutory remedy of appeal is provided power conferred upon the High Court under Article 226 of the Constitution of India should not be invoked barring some exceptions, but in this case no such pleading is available in the writ petition so that the writ petition can directly be entertained.

24. It is settled that there if statutory appeal is provided under the Payment of Gratuity Act, 1972, extraordinary jurisdiction under Article 226 of the Constitution of India should not be invoked.

25. In this connection, reference of judgment rendered by the Hon''ble Supreme Court in the case Nivedita Sharma Vs. Cellular Operators Assn. of India and Others, (2012) 4 RCR(Civil) 850 : (2011) 13 SCALE 584 worth to be taken note.

26. In this judgment their Lordships of the Hon''ble Supreme Court has been pleased to deprecate entertaining writ petition in case of availability of statutory appeal, however, with certain exceptions like in case of violation of principles of natural justice or enforcement of any fundamental right or order under challenge is wholly without jurisdiction or vires of the rules are under challenge.

27. In this case, no such pleading has been made by learned counsel appearing for the petitioner regarding entertaining the writ petition on the ground of exceptions.

28. In view of the fact that the petitioner has approached this Court directly without availing alternative remedy provided under the statute, this writ petition cannot be entertained.

29. Hence, both on merit as well as on the ground of maintainability. I find no

merit in the writ petition.

30. Accordingly the writ petition is dismissed being devoid of merit.