
(2014) 05 AHC CK 0321

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 20574 of 2012

Shobhai Ram

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 21-05-2014

Acts Referred:

Citation : (2014) 6 ADJ 280 : (2014) 142 FLR 457 : (2014) 4 LLJ 56 : (2014) 4 LLN 604 : (2014) 3 UPLBEC 2512

Hon'ble Judges : Rajan Roy, J; Amreshwar Pratap Sahi, J

Bench : Division Bench

Advocate : K.M. Mishra, H.R. Misra and Rajesh Kumar, Advocate for the Appellant; K.N. Mishra, Shailendra Kumar Singh and Abhishek Mishra, Advocate for the Respondent

Final Decision : Allowed

Judgement

1. Heard Sri H.R. Misra, learned Senior Counsel assisted by Sri K.M. Mishra for the petitioners and Sri K.N. Mishra for the respondent bank. By means of this writ petition the petitioners are challenging the order dated 13th July, 2010 passed by the Managing Director of the respondent bank whereby the claim of the petitioners for enhanced gratuity amounting to Rs. 10 lacs w.e.f. 1.1.2006 has been turned down on the ground that the said benefit is admissible under the provisions of the Payment of Gratuity Amendment Act, 2010 w.e.f. 6.7.2010 when the respondent bank took a decision to enhance the same from Rs. 3.50 lacs to 10 lacs.

2. The contention of the learned counsel for the petitioner is that the Payment of Gratuity Act being an Industrial Law is not applicable to the employees of the Cooperative Societies in view of the U.P. Cooperative Society Act as also the pronouncement of the Supreme Court in the case of Ghaziabad Zila Sahkari Bank Ltd. Vs. Addl. Labour Commissioner and Others, and the judgment rendered in the case of Brahmawarta Commercial Co-Operative Bank Ltd., Kanpur Vs. Presiding Officer, Industrial Tribunal III, U.P. Kanpur,

3. Learned counsel for the petitioner further contends that in fact the gratuity is payable under Regulation 95 of the U.P. Cooperative Societies Employees Service Regulations 1975.

4. Sri K.N. Mishra appearing for the respondent bank very fairly submits that in fact the Gratuity Act is not applicable to the cooperative society and that it being an independent body the relevant Government orders issued by the State Government in pursuance of the recommendations of the 6th Pay Commission are also not applicable unless and until the respondent bank takes a decision adopting the same.

5. Be as it may, the fact remains that the impugned order has been passed only on the ground of applicability of the Gratuity Act 1972 which is clearly not applicable in view of the provisions of the U.P. Cooperative Societies as also the aforesaid judgments mentioned.

6. In view of the above, the impugned order does not survive to the extent it refers to the application of the Gratuity Act, 1972. However, as the decision has already been taken by the respondent bank to enhance gratuity from Rs. 3.50 lacs to 10 lacs on 6.7.2010 is the said decision relatable to Regulation 95 of the aforesaid regulations 1975 and therefore the benefits to the employees would be admissible treating the same as a decision taken under the aforesaid Regulations 1975.

7. So far as the claim of the petitioner to get enhanced gratuity w.e.f. 1.1.2006 is concerned the respondent bank may take a fresh decision in this regard under Regulation 95 of the Regulations 1975 within a period of 3 months from the date of production of a certified copy of this order before the governing body of the respondent. Subject to the above, the writ petition is allowed.