

(2014) 04 AHC CK 0217

Allahabad High Court

Case No: Writ-A No. 20975 of 2014

Bhagwat Swarup Dixit

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: April 16, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Co-operative Societies Act, 1965 - Section 122

Citation: (2014) 5 ADJ 642 : (2015) 1 ALJ 18 : (2014) 141 FLR 987 : (2014) 3 LLJ 285 : (2014) 3 LLN 616

Hon'ble Judges: Surya Prakash Kesarwani, J

Bench: Single Bench

Advocate: Kr. Hans Pratap Singh, Advocate for the Appellant

Judgement

Surya Prakash Kesarwani, J.

Heard Sri Hans Pratap Singh, learned Counsel for the petitioner, Sri B.P. Singh Kachhawah, learned Standing Counsel for respondent No. 1, and Sri Ashok Kumar Lal, learned Counsel for respondent Nos. 1 & 2. It is alleged in paragraph 3 of the writ petition that the petitioner was initially appointed as Clerk/Cashier in Hamirpur District Co-operative Bank Limited, District Mahoba, on 16.5.1972. In paragraph 4, it is stated that he was promoted to the post of Junior Branch Manager w.e.f. 24.1.1992. In paragraph 5, it is stated that the petitioner attained the age of superannuation on 30th June, 2010 and thus he was retired from service. Undisputedly the service condition of the petitioner was governed by the provisions of U.P. Co-operative Employees Service Regulations, 1975, which also contains the provisions with regard to Payment of Gratuity.

2. The grievance of the petitioner is that he should be paid gratuity as per provisions of the Payment of Gratuity Act, 1972.

3. Sri Hans Pratap Singh, submits that inaction of the respondents in not paying the gratuity to the petitioner as per the provisions of Gratuity Act, 1972, is wholly illegal.

4. Sri Ashok Kumar Lal submits that the Payment of Gratuity Act, 1972 is not applicable to the petitioner inasmuch as his service condition is governed by the provision of U.P. Co-Operative Employees Service Regulations, 1975. He submits that undisputedly the petitioner has been paid the gratuity as per provisions of the Regulation, 1975.

5. Sri B.P. Singh Kachhawah, learned Standing Counsel for respondent supports the above submission.

6. I have carefully considered the submissions of learned Counsel for the parties.

7. The controversy raised in this writ petition is whether the petitioner whose service condition was governed by the Provisions of U.P. Co-operative Society Employees Regulation, 1975 is entitled to gratuity as per provision of the Payment of Gratuity Act, 1972?

The controversy so raised stands concluded by a judgment of this Court in the case of Brahmawarta Commercial Co-operative Bank Ltd., Rampur v. Presiding Officer and others, ADJ-2012-(10) Page 8 wherein this Court has held as under:--

11. The Bank paid him the amount of gratuity to the tune of Rs. 2,76,412.10p in terms of the Regulations 95 of the U.P. Employees Service Regulations, 1975. The said Regulation was framed under the provisions of the U.P. Co-operative Societies Act, 1965 and the Rules framed thereunder. The employees of the Co-operative Bank are governed by the said Regulations (for short 1975 Regulations). The 1975 Regulations were framed by the Institutional Board u/s 122 of the U.P. Co-operative Societies Act, 1965. The Regulation 95 deals with the gratuity, it provides that an employee is entitled to gratuity equivalent not more than 15 days salary for every completed year of service, if he has attained the age of superannuation. The Bank stand is that it has paid the gratuity to its above mentioned employee in terms of the said Regulations. However, after receiving the said amount the employee moved all application under the provisions of the Payment of Gratuity Act, 1972 and he claimed a higher amount of the gratuity.

16. Therefore, the employees of the Bank continued to be governed by this Regulation in the matter like emoluments, promotion, disciplinary control etc. Regulation, 1995 provides that employees shall not get gratuity more than 15 days salary for each completed year of service, therefore neither any agreement contrary to the Regulations would be enforceable. Moreover the Payment of Gratuity Act would not prevail over the U.P. Co-operative Societies Act which is a Special Act. Thus the writ petition was dismissed.

8. In Writ--C No. 34538 of 2009--Vikram Singh Rathi v. Appellate Authority and others, and other connected writ petitions decided on 13.7.2013, this Court held as

under:--

The petitioner was employed as a clerk in Aligarh Zila Sehkari Bank Limited and he retired on 31.7.2004 as Assistant Accountant. He was paid the gratuity in accordance to U.P. Co-operative Societies Employees Service Regulations, 1975 at the rate of 15 days salary for each completed year of service. However, he lodged a claim under the Payment of Gratuity Act, 1972 before the controlling authority claiming payment of gratuity at the rate of one month per completed year of service. After contest the controlling authority rejected the claim vide order dated 31.3.2008 whereafter the matter was carried before the appellate authority but the appeal was also dismissed vide order dated 15.4.2009. Both these orders are under challenge in the present petition.

The issue is no longer res-integra as a Single Judge of this Court in the case of Deo Raj Singh v. Fatehpur District Co-operative Bank Limited, 2005(107) FLR 28 has held that such employees as the petitioner who are governed by the 1975 Regulations are entitled to gratuity in accordance to the said Rules and not in accordance with the Payment of Gratuity Act, 1972 which is a general law on the issue. This judgment has been followed in several decisions and lately in the case of Brahmawarta Commercial Co-operative Bank Ltd., Kanpur v. Presiding Officer, Industrial Tribunal III, U.P., Kanpur 2012(134) FLR 574. Counsel for the parties have not been able to point out any decision contrary to it.

Having gone through the two judgments, the Court has no reason to take a different view.

Accordingly, this is not a fit case for interference under Article 226 of the Constitution of India. Rejected.

9. Respectfully following the law laid down in the aforesaid decisions, it is held that the petitioner has been lawfully paid gratuity in accordance with Regulation, 1975. He cannot claim gratuity under the provisions of the Payment of Gratuity Act, 1972.

10. The writ petition is wholly misconceived and therefore deserves to be dismissed. In result the writ petition fails and is hereby dismissed.