

(2007) 12 CAL CK 0056

Calcutta High Court

Case No: Writ Petition No. 1337 (W) of 2005

Shankar Ghosal

APPELLANT

Vs

Howrah District Central

Co-operative Bank Ltd. and

RESPONDENT

Others

Date of Decision: Dec. 5, 2007

Acts Referred:

- Payment of Gratuity Act, 1972 - Section 7(4), 8

Citation: (2008) 117 FLR 1160 : (2008) 3 LLJ 394

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Tapas Mukherjee, for the Appellant; Dhiman Sengupta, for the Respondent

Final Decision: Dismissed

Judgement

Jayanta Kumar Biswas, J.

The petitioner in this writ petition dated January 24, 2005 is seeking a mandamus directing the respondents to recalculate gratuity payable to him on the basis of provisions of the Payment of Gratuity Act, 1972, and pay him Rs. 73,762/- with statutory interest. The two questions which have arisen are: (i) whether he was entitled to approach the writ Court avoiding the controlling authority empowered to take steps for recovery of gratuity in terms of the provisions in Section 8 of the Payment of Gratuity Act, 1972; and (ii) whether he was entitled to get gratuity under the provisions of the Payment of Gratuity Act, 1972.

2. He retired from the service of the first respondent on December 30, 2002. He was entitled to get gratuity, and accordingly, on March 1, 2004 the bank gave him gratuity on the basis of para. 10.2 of the Krishna Murti Committee recommendations which had been accepted by the bank. On July 24, 2004 a bipartite settlement, effective from July 1, 2004, was signed between the bank and

the employees" federation. It was provided that gratuity would be paid to a retired employee, according to provisions of the Payment of Gratuity Act, 1972. One Sisir Kumar Bose, another employee of the bank, retired on November 6, 2001, moved a writ petition in this Court in 2004 contending that though he was entitled to get gratuity under provisions of the Payment of Gratuity Act, 1972, the bank did not give him the benefits. Order was made in July 2004 and accordingly the bank paid him gratuity under provisions of the Payment of Gratuity Act, 1972. Noticing these developments, the petitioner who had received his gratuity on March 1, 2004 without raising any objection submitted a representation dated August 3, 2004 contending that he was also entitled to get gratuity under provisions of the Payment of Gratuity Act, 1972. Since the bank did not oblige him, he took out this writ petition.

There is no stated reason why he did not take steps u/s 8 of the Payment of Gratuity Act, 1972. He has rather incorrectly said in par. 19 of the writ petition that he had no other equally efficacious remedy available before any other forum. Counsel has said that in view of Section 7(4)(a) of the Payment of Gratuity Act, 1972, the bank was under an obligation to refer the matter to the Controlling authority, after depositing the amount claimed by the petitioner. I am unable to agree with him. At the relevant point of time there was no dispute regarding the amount of gratuity payable to the petitioner. He raised a dispute after receiving the amount, and under the circumstances, if at all, he was entitled to submit the requisite application to the controlling authority for recovery of gratuity u/s 8 of the Payment of Gratuity Act, 1972. In my view, he should not have approached the writ Court.

3. The bank does not admit that the petitioner was entitled to get gratuity under provisions of the Payment of Gratuity Act, 1972. In its affidavit it has rather stated that gratuity was paid to him according to the existing provisions by which both the parties were bound. I have not been shown anything from which it can be unmistakably held that he was entitled to get gratuity under provisions of the Payment of Gratuity Act, 1972. It is not known on what basis Sisir got benefit in terms of the bipartite settlement dated July 24, 2004 by which he was not covered. In any case, the question whether at the date the petitioner retired, he was governed by the provisions of the Payment of Gratuity Act, 1972, is essentially a question of fact that could be examined on the basis of evidence recorded by the controlling authority under the Payment of Gratuity Act, 1972. As I have said, the petitioner should not have approached the writ Court.

4. For these reasons, I dismiss the writ petition making it clear that nothing in this judgment shall prevent the petitioner from approaching the controlling authority seeking the benefit in accordance with law. There shall be no order for costs.

Urgent certified xerox copy of this order shall be supplied to the parties, if applied for, within three days from the date of receipt of the file, by the Section concerned.