



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 11463 OF 2020 (L-RES)



BETWEEN:

M/S CANARA BANK
REPRESENTED BY MANAGING DIRECTOR AND CEO
HEAD OFFICE AT NO.112, J.C. ROAD,
BANGALORE - 560 002.

...PETITIONER

(BY SRI. UDAYA SHANKAR RAI P., ADVOCATE)

AND:

SMT. M SHANTHA KUMARI

...RESPONDENT

(BY SMT. GEETA R. SHINDE, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDERS DATED 31.10.2019 PASSED BY THE APPELLATE AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT, 1972 AND THE DEPUTY CHIEF LABOUR COMMISSIONER (CENTRAL), BANGALORE IN APPEAL AND ALSO THE CORRIGENDUM DATED 13.11.2019 TO THE ORDER PRODUCED AT ANEXURE-F AND G RESPECTIVELY.

THIS WRIT PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

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POORNIMA
SHIVANNA
Location: HIGH
COURT OF
KARNATAKA



ORDER

1. The petitioner is before this Court seeking for the following reliefs :

a) The Petitioner prays that this Hon'ble Court may pleased to issue a writ of Certiorari to quash the impugned orders dated 31.10.2019 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 and the Deputy Chief Labour Commissioner (central), Bangalore in Appeal No.36(129)/2018/B1 and also the Corrigendum dated 13.11.2019 to the order produced at ANNEXURE-F and G respectively.

b) Grant such other relief or reliefs as this Hon'ble Court deems fit in the circumstances of the case including cost of this writ petition.

2. The petitioner is a nationalised Bank constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970. One Mr. Srimantha D, husband of the respondent joined the service of the petitioner-Bank on 13.3.1975 as a Peon and subsequently was promoted as a Clerk with effect from 24.8.1987. During his service, the petitioner had availed Housing Loan which was being repaid by him from time to time.



3. In the year 2005, alleging that there is gross misconduct on the part of the husband of the respondent, disciplinary proceedings were taken up against him and a charge sheet was issued on 14.12.2005. The Enquiry Officer submitted its finding on 20.5.2006, holding the charge to be proved and thereafter, punishment of compulsory retirement was imposed on 27.7.2006 by the disciplinary authority.
4. Appeal preferred by the husband of the respondent was dismissed on 3.8.2007. An industrial dispute was filed. In the meanwhile, the said husband expired. On his expiry, his legal heirs, i.e. the wife and children, were impleaded in the said industrial dispute, which came to be withdrawn on 11.12.2018. In the meanwhile, an application filed by the husband in the year 2017 for release of the gratuity amount came to be rejected. Hence, the employee had



approached the Controlling Authority for a direction to make payment of the said amounts.

5. In the proceedings, it was contended by the Bank that there are dues liable to be paid on account of the housing loan and the dues which are due on account of the Staff Welfare Fund. These dues have to be adjusted from and out of the gratuity amount, and as such, no amount is due.
6. The Controlling Authority, after considering the matter, came to the conclusion that adjustment of gratuity amount towards loans of the employee was permissible and as such rejected the application filed by the employee vide its order dated 19.12.2017.
7. An appeal came to be filed by the respondent herein before the Appellate Authority in Appeal No.36(129)/2018/B1, and the Appellate Authority by way of its order dated 21.10.2019, set aside the order of the Controlling Authority and directed the



Bank to make payment of gratuity amount along with interest at 10% p.a. from the date it became due till the actual date of payment. It is challenging the said order, the petitioner-Bank is before this Court.

8. Sri. Udaya Shankar Rai P, learned counsel for the petitioner-Bank would submit that the decision of the Appellate Authority is not proper inasmuch as by a mandate executed by the workman, the Bank was entitled to adjust the gratuity amounts towards the loan amounts due, which was pending as on that date. On enquiry regarding the term/period of the loan, he submitted that the loan has been closed on account of the compulsory retirement of the workman. He further submits that the Appellate Authority could not have directed payment of interest on the said amount since the application/claim was made beyond the period of 90 days and the same not being within the reasonable time, in which only the principal amount could have been directed to be paid



and not interest. On these grounds, he prays to allow the writ petition.

9. Per contra, Smt. Geeta R. Shinde, learned counsel appearing for the respondent submits that the order passed by the Appellate Authority is proper and correct and therefore, there is no necessity to interfere with the said order.

10. Heard learned counsels on both sides and perused the papers.

11. The short question that would arise in the present matter is whether the loan account of an employee can be adjusted towards the gratuity amounts?

12. There is a special treatment for payment of gratuity both under the Payment of Gratuity Act and also under the Code of Civil Procedure, 1908. Gratuity has been given a special protection and special



treatment inasmuch as it is made absolutely clear that the gratuity amounts can neither be attached nor can any garnishee order be passed. Section 7 of the Payment of Gratuity Act, 1972 is herewith reproduced for easy reference :

7. Determination of the amount of gratuity.-

(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.



(4)(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit -

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under subsection (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under



the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely :

- (a) enforcing the attendance of any person or examining him on oath;*
- (b) requiring the discovery and production of documents;*
- (c) receiving evidence on affidavits;*
- (d) issuing commissions for the examination of witnesses.*

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code, 1860 (45 of 1860).

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under subsection (4), or deposits with the appellate authority such amount.

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.



13. The protection to gratuity is granted in order to safeguard the financial security of a person at the time of his retirement. In the present case, the petitioner-Bank has sought to adjust a sum of Rs.9,85,420.24 towards the housing loan and a sum of Rs.1,29,691/- on account of Staff Welfare Fund liability. The Staff Welfare Fund would come within the domain of the service conditions. However, home loan occupies a completely different position inasmuch as the home loan would be governed by the terms of the loan agreement which is a commercial transaction between the bank and the debtor. Whether the debtor is an employee or not, it is the said terms of the loan which would govern the said relationship.
14. In the present case, admittedly, there is no demand made for repayment of Housing loan interest by the Bank on the employee and/or after his expiry on his legal heirs/legal representatives. The Bank has unilaterally on the basis of an alleged authorization,



determined the amount due on its own and recovered the same from gratuity amount payable by it, there being no dispute about the requirement of payment of gratuity amount.

15. Home loan is governed by the agreement of loan. It is for the Bank to act in terms of the said agreement and exercise all rights under the said agreement as against the debtor. The Bank could not have adjusted the same from and out of gratuity amount, which are protected under Section 7 of The Payment of Gratuity Act, 1972. It is this factor which has been taken into consideration by the Appellate Authority and the action of the Bank in adjusting the said amount has been set aside.

16. Mr. Udaya Shankar Rai, learned counsel for the petitioner-Bank, submits that interest ought not to be payable by relying upon Rule 10 of the Payment of



Gratuity Rules 1972 which is reproduced here under for easy reference.

10. Application to controlling authority for direction.—(1) *If an employer-*

(i) *refuses to accept a nomination or to entertain an application sought to be filed under rule 7, or*

(ii) *issues a notice under sub-rule (1) of rule 8 either specifying an amount of gratuity which is considered by the applicant less than what is payable or rejecting eligibility to payment of gratuity, or*

(iii) *having received an application under rule 7 fails to issue any notice as required under rule 8 within the time specified therein,*

the claimant employee, nominee or legal heir, as the case may be, may, within ninety days of the occurrence of the cause for the application, apply in Form 'N' to the controlling authority for issuing a direction under sub-section(4) of section 7 with as many extra copies as are the opposite parties.

Provided that the controlling authority may accept any application under this sub-rule, on sufficient cause being shown by the applicant, after the expiry of the specified period.

(2) *Application under sub-rule (1) and other documents relevant to such an application shall be presented in person to the controlling authority or shall be sent by registered post acknowledgement due.*



17. The further contention is that interest could not be awarded by the Payment of Gratuity (Central) Rules, 1972. By relying upon the said Rules, he submits that the employee could have made an application within a period of 90 days. In the present case, application was made in the year 2017 after a period of ten years from the order of punishment dated 27.06.2006 for compulsory retirement.

18. From the facts, it is seen that the retirement order dated 27.07.2006 was challenged before the Appellate Authority and thereafter industrial dispute was raised in CR No.72/2008 before the CGIT, Labour Court in the event of the employee having applied for payment of gratuity that would amount to giving up the employment in the proceedings before the CGIT/Labour Court since the employee could only be paid after the person accepts his retirement. In the present case, compulsory retirement order was under challenge there is no scope for the employee



to have made a claim for gratuity, it is only in the year 2017 that upon he attaining the age of superannuation, that application for release of gratuity amount has been filed and consequently, the proceedings before the Labour Court were also withdrawn.

19. Therefore, I am of the considered opinion that there is no delay in filing the application for payment of gratuity amounts. Be that as it may, even otherwise in terms of the proviso to sub clause (iii) of sub Rule (1) of Rule 10, the Authority is also authorised to condone the delay if any. There is neither restriction on the period which could be condoned nor there is an embargo imposed under the said Rules which would disentitle the applicant to receive any interest. Hence, on this ground also the writ petition will have to be rejected.

20. Hence, I pass the following order :



ORDER

- i) Writ petition stands dismissed.
- ii) The Bank is directed to comply with the order of the Appellate Authority within three weeks from the date of receipt of a copy of this order.

**Sd/-
JUDGE**

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List No.: 1 Sl No.: 27