



**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 11TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE N.S.SANJAY GOWDA

WRIT PETITION NO. 103664 OF 2023 (L-PG)

BETWEEN:

KARNATAKA VIKASA GRAMEENA BANK,
REGIONAL RURAL BANK, CONSTITUTED
UNDER R.R.B ACT, 1976, HEAD OFFICE,
DHARWAD, R/BY ITS GENERAL MANAGER,
SHRI CHANDRASHEKAR
S/O DATTAJI KRISHNARAO MORO.

... PETITIONER

(BY SMT. BHAGYASHREE N.BIKKANAVAR, ADVOCATE)

AND:

1. THE APPELLATE AUTHORITY
UNDER PAYMENT OF GRATUITY ACT, 1972 AND
DY. CHIEF LABOUR COMMISSIONER, (CENTRAL),
BANGALORE, SHRAM SADAN, III CROSS,
III MAIN, II PHASE, TUMKUR ROAD,
YESWANTHPUR, BANGALORE-560022.
2. THE CONTROLLING AUTHORITY UNDER
PAYMENT OF GRATUITY ACT AND ASST. LABOUR
COMMISSIONER (CENTRAL), KADRI AMENITY BLOCK,
1ST FLOOR, NEXT TO BSNL STAFF QUARTERS,
NH 66, PADAVU, MANGALURU-04.
3. SHRI. R.P. BHAVI, DEVAGIRI,
DHARESHWAR, KUMTA-581327.

... RESPONDENTS

(BY SRI. MADHUSUDHAN P.N. AND
SRI. BHARATKUMAR S., ADVOCATES)





THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR RELEVANT RECORDS AND ISSUE A WRIT OF CERTIORARI OR ANY OTHER WRIT OR ORDER IN THE LIKE NATURE QUASHING THE IMPUGNED ORDER DATED 16/06/2021 PASSED BY THE RESPONDENT NO.2 IN APPLICATION NO.48/02/17-A/M PRODUCED AT ANNEXURE-A AND THE IMPUGNED ORDER DATED 11/01/2023 PASSED BY THE RESPONDENT NO.1 IN APPEAL NO.36(132)/2022-B1 PRODUCED AT ANNEXURE-B, AS THE SAME BEING TOTALLY ARBITRARILY, ILLEGAL AND NOT SUITABLE IN LAW, IN THE INTEREST OF JUSTICE AND EQUITY.

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

ORDER

1. This petition is filed by the Bank, challenging the decision of the Controlling Authority, by which the Controlling Authority has determined that the 3rd respondent was entitled to a total gratuity of Rs.10,63,860.63 and since only a sum of Rs.10,00,000/- had been paid as gratuity by the Bank, the Bank was directed to pay the difference amount of Rs.63,860.63/-.

2. This order has also been conformed in Appeal.

3. It is the case of the Bank that the gratuity payable to the petitioner was higher under the Payment of Gratuity Act, 1972 (for short the Act 1972) at



Rs.12,27,531.50/- as against the gratuity payable under the Bank's regulations, which was Rs.7,98,095/- and since the gratuity payable under the Act 1972 was more beneficial, the petitioner was paid, as per the provisions of the Act 1972, the maximum sum of Rs.10,00,000/- payable under the Act.

4. It is contended that the authorities have committed an error in calculating the pay of the petitioner, of the third respondent by including the component of dearness allowance, which was contrary to the definition of 'pay' under the Bank's Regulations.

5. It is contended that the Controlling Authority was not right in incorporating the component of dearness allowance while calculating the gratuity under the Bank's regulations, since the regulations clearly stipulated that pay only meant basic pay drawn per month by an officer was to be taken for the purpose of calculating gratuity and therefore, the inclusion of the dearness allowance was incorrect.



6. Regulation 72 of the Karnataka Vikas Grammar Bank (Officers and Employees Service Regulations-2010) reads as follows:

72. Gratuity :-

- (1) *An officer or employee shall be eligible for payment of gratuity either as per the provisions of the Payment of Gratuity Act, 1972 (39 of 1972) or as per sub-regulation (2), whichever is higher.*
- (2) *Every officer or employee shall be eligible for gratuity on,*
 - (a) *retirement,*
 - (b) *death,*
 - (c) *disablement rendering him unfit for further service as certified by a medical officer approved by the Bank, or*
 - (d) *resignation after completing 10 years of continuous service, or*
 - (e) *termination of service in any other way except by way of punishment after completion of 10 years of service:*



Provided that in respect of an employee there shall be no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only.

(3) The amount of gratuity payable to an officer or employee shall be one month's pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 month's pay:

Provided that where an officer or employee has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years:

Provided further that in respect of an officer the gratuity is payable based on the last pay drawn:

Provided also that in respect of an employee pay for the purposes of calculation of the gratuity shall be the average of the basic pay (100%), dearness allowance and special allowance and officiating allowance payable during the 12 months preceding death, disability, retirement, resignation or termination of service, as the case may be."



7. As could be seen from Sub Regulation (1) of Regulation 72, it is clearly stated that an officer or an employee would be eligible for payment of gratuity either under the 1972 Act or under Sub Regulation (2), whichever is higher. Thus, if it is found that the gratuity payable to an officer or an employee is found to be more under the Bank's regulations, that amount of gratuity would have to be paid. If, however, the gratuity payable under the 1972 Act is higher, the said amount would have to be paid.

8. As could also be seen from regulation Sub Regulation (3), the gratuity payable to an officer would be one month's pay for every completed year of service. As per the proviso, however, in respect of an officer and an employee who had completed more than 30 years, they would also be eligible for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years.

9. Since, it is not in dispute that the respondent had rendered more than 30 years of service, he would be



entitled for one month's salary for 30 years of service and for 1 ½ month's pay for each completed year of service beyond 30 years.

10. The controversy, however, raised by the learned counsel for petitioner-Bank is that pay has been defined under the regulations to only mean the basic pay and therefore, the inclusion of the component of dearness allowance by the Controlling Authority would be incorrect.

11. The third proviso to sub regulation (3) states that in respect of an employee, pay for the purposes of calculation of gratuity would be the average of basic pay, dearness allowance, special allowance and officiating allowance payable during the twelve months preceding the retirement. Thus, for the purposes of calculating gratuity in respect of an employee of the Bank, the component of Dearness is required to be included.

12. However, it is contended that because the third proviso is made applicable only to an employee and the



second proviso is specifically made applicable to an Officer, for the purposes of calculating the gratuity to an Officer, only the basic pay as provided in the second proviso is required to be taken into consideration.

13. Section 2(s) of the Payment of Gratuity Act, reads as follows:

"2. *Definitions.— XXXXX*

(s) *"wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employments and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance."*

14. Thus, as per the definition of *wages* under the Act, Dearness Allowance also forms a component of wages. The third proviso to the regulations also incorporates this fact, but the argument of the Bank is that this is applicable only to an employee and not to an officer.



15. It is to be stated here that the Officer of the Bank is also an employee of the Bank. Merely because the expression "Officer" and "Employee" are used separately that would not mean that the Officer is not an employee of the Bank.

16. Since, the Officer is also an employee of the Bank, for the purposes of calculating the gratuity in respect of the Officer, the third proviso would stand attracted and consequently the Dearness allowance would also have to be taken into consideration for the purposes of calculating the gratuity.

17. It is to be noticed here that different yardsticks cannot be applied for calculating gratuity for the employees of the same organisation and a common yardstick would have to be adopted. Since the 3rd proviso provides for calculation of gratuity of an employee of the bank, which would obviously include even an officer of the Bank, the said proviso which mandates that Dearness allowance will



also have to be taken into consideration for calculating gratuity, would be applicable.

18. The Controlling Authority has calculated the gratuity as follows:

"One Month's pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 month's pay

Rs.68,636.17 x 15 years = Rs.10,29,542.55

Provided that where an officer or employee has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years.

*One half of Rs.68,636.17 – Rs.34,318.08 x 1 year
= Rs.34,318.08*

*Total Rs. Rs.10,29,542.55 + Rs.34,318.08
= Rs.10,63,860.63*

Total Gratuity payable : Rs.10,63,860.63

*Less Gratuity paid as per : Rs.10,00,000.00
Per the Act*

Different of Gratuity payable : Rs.63,860.63



Since gratuity payable under the Act is confined to the ceiling limit of Rs.10,00,000, though the actual calculation works out to Rs.12,27,531, payment of gratuity under the service Regulations of the Respondent is more beneficial to the Applicant, which works out to Rs.10,63,860.63.”

19. In my view, this calculation cannot be found fault with.

20. However, reliance is placed on the decision of the Division Bench of the Calcutta High Court rendered in FMA No.657/2020, decided on 4th February 2021 and the Single Judge judgment of the Kerala High Court in the case of ***Thomas Kurian Vs. Idukki District Co-operative***¹. This decision can be of no avail.

21. In the decision of the Calcutta High Court, though the Division Bench has stated that the pay in respect of an Officer would only mean the basic pay, it is to be noticed here that the Calcutta High Court has not taken

¹ (2003) III LLJ 1026 Ker



into consideration the definition of wages under the Payment of Gratuity Act.

22. In this regard, it may be noted that the Division Bench of the Madhya Pradesh High Court has, in fact, rendered a decision, which is produced as Annexure-1, in which the Madhya Pradesh High Court had held that the component of Dearness Allowance ought to be included while calculating the gratuity under the Service Regulations.

23. It is also stated that this order was confirmed by the Hon'ble Supreme Court in SLP (C) Nos.11113-11115/2019, which is produced as Annexure-2.

24. It is therefore clear that, while calculating the gratuity even under the Service Regulations of the Bank, the Bank would have to be necessarily include the component of Dearness Allowance for the purpose of calculating the gratuity.



25. In my view, since this calculation of gratuity by the Controlling Authority is in accordance with the provisions of the Act and also the regulations, there is no infirmity in the order passed by the Controlling Authority and also the confirmation of the said order in appeal. Resultantly, the writ petition is dismissed.

Sd/-
JUDGE

VB & VNP* / CT:BCK
List No.: 1 Sl No.: 11