



IN THE HIGH COURT OF ORISSA AT CUTTACK

WA No.323 of 2025

Cuttack Central Co-operative Bank Ltd., Cuttack ***Appellant***

Dr. Patanjali Tripathy, Advocate

-versus-

The Joint Labour Commissioner, Bhubaneswar-cum-Appellate Authority under Payment of Gratuity Act, Bhubaneswar and others ***Respondents***

Mr. Sanjay Rath, AGA for Respondent Nos.1 to 3

Ms. S. Sunandini, Advocate for Respondent No.4

CORAM:

THE HON'BLE THE CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE MURAHARI SRI RAMAN

ORDER

18.09.2025

Order No.

03. 1. The instant writ appeal arises from a judgment dated 8th November, 2024 passed in WP(C) No.9493 of 2022 by the Single Bench, wherein the writ petition filed by the appellant challenging the judgment and order dated 28th March, 2022 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 was dismissed.
2. Undeniably, respondent no.4 was employed as Deputy Manager in the appellant-Bank and attained the age of superannuation with effect from 31st July, 2010. Despite having allowed to retire from service without any blemish or disciplinary proceeding having initiated while in employment, the retiral benefit was withheld by the appellant which constrained the respondent no.4 to move to the authority under the Payment of Gratuity Act, 1972 for release of the gratuity amount. The appellant took a plea that said respondent no.4 stood as a guarantor to a loan disbursed to the principal borrower, who failed and neglected to pay the loan amount and, therefore, the liability to pay the amount is



coextensive. The recovery thus can be made from her and for such reason, the amount of gratuity was not disbursed to the respondent no.4. The authority did not find any conditions, stipulation and/or powers conferred under the statute upon the appellant to withhold the gratuity amount and directed the payment to be made. The order was assailed before the Appellate Authority under the said Act, but the appellant could not emerge successful therefrom. Ultimately, the writ petition was filed assailing the order of the Appellate Authority reiterating and restating the factual grounds as taken before the original authority, but the writ Court did not find any power conferred upon the appellant to deny the disbursement of the gratuity amount to the respondent no.4 after she attained the age of superannuation.

3. Learned counsel for the appellant vociferously submits that since respondent no.4 stood as guarantor to a loan disbursed to principal borrower, any default or the liability is also imposed upon her and unless the entire loan amount is liquidated, the gratuity amount cannot be released in favour of the respondent no.4.

4. We find from Section 4 of the Payment of Gratuity Act, 1972 that the power to forfeit the payment of the gratuity is conferred upon the employer subject however to the conditions enshrined therein are fulfilled. Sub-section (6) of Section 4 of the said Act postulates that the gratuity of an employee shall be forfeited to the extent of damage or loss so suffered, provided such employee has been terminated from service for any act, wilful omission or negligence which causes the damage or loss or destruction of the property belonging to the employer. The said sub-section starts with the non-obstante clause and, therefore, has an overriding effect on the preceding sub-sections of Section 4 thereof. The legislature has restricted the applicability of said provision only in the event of contingencies incorporated therein



and, therefore, any transgression therefrom or imbibing any other contingencies not contemplated therein, in the action is illegal and not sustainable in law.

4.1. The gratuity is neither a bounty nor a bonanza, but a deferred payment of salary to an employee. It is recognition of his successful accomplishment of the services rendered to the employer and, therefore, is required to be paid on the date of superannuation. The statutory sum or the amount entitled to an employee under a particular Act cannot be forfeited nor be denied in absence of any power conferred upon the employer. The moment the power is to be exercised in a particular eventuality, any other eventuality cannot be impliedly engulfed into the said provision as the authority has to travel within the circumference of the statutory provision and cannot wriggle out from the provisions applicable in this regard. The amount of gratuity can only be forfeited in the event of a termination of service for an act or the things done while in the employment causing a damage or loss to the employer and not otherwise.

5. Admittedly, the respondent no.4 was made to retire after achieving age of superannuation and, therefore, the incidences encompassing the said sub-section does not invite withholding of the gratuity amount.

6. Apart from the same, the writ Court should not interfere with the order of the fact finding authority unless the finding appears to be perverse, irrational, unreasonable and beyond the conferment of powers by the statute. The statutory authorities concurrently found the action of the appellant *de hors* the powers conferred in the Payment of Gratuity Act, 1972 and the writ Court refused to entertain the writ petition filed by the appellant. We do not find any ground warranting interference with the impugned judgment.



7. The writ appeal, sans merit, is hereby dismissed. No order as to costs.

(Harish Tandon)
Chief Justice

(M.S. Raman)
Judge

MRS/Laxmikant