

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.1919 of 2021**

=====

The Chairman, Dakshin Bihar Gramin Bank (Erstwhile Madhya Bihar Gramin Bank) Head Office, Sri Vishnu Commercial Complex, Asochak Chowk, New Bypass Road, (N.H.-30), Patna.

... .. Petitioner/s

Versus

1. The Union of India through the Ministry of Labour and Employment, New Delhi.
2. The Assistant Labour Commissioner (Central), Patna and Controlling Authority under the payment of Gratuity Act, 1972, 2nd Floor, A- Block, Room No. 17, Mauryalok Complex, Patna.
- 3.1. Smt. Sundar Devi Wife of Late Surendra Kumar R/o Village- Chhotaki Sandiya, Ratanpur, Dist- Bhojpur.

... .. Respondent/s

=====

**Appearance :**

For the Petitioner/s	:	Mr. Ranjeet Kumar Pandey, Advocate
For the Respondent/s	:	Kanak Verma, Advocate
		Mr. Harendra Singh, Advocate
		Mr. Jai Prakash Singh, Advocate

=====

**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**  
**ORAL JUDGMENT**

**Date : 04-01-2023**

Heard learned counsels for the respective parties.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

“(i) For issuance of writ/writs, order/orders or direction/directions in the nature of Certiorari for setting aside Decision and Order dated 05-06-2020 which has been signed on 09-06-2020 under the signature of Sri Rohit Mani Tiwari, Learned Assistant Labour Commissioner (Central), Patna and Controlling Authority under the payment of Gratuity Act, 1972 and communicated to the Bank vide notice dated 09/22-06-2020 whereby and whereunder Learned Controlling



Authority directed the management of Dakshin Bihar Gramin Bank to pay gratuity and interest as per regulation of MBGB to the tune of Rs. 8,32,882/- within 30 days from the day of receipt of the order.

(ii) For any other relief/reliefs for which the petitioner may be found entitle in the eye of law and in the facts and circumstances of the case may also be granted in favour of the petitioner.”

3. In terms of sub-Section 7 of Section 7 of the Payment of Gratuity Act, 1972 the petitioner has a statutory remedy of filing appeal against the Controlling Authority. Without exhausting the statutory remedy, the petitioner has rushed to this Court. It is stated that in the event of filing appeal he is required to deposit gratuity amount as stated in the second proviso to Section 7 of the Payment of Gratuity Act, 1972.

4. At the stage, it is submitted that amount of Rs. 8,24,851/- is stated to have been paid to the respondent – workmen. Merely paying certain amount does not permit the petitioner to ignore the statutory remedy available to him. Apex Court in the case of *State of Jammu and Kashmir V/s. R.K.Zalpuri and others* reported in AIR 2016 SC 3006, **Paragraph-20**, it is held as under:

“20. Having stated thus, it is useful to refer to a passage from *City and Industrial Development Corporation V/s.Dosu Aardeshir Bhiwandiwala and others* {(2009) 1 SCC 168}, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-



*“The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:*

*(a) Adjudication of writ petition involves any complex and disputed question of facts and whether they can be satisfactorily resolved;*

*(b) The petition reveals all material facts;*

*(c) The petitioner has any alternative or effective remedy for the resolution of the dispute;*

*(d) Person invoking the jurisdiction is guilty of unexplained delay and laches;*

*(e) Ex facie barred by any laws of limitation;*

*(f) Grant of relief is against public policy or barred by any valid law; and host of other factors”*

5. In the light of the aforesaid decision of the Apex Court, the present petition is not maintainable. Accordingly, writ petition stands dismissed reserving liberty to the petitioner to invoke sub-Section 7 of Section 7 of the Payment of Gratuity Act, 1972 in accordance with law. Petitioner – employer, if he files appeal, in that event he is permitted to deposit 50 % of the disputed gratuity amount to entertain appeal, since petitioner is stated to have paid certain gratuity amount to the respondent – employee.

Underline supplied



6. The appellate authority is hereby directed to take note of Section 14 of the Limitation Act. If petitioner satisfy delay, the same shall be taken note of in terms of relevant provision of Payment of Gratuity Act, 1972.

**(P. B. Bajanthri, J)**

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	09.01.2023
Transmission Date	

