IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Sudip Deb

WPA No. 2183 of 2009

Sri Rabindra Nath Naskar
-Vs-
Oriental Bank of Commerce & Ors.

For the Petitioner	: Ms. Jaharlal Ray Mr. Kavita Rani
For the Respondents	: Mr. Pankaj Kumar Mukherjee
Heard on	: 20.11.2026
Judgment on	: 27.11.2026

Sudip Deb, J.:-

1. The instant writ petition has been filed by the petitioner, inter alia, praying for a writ of mandamus directing the respondents to produce the entire service records on the basis of which calculation of retiral benefits of the petitioner has been made and to pay his entire retiral benefits together with interest.
2. It appears from the record that the respondent no. 4 herein has filed two affidavits on behalf of the respondent no. 1 bank. The petitioner has also filed his affidavit-in-reply to one of such affidavits-in-opposition.
3. Learned counsel for the petitioner submitted that the petitioner was appointed as a Peon by the respondent no. 1 bank on 22nd March, 1984. He further submitted that the respondent no. 4 thereafter confirmed the

service of the petitioner and the confirmation was notified to the petitioner by way of a written communication dated 29th September, 1984. He further submitted thereafter the petitioner was promoted to the post of Clerk on 20th June, 2001. It is also submitted that thereafter by way of a letter dated 18th January, 2002, the Deputy General Manager of the respondent no. 1 had issued an order of transfer and directed the petitioner to join service at Bankura and based on that transfer order the petitioner also joined service at Bankura. It is submitted that from September, 2004 to December, 2004 the petitioner was seriously ill and was irregular as a result of which the respondent no. 2 informed the petitioner to file a leave application along with medical certificates. Subsequently, the petitioner informed the respondent no. 3 by way of a written communication dated 18th January, 2006 explaining the reasons of his frequent absence in his office. It is further submitted that by way of a written communication dated 24th October, 2007, the respondent no. 4 noted the fact that the petitioner had voluntarily vacated the employment with effect from 11th August, 2007 and treated the petitioner's case as voluntary cessation of employment from the bank's service. According to the learned counsel for the petitioner though the respondent no. 1 through its officer informed this fact, it did not pay all the post retiral benefits to the petitioner which includes Provident Fund dues as also gratuity.

4. It is submitted that voluntary cessation from employment cannot be treated as punishment. As such, it is argued that the petitioner is entitled to the gratuity and other pensionary benefits. It is also submitted that

during the service, the petitioner had taken house building loan from the bank on three installments and almost the entire amount had been deducted from the petitioner's salary by the bank. As such, it is argued that necessary orders should be passed directing the respondent authorities to pay the post retiral benefits to the petitioner considering the fact that when the voluntary cessation had taken place the petitioner was working as a Clerk. It is further argued that the petitioner is entitled to get post retiral benefits as Clerk as he had never joined duty as Peon after demotion. It is also argued that pension is a right of an employee who completed the service of ten years and such right is guaranteed under Articles 14 and 300A of the Constitution of India. In support of such contention, reliance has been placed on a judgment of the Hon'ble Supreme Court in the case of ***United Bank of India (now Punjab National Bank) vs. Swapan Kumar Mullick and Others (2025 INSC 881)***.

5. Learned counsel for the respondents submitted that the instant writ petition is not maintainable as there is an alternative forum available to the petitioner under the Industrial Disputes Act, 1947 under which the issues raised in the writ petition can be urged. It is also argued that the entire post retiral benefits had been paid to the petitioner. It is also argued that the petitioner by his own representation dated 30th March, 2006 had sought conversion to the post of Peon and such request had been accepted by the bank by its letter dated 24th July, 2006 and considering his status as Peon, the entire post retiral benefits had been disbursed. It is also argued that the instant writ petition involves disputed

questions of fact and the same cannot be adjudicated by way of affidavit evidence in exercise of this Court's extraordinary jurisdiction.As such, it is argued that the instant writ petition should be dismissed.

6. It is important to mention that though the order of a Co-ordinate Bench of this Court passed earlier records the fact that respective parties had filed the written notes of argument but from the record it is found that only the petitioner has filed his written notes of argument. During the course of hearing this has been duly pointed out to the learned counsel for the respondents.
7. Heard the learned counsel for the parties and perused the record.
8. In view of the rival contentions of the parties, the following issues thus emerge for consideration:-

    (a) Whether the writ petition is maintainable?

    (b) Whether the petitioner is entitled to the post retiral benefits?

9. This Court is of the view that the first question relating to the maintainability of the instant writ petition needs to be decided first. This Court notes that the respondent bank, which is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), and now also governed by virtue of the amalgamations under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), is "State" within the meaning of Article 12 of the Constitution of India. Therefore, the instant writ is maintainable against the respondent bank.
10. It is well settled that the existence of an alternative remedy does not operate as an absolute bar to the exercise of jurisdiction under Article

226, but is a rule of discretion applied having regard to the facts of each case, particularly where, as here, the grievance concerns non-payment of post retiral dues that an employee requires for his subsistence, implicating the protection of Article 21 of the Constitution. Therefore, the point of alternative remedy as argued by the learned counsel for the respondents fails and this Court is of the view that the writ petition is maintainable.

11. The second and most important point which comes up for consideration is whether and to what extent the petitioner is entitled to his post retiral benefits.

12. Though the petitioner averred and submitted that the petitioner is entitled to post retiral benefits as Clerk but from the record this Court finds that a representation had been made by the petitioner on 30th March, 2006 addressed to the Assistant General Manager of the respondent no. 1 seeking conversion from the post of Clerk to the post of Peon as he was not able to work as a Clerk. The respondent no. 1 bank had replied to the said representation by way of a written communication dated 29th July, 2006 addressed to the petitioner accepting such proposal and, inter alia, holding that the petitioner shall be permanently debarred from promotion to the clerical cadre and there would be no commitment to the post at a particular branch/office.

13. It also appears from the record that voluntary cessation had taken place with effect from 11th August, 2007. This fact is not disputed. This is also an undisputed fact that some amount had been paid to the petitioner on account of gratuity as also on other heads.

14. It also appears from a communication dated 28th October, 2008, annexed to one of the affidavits-in-opposition filed on behalf of the respondent bank that a sum of Rs.1,24,273.93 had been paid on account of gratuity. However, it also appears from the said communication that though the payable amount in the said document was Rs.3,50,000/- but only the said sum of Rs.1,24,273.93 had been paid due to termination of the petitioner's service by way of punishment.

15. It further appears from the said communication that such amount had been paid to the petitioner considering the petitioner as Peon of the respondent no. 1 bank. However, the petitioner had subsequently also made a representation to the respondent no. 4 to consider his financial stringency as he was the only earning member in the family and requested to consider the petitioner's case and allowing the petitioner to join the service. From the said representation dated 23rd December, 2009, it also appears that the petitioner had categorically stated that the petitioner was misguided and filed the instant writ petition and in the event the bank accepts the petitioner's request then the petitioner would withdraw the instant writ petition immediately. However, the bank did not give any reply to the petitioner. This is also a fact that after voluntary cessation from service on 11th August, 2007, the bank did not pay a sum of Rs.1,10,360.57 to the petitioner. The said sum had been paid finally on 25th August, 2023 to the petitioner pursuant to a direction passed by a Co-ordinate Bench of this Court.

16. This is also important to note though the petitioner claimed post retiral benefits but no particulars have been given relating to the claim. The

instant writ petition is devoid of any particulars relating to the petitioner's actual claim on account of post retiral benefits. This Court also does not find any representation of the petitioner made to the respondent no.1 quantifying the actual claim. In fact, the claim of the petitioner to get pensionary benefit is also devoid of any particulars as the petitioner has not mentioned any specific amount quantifying his claim. In the absence of specific figure, merely on the basis of a prayer it would be impossible to come to any specific finding relating to the petitioner's claim. This Court is also of the view that the finding of the respondent relating to the deduction of the amount of gratuity on account of punishment is not correct as there was no order of punishment disclosed anywhere either in the writ petition or in the affidavits filed by the parties. The claim of the petitioner as Clerk is also disputed by the respondents and from the contemporaneous documents it appears that in fact the petitioner's request to allow the petitioner to work as Peon had been accepted by the bank. Therefore, the claim of petitioner of all post retiral benefits as Clerk requires adjudication.

17. On the question whether the order of voluntary cessation of employment could operate to reduce or forfeit the petitioner's gratuity, this Court notes that such an order, founded on prolonged unauthorized absence under the relevant bipartite settlement is a valid mode of determining employment without the necessity of a disciplinary inquiry provided the employee is given due notice and an opportunity to explain his absence before the cessation takes place.

18. This is also an admitted position that the petitioner has never been terminated. Therefore, the embargo as contemplated under section 4(6) of the Payment of Gratuity Act, 1972 does not apply to the petitioner's case.

19. This Court is also of the view that it is necessary to disentangle two distinct heads of claim that appear to have been conflated in the petitioner's own pleadings: firstly, the correctness of the gratuity amount itself which depends on the petitioner's last drawn salary and length of qualifying service both are in turn contingent on resolution of the disputed cadre question and secondly, the adjustment made against the petitioner's Provident Fund on account of his admitted outstanding loan dues which is a contractual recovery stands on a wholly different footing from a statutory forfeiture of gratuity.

20. This Court is of the view that without finally deciding the point, this Court cannot accept the figure of Rs.3,50,000/- referred to in the petitioner's written notes of argument as "actual calculated amount". In the absence of any specific quantification of the petitioner's last drawn salary and a clear finding on his cadre, this Court is not in a position to verify the figure and leaves it to be examined by the bank in the first instance.

21. The decision which has been cited by the petitioner, namely, ***United Bank of India (now Punjab National Bank) vs. Swapan Kumar Mullick and Others (supra)*** for the proposition that the pension is an absolute right of an employee who completed ten years of service irrespective of the manner of cessation of his employment does not apply in the instant case as the case cited is factually distinguishable from the instant case. The Apex Court has drawn a careful distinction between

resignation and voluntary retirement as legally and substantially distinct concepts and held that the pension regulation forfeiting pension upon resignation is not, for that reason alone, manifestly arbitrary or violative of Article 14. That apart, the Apex Court has granted relief to appellant exercising its power under Article 142 of the Constitution of India and permitted to opt for pension as a very special case.

22. This Court is of the view that since the claims have not been specifically pleaded in the writ petition which sought only the retiral benefits "generally" and no supportive material has been produced, it would not be possible for this Court to adjudicate upon the claims of pensionary benefit of the petitioner.

23. On the question of interest, this Court is of the view since the petitioner's claims of post retiral benefits have not been finally adjudicated, question of awarding any interest at this stage does not and cannot arise. To do complete justice, this Court permits the petitioner to claim interest and the respondent bank is directed to consider and decide the issue of interest strictly in accordance with law.

24. It is also important to note that by a scheme of amalgamation notified by the Central Government on 4th March, 2020 [G.S.R. 153(E)] dated 4th March, 2020, with effect from 1st April, 2020, the Oriental Bank of Commerce being the respondent no. 1 herein stood amalgamated with the Punjab National Bank. By virtue of Clause 4 (9) of the said scheme which provides that pending proceedings shall not abate and may be continued by or against the transferred bank, this instant proceeding stands continued with the Punjab National Bank as successor to the respondent

no. 1. Though no formal application for bringing on record the name of the Punjab National Bank has been made but this Court considering the agony of the petitioner is of the view that appropriate representation can be made to the Punjab National Bank since Oriental Bank of Commerce being respondent no.1 stood amalgamated with the Punjab National Bank. This is also a fact that the learned counsel for the respondent bank did not raise any objection on this issue.

25. In view of the foregoing, this Court is of the view that a final adjudication on the petitioner's claim of his post retiral benefits along with the claim of interest cannot be adjudicated here on an incomplete record. Rather, it would be appropriate to direct the respondent bank to undertake a fresh, comprehensive and reasoned examination of the petitioner's entitlement.

26. The petitioner is permitted to make a detailed representation relating to the petitioner's entire claim mentioning the heads under which such claim is being made to the respondent no. 1 presently known as Punjab National Bank within six weeks from the date of communication of this order and the respondent bank is directed to reconsider by a detailed and reasoned order the petitioner's claim to his retiral benefits addressing specifically: (a) whether the petitioner at the time of cessation of his employment, held the post of Clerk or had been validly reverted to the post of Peon, (b) the correct computation of the petitioner's gratuity in the light of the observations made hereinabove and strictly in accordance with the Payment of Gratuity Act, 1972, (c) the correct computation of the petitioner's other pensionary benefits, if any, (d) the issue of interest and the petitioner's entitlement thereto, if any, in the light of the observations

made hereinabove and strictly in accordance with law. Such order shall be passed by the respondent bank within ten weeks from the date of communication of this order strictly in accordance with law after giving an opportunity of hearing to the petitioner.

27. With these observations, the instant writ petition stands disposed of.

28. There will be no order as to costs.

29. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of the requisite formalities.

(Sudip Deb, J.)