

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3436 OF 2005

Asaram Shivram Deokar
Age : 65 Yrs., Occ. Labour,
R/o : Jamgaon, Tq. :
Gangapur, Dist. : Aurangabad.

..... PETITIONER/
[ORIGINAL COMPLAINANT]

V E R S U S

1. The Managing Director
Maharashtra State Farming
Corporation Ltd.,
Senapati Bapat Marg,
Bhamburda, Pune.
2. The Estate Manager
M.S.F.C., Gangapur Farm,
Raghunath Nagar,
Tq. Gangapur, Dist.
Aurangabad.

..... RESPONDENTS/
[ORIGINAL RESPONDENTS]

3. The State of Maharashtra
Through the Secretary
Agricultural Department
Mantralaya, Mumbai – 32.
(deleted as per order
dated 15/09/2005).

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Mr. N.J.Pahune Patil, Advocate for the Applicant.

Mrs. Kalpalata Patil – Bharaswadkar, Advocate for R-1 & 2.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 23rd JANUARY, 2015

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ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. By the consent of the learned counsel for the petitioner and the learned counsel for respondent Nos. 1 and 2, the present Writ Petition is taken up for final hearing.

2. A employee, who was entitled for gratuity, was forced to approach before the Industrial Court to claim his rightful claim. The learned Member, Industrial Court, Aurangabad on 02/08/2004 allowed the Complaint [ULP] No. 320/1999 and recorded finding that the petitioner/original complainant is entitled for gratuity. However, interest was not granted and thereby allowed the

Complaint in part.

3. Challenge before this court by the employee is that, though he was entitled for interest, the same was not granted by the learned Member of the Industrial Court.

4. Complaint was lodged by the present petitioner. The same was registered as Complaint [ULP] No. 320/1999. Prayer clause ' C ' of the said Complaint reads as under :

“ Respondents, their agents, officers, servant be directed to pay gratuity ₹ 30,415/- [Rupees Thirty Thousand Four Hundred Fifteen only] along with 18% interest forthwith to the complainant ”.

The claim for gratuity was contested by the respondents on the ground that the petitioner has accepted the Voluntary Retirement Scheme and at that time he has paid the handsome amount and, therefore, he can not claim gratuity.

5. The learned Member, Industrial Court,

Aurangabad has specifically recorded finding that not paying the gratuity to the petitioner is unfair labour practice committed by the respondents. He has, therefore, directed that the respondents shall pay amount of gratuity to the present petitioner. It appears that the interest was not granted by the learned Member, Industrial Court, Aurangabad for the reason that there is shadow of doubt about handing over of the official residence.

6. Before proceeding to decide the claim of the interest, it is to be noted that the Judgment and order of the Member, Industrial Court, Aurangabad dated 02/08/2004 is not challenged by any of the respondents. Thus, the same has become final and has attained finality. Thus, it is crystal clear that the present petitioner is entitled for the gratuity.

7. Further, the learned counsel for the petitioner has submitted that the petitioner has received the gratuity amount of ₹ 30,415/- on 02/11/2004.

8. Section 7 of the Payment of Gratuity Act, 1972 [hereinafter referred as 'the Act' for brevity] deals regarding

determination of amount of gratuity. Sub section (3) of Section 7 of the Act reads as under :

“ [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. ”

9. Thus, it is for the employer to make the arrangement to pay the amount of gratuity within a period of 30 days from the date it becomes payable to the person. Sub section (3A) of Section 7 of the Act reads as under :

“ [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. ”

10. Proviso to Sub section (3A) commands that no

interest is payable if the delay is due to the fault of the employee.

11. The reasoning given by the learned Member, Industrial Court for refusing to grant interest is that there is shadow of doubt in respect of handing over of the premises. Mrs. Kalpalata Patil – Bharaswadkar, the learned counsel for respondent Nos. 1 and 2 submitted that the order passed by the learned Industrial Court is just and proper.

12. Proviso to sub section (3A) is clear that the delay of making the payment of gratuity is on the part of the employee, then only the employee is not entitled to receive the amount. In the case in hand, it was not the case of the employer/respondent that the amount of gratuity could not be paid to the employee because of the fault on the part of the employee. On the contrary, the contention of the respondent is that he did not vacate the premises. From the perusal of the Judgment, it is clear that the employer could not demonstrate anything against the present petitioner that he did not vacate the premises within the stipulated period. On the contrary, the reasoning given by the Member,

Industrial Court to deny the rightful claim of the interest of the employee on the shadow of doubt.

13. The rightful claim of the employee, such as gratuity along with interest can not be decided on “ shadow of doubt ”. In that view of the matter, the order passed by the learned Member, Industrial Court, Aurangabad rejecting the claim of interest can not stand to the scrutiny of law. Hence, the petition is allowed, however it is made clear that the petitioner shall be entitled to claim interest keeping in mind the provisions of section (3A) of section 7 and second proviso to Section 8 of the Act. It is directed that the respondents shall pay the interest within a period of 2 months from the receipt of the order. No costs.

[V.M.DESHPANDE, J.]

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