

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3545 OF 2014

Nagesh S/o. Jagdishrao Deshpande,
Age 58 years, Occ. Retired,
R/o. Mayanagar, N-2, CIDCO
Aurangabad, Tq. Dist. Aurangabad.

Petitioner/s

Versus\

1] The State of Maharashtra
through its Secretary,
Social Justice Department
Mantralaya, Mumbai-32.

2] The Managing Director,
Maharashtra State Other Backward Class
Finance and development Corporation Ltd.,
4th Floor, R.C. Chemburkar Marg,
Chembur, Mumbai-71.

Respondent/s

Mr. V.D. Gunale, Advocate for the petitioner.
Mr. S.K. Kadam, AGP for respondent No.1.
Mr. B.B. Yenge, Advocate for respondent No.2.

CORAM : S.S. SHINDE & A.M. BADAR, JJ.

DATE OF RESERVING ORDER : 9th October, 2015
DATE OF PRONOUNCING ORDER : 17th December, 2015

ORDER : [PER A.M. BADAR, J]:

1] By this petition, petitioner - retired Accountant of respondent
No.2 Maharashtra State Other Backward Class Finance and Development

Corporation Ltd. (hereinafter referred to as “Respondent No.2 - Corporation” for sake of brevity), is praying for quashing and setting aside the communication dated 7.2.2014 addressed to him by respondent No.2, thereby informing him that as the writ petition filed by him in respect of Departmental Enquiry initiated against him by respondent No.2 is pending, his request for release of amount of Gratuity and amount of encashment of Earned Leave, cannot be decided.

2] Brief facts necessary for deciding the petition are thus :-

[a] Petitioner was initially appointed as Accounts Officer with Maharashtra Electronic Corporation Ltd., MELTRON, and after its closure he was absorbed and continued with respondent No.2 - Corporation. While working as Divisional manager at Aurangabad, on 3.4.2008, the petitioner received a show cause notice with several allegations including allegation that he has disbursed funds irregularly, beneficiaries of loan are not found and loans are disbursed to ineligible persons. The petitioner replied that notice. Ultimately, the petitioner was served with charge sheet dated 7.8.2008 containing 7 charges. Respondent No.2 - Corporation then appointed one Mr. M.G. Gaikwad, retired Deputy Collector as Enquiry Officer to hold the Departmental Enquiry against the petitioner as per the provisions of the Maharashtra Civil Services (Discipline and Appeal Rules, 1979. The petitioner appointed his representative for defending him and also adduced evidence. After conclusion of the Departmental Enquiry, the petitioner

received show cause notice dated 8.6.2010, calling upon him to explain why he should not be dismissed from services of respondent No.2. In the Departmental Enquiry, it was found that loan of Rs. 42 Lakhs (approximately) was released by the petitioner in favour of fictitious suppliers of Kannad who were not available at their addresses. In the Departmental Enquiry, it was further proved that loans amounting to Rs. 47.14 Lakhs was released by the petitioner in favour of the suppliers who had no capacity to supply goods. Those suppliers had not even started the business or purchased goods against the amount of loan received by them. It was further held that the petitioner had released loan to ineligible borrowers to the tune of Rs. 12.50 Lakhs. Yearly income of such borrowers was exceeding the maximum prescribed limit and 4 borrowers were relatives of the Government employees, to whom, loan ought not to have been disbursed. The Enquiry Officer concluded that the petitioner wrongly disbursed loan amounting to Rs. 101.44 Lakhs and major part of the loan will not be recovered. It was held that the petitioner has committed breach of Rule 3 of the Maharashtra Civil Services (Discipline & Appeal) Rules. Second/final show cause notice as such was sent to him seeking his explanation as to why he should not be dismissed from services of respondent No.2 - Corporation.

[b] The petitioner submitted his explanation on 25.6.2010 and contended that the provisions of the Maharashtra Civil Services Rules are not applicable to the employees of the respondent No.2 - Corporation and that Departmental Enquiry was conducted without following the principles of natural justice.

[c] Undisputedly, the petitioner challenged the final show cause notice of his dismissal by filing complaint bearing Complaint (ULP)No. 31/2010. It was decided by the learned Labour court on 7.3.2011 and it was held that as the petitioner is not a workman, the labour court has no jurisdiction to entertain the said complaint.

[d] In Revision, challenging the said judgment and order of the Labour court, the learned Industrial Court remanded the matter to the Labour court again. After remand, the learned Labour Court decided the Complaint (ULP) No. 31/2010 on 3.9.2011. It was held that the Departmental Enquiry held against the petitioner was not fair and proper and findings of the Enquiry Officer are perverse. However, the complaint was again dismissed as there was a finding to the effect that the Labour Court has no jurisdiction to entertain the complaint as the petitioner is not a workman.

During the pendency of Complaint (ULP) No. 31/2010, the order of status-quo was operating in favour of the petitioner.

[e] The judgment and order of the learned Labour Court passed on 3.9.2011 in Complaint (ULP) No. 31/2010 dismissing the complaint of the petitioner was challenged by the petitioner by filing Revision Petition bearing Revision (ULP) No. 36/2011 before the learned Industrial Court. Respondent No.2 - Corporation challenged the same judgment, by filing Revision petition bearing Revision (ULP) No. 41 of 2011, so far as it relates to

the finding that the Departmental Enquiry against the petitioner was not fair and proper and that findings of the Enquiry Officer are perverse. Both these revision petitions came to be decided by the learned Industrial Court, by a common judgment and order dated 16.11.2011, whereby, Revision Petition No. 36 of 2011 filed by the petitioner came to be dismissed, whereas, Revision Petition No. 41 of 2011, filed by respondent No.2 corporation came to be allowed. By this judgment and order dt. 16.11.2011, the learned Industrial Court held that the Departmental Enquiry against the petitioner was fair and proper. It is further held that the findings recorded by the Enquiry Officer are not perverse but those are fair and proper findings. The findings of the learned Labour court that the complaint of the petitioner is not maintainable because petitioner is not a workman came to be confirmed by the Industrial Court.

[f] The petitioner challenged the judgment and order passed by the learned Industrial court on 16.11.2011 in Revision Petitions, bearing No. 36/2011 and 41/2011, by filing a writ petition bearing Writ Petition No. 8952 of 2011. The order of maintaining status-quo by the parties came to be passed in the said writ petition, thereby enabling the petitioner to continue in employment of respondent No.2 - Corporation.

[g] The petitioner filed one more petition bearing Writ Petition No. 677 of 2013. According to the petitioner, this writ petition came to be filed by him by way of abundant precaution and second show cause notice dated

8.6.2010 of dismissal issued by respondent No.2 Corporation is challenged by him before this Court directly in the said petition. It is thus clear that in W.P. No. 8952 of 2011, the petitioner is challenging the order passed by the Industrial Court in which the challenge is to the Departmental Enquiry and consequent final show cause notice of his dismissal came to be negated. Similarly, he has also challenged the final show cause notice of dismissal independently by separate Writ Petition Bearing No. 677 of 2013, directly.

[h] With the passage of time, because of interim orders passed by the Labour Court, Industrial Court as well as this Court, the petitioner continued in service and ultimately, stood superannuated on 31.12.2013.

[i] It is seen that after his retirement on attaining age of superannuation, the petitioner applied to the respondent No.2 Corporation on 2.1.2014 (Exhibit C) for release of payment of gratuity and amount of encashment of Earned Leave. He issued reminder on 6.1.2014. Ultimately, by impugned communication dated 7.2.2014 (Exhibit E), the Managing Director of the respondent No.2 Corporation, informed the petitioner that as his writ petition in respect of Departmental Enquiry is pending before this Court, presently, no decision can be taken on his request for release of gratuity and encashment of amount of Earned Leave. This is the cause sought to be agitated by the petitioner in the instant petition.

3] In this backdrop, by pointing out the rejoinder affidavit of the

petitioner dated 6.7.2015, Shri Gunale, learned counsel for the petitioner vehemently contended that after retirement of the petitioner from service of respondent No.2 Corporation, the amount of Gratuity and encashment of Earned Leave ought to have been released in his favour. Similarly, according to Shri Gunale, learned counsel for the petitioner, provisions of Payment of Gratuity Act, 1972, does not permit the employer to withhold the amount of gratuity after retirement of employee. He placed reliance on the judgment of the Honourable Court in SLP, in the matter of ***State of Jharkhand vs. J.K. Shrivastava*** decided on 14.8.2013. Shri Gunale submitted that no charge of misappropriation was leveled against the petitioner. According to him, the charges were regarding irregularity and the enquiry was just to harass the petitioner. According to Shri Gunale, provisions of Maharashtra Civil Services Rules are not applicable to the employees of respondent Corporation. According to him, the challenge to the judgment and order of the Industrial Court in Revision (ULP) Nos. 36 and 41 of 2011, is already disposed of on 2.8.2014. He further pointed out that the writ petition bearing W.P. No. 677 of 2013, filed by the petitioner challenging the final show cause notice of dismissal, is also disposed of by this court on 26.6.2014. Therefore, in the submission of Shri Gunale, respondent No.2 Corporation cannot withhold his gratuity as well as amount of encashment of Earned Leave.

4] As against this, Shri B.B. Yenge, learned counsel for the respondent No.2 - Corporation submitted that in the Departmental Enquiry charges leveled against the petitioner are proved and the impugned

communication is perfectly legal. We also heard Shri Kadam, learned AGP appearing for the respondent No.1 State.

5] Having heard the learned counsel appearing for the parties, and on perusal of the impugned communication dated 7.2.2014, we are of the view that there is no need to enter into the merits of the controversy as to whether the amount of gratuity can be withheld after retirement of the petitioner or not. Perusal of the impugned communication dated 7.2.2014 (Exhibit E), makes it clear that only because Writ Petition filed by the petitioner is pending in this Court, respondent No.2 was not in a position to take decision on request of the petitioner in respect of the release of amount of gratuity and amount of encashment of earned leave. It is pointed out by Shri Gunale, learned counsel for the petitioner that with passage of time, petitions filed by the present petitioner are also disposed of.

6] As stated in foregoing paras, in the enquiry held against the petitioner, charges that the petitioner wrongly disbursed loans amounting to Rs. 101.44 Lakhs and major part of which may not be recovered, are held to be proved. Thereafter, final show cause notice of dismissal on 8.6.2010 came to be issued to the petitioner. This final show cause notice as well as Departmental Enquiry was challenged by the petitioner by filing complaint before the Labour Court which came to be registered as Complaint (ULP) No. 31 of 2010. The learned Labour Court dismissed that complaint for want of jurisdiction, after holding that the Departmental Enquiry against the

petitioner is not fair and proper and findings of the Enquiry Officer are perverse. Revision Petitions bearing No.36 of 2011 filed by the petitioner challenging the said judgment and order dated 3.9.2011 of the Labour Court, came to be dismissed by the learned Industrial Court. At the same time, by very same judgment and order dated 16.11.2011, the learned Industrial court was pleased to allow the revision petition bearing No. 41 of 2011, filed by respondent No.2 Corporation challenging the findings recorded by the learned Labour court. The Industrial Court, while allowing this revision petition, held that the Departmental Enquiry is fair and proper and the findings of the Enquiry Officer are not perverse. This judgment and order dated 16.11.2011 of the learned Industrial Court in Revision Petition Nos. 36 of 2011 and 41 of 2011 was subject matter of challenge in W.P. No. 8952 of 2011 at the instance of the petitioner. Along with his rejoinder affidavit dated 6.7.2015, the petitioner has placed on record, copy of order dated 2.8.2014, passed by this Court in W.P. No. 8952 of 2011 filed by him. It is seen from perusal of this order dated 2.8.2014 (record page No. 195) that the learned counsel for the petitioner in the said petition, invited attention of this Court to the fact that the petitioner stood retired from service upon superannuation and submitted that the writ petition is rendered infructuous. Acting on the statement of learned counsel for the petitioner, the said writ petition was then disposed of as infructuous. The judgment and order of the learned Industrial Court in Revision Petition Nos. 36 of 2011 and 41 of 2011, as such was not interfered with by this Court in the said petition.

7] Along with the rejoinder affidavit, the petitioner has also placed on record (record page 200) copy of the order of the Division Bench of this Court dated 26.6.2014, in W.P. No. 677 of 2013 filed by him. By this writ petition, the second show cause notice of dismissal dated 8.6.2010, was challenged independently by the petitioner. The order dated 26.6.2014, of this Court in the said writ petition shows that the learned counsel for the petitioner, on instructions, made a statement that the petitioner has retired on attaining age of superannuation. On considering the said fact, it was held that the petition need not be entertained and accordingly the same is disposed of. As such, the second show cause notice dated 8.6.2010, about dismissal of the petitioner was not interfered with, while disposing of the said petition.

8] Be that as it may, as both the petitions filed by the petitioner are now not pending, there is no hurdle in the way of the respondent No.2 Corporation to examine the application of the petitioner for release of the amount of gratuity and amount of encashment of Earned Leave, on its own merit, in accordance with law. By way of rejoinder, the petitioner has brought to our notice that he has made representation on 21.5.2015 to the respondent No.2 Corporation, requesting it to release the amount of gratuity and encashment of Earned Leave to him, as per his entitlement. As with the passage of time, both writ petitions filed by the petitioner are already disposed, respondent No.2 Corporation need to decide the representation of the petitioner dated 21.5.2015 (Exhibit R-3 record page 186), on its own

merit, as per the provisions of law and relevant rules.

9] In view of the foregoing discussion, present writ petition is disposed of with a direction to the respondent No.2 Corporation, to decide the representation dated 21.5.2015 (Exhibit R-3) filed by the petitioner, regarding release of the amount of gratuity and amount of encashment of Earned Leave, on its own merit, as per provisions of relevant law and rules, within a period of six weeks from today. In the circumstances, there shall be no orders as to costs.

[A.M. BADAR]
JUDGE

[S.S. SHINDE]
JUDGE.

grt/-