IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3502 OF 2014

1. The President,
Shri M.S.Jain English School, Jalna
Sunilkumar Madanlal Chordiya,
Age 47 years, Occ. Service

2. The Secretary,
Shri M.S.Jain English School, Jalna
Bharatkumar Binjaraj Gadiya,
Age 47 years, Occ. Business,

3. The Head Mistress (Primary Section),
Shri M.S.Jain English School, Jalna
Mrs. Bhavna Santosh Jaju,
Age 48 years, Occ. Service

All R/o Near Bhagwan Mahaveer
Mangal Karyalay, Jalna 431203. ..Petitioners

VERSUS

Smt. Sulbah Prakash Agte,
Age 58 years, Occ. Nil,
R/o at post C/o Waman Agte,
Laxminarayanpura,
Old Jalna, Jalna 431203. ..Respondent

...
Advocate for Petitioners : Shri Sonawane M.R.
Advocate for Respondent : Shri Golewar V.P.
...
CORAM : RAVINDRA V. GHUGE, J.
Dated: June 10, 2015
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ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. Shri Sonawane, learned Advocate has canvassed several issues in

support of the prayers put forth by the petitioners in this petition. Same are opposed by Shri Golewar, learned Advocate on behalf of the sole respondent. Relevant prayer clauses (A) and (B) read as under:-

> " (A) By issuing Writ of Certiorari or appropriate writ or orders or directions in the like nature the impugned judgment and order dated 04.02.2014 passed by Ld. Labour Court, Jalna (Exh.A) in Application (PGA) No. 13/2013 may please be quash(ed) and set aside.
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> (B) To quash and set aside the Application (PGA) No.13/2013 filed by respondent as not maintainable."

3. The issue is as regards a challenge posed by the petitioners to the judgment and order dated 4.2.2014, delivered by the Controlling Authority Labour Court, Jalna, in Application (PGA) No. 13 of 2013. The application claiming gratuity, preferred by the respondent herein, has been allowed by the impugned judgment.

4. This Court has already taken a view in the matter of Chief Executive officer Zilla Parishad Beed Vs. Assistant Labour Commissioner and Controlling Authority [2014(3)Mah.L.J.639], by which, it has been concluded that the statutory remedy of appeal, available to an aggrieved party, under Section 7(7) of the Payment of Gratuity Act lies before the appellate authority and such appellate forum shall not be bye-passed merely because the law mandates the deposition of the gratuity amount as ordered by the Controlling authority, prior to entertaining an appeal.

5. The observations of this Court in the CEO, ZP, Beed judgment *(supra)* are set out in paragraph Nos. 4 to 14, which read as under:-

"4. In the case of Delhi Cloth and General Mills Co. Ltd. Vs Workmen and others AIR SC 1970 919) the Honourable Supreme Court has held that the object of providing a gratuity scheme is to provide a retiring benefit to the workman who has rendered long and unblemished service to the employer and thereby contributed to the prosperity of the employer. In the Working Journalists (Conditions of Service) & Miscellaneous Provisions Act, 1955, the provision to pay the gratuity to the working journalists was made.

5. After few years, the Government of Kerala enacted the Kerala Industrial Employees Payment of Gratuity Act, 1970 making gratuity a statutory right of the employees. West Bengal Government enacted the West Bengal Employees Payment of Gratuity Act, 1971 relating to the subject. The other states were also thinking to legislate such enactments. Thus, it was felt that there should be a uniform central legislation for the whole country instead of state legislations for each and every separate states. The whole matter was discussed in the Labour Ministers' Conference held on 24th August 1971 and thereafter in the Indian Labour Conference held on 22nd and 23rd October 1971 it was agreed that the central legislation on the payment of gratuity should be undertaken. Accordingly, the payments of Gratuity Act, 1972 was enacted, largely based on the West Bengal legislation, which came into force on 16th September, 1972.

6. The payment of Gratuity Act, 1972 is thus an enactment of the Parliament. It has a specific scheme providing for payment of gratuity to the employees engaged in different establishments/industries and to deal with matters connected *therewith. Nevertheless, the Parliament has made provisions for dealing with several incidental issues, naturally for entertaining disputes as regards admissibility of gratuity, amount of gratuity and many others arising out of non payment of gratuity. The machinery to deal with such cases is in place and there is a mechanism provided for adjudicating upon such disputes.*

7. Section 3 of the Gratuity Act defines the Controlling Authority. Section 4 of the Gratuity Act provides for the payment of gratuity after the determination of employment of an employee who has rendered not less than 5 years in continues service. Similarly, section 7 determines the amount of gratuity and sub section 7 enables a party to prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf. Limitation period of 60 days is provided with a pre-condition of depositing the amount equal to the amount of gratuity as is determined.

8. Section 7(7) and its two proviso read as under:

> *Any person aggrieved by an order under sub section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:*
>
> *Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days;*
>
> *[Provided further that no appeal by an employer*

shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the Controlling Authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellant authority such amount.]

9. The question therefore is when a specific act has been put in place to deal with all connected and incidental issues to payment of gratuity, whether it would it be appropriate for any party, in order to avoid the pre-condition of deposit of entire amount while filing appeal, to by-pass the said provision and invoke the writ jurisdiction of this Court.

10. The payment of gratuity and its provisions is a part of social security legislation which not only has to be dealt with on a broader spectrum, but with a high degree of sensitivity.

11. I have therefore no hesitation in concluding that this writ petition, filed with an intent and object of avoiding deposit of the determined amount while preferring an appeal, is not maintainable before this Court, by by-passing the Appeal provision u/s. 7(7).

12. In the light of the above, the petition stands dismissed for being untenable. Nevertheless, this would not come in the way of the petitioner taking recourse to section 7(7) of the Gratuity Act for preferring an appeal against the impugned order dated 23/08/2011 passed by the Controlling Authority.

13. All contentions/issues raised in this petition are kept open. In the event, the petitioner prefers such an appeal, the appropriate authority shall not be influenced by the observations made in this *order since I have not decided this petition on its merits. It should proceed to deal with the Appeal and the petitions u/s. 7(7) of the Gratuity Act, strictly in accordance with Law.*

14. Rule is accordingly discharged. In view of dismissal of this writ petition, civil application no. 2237/2013 does not survive, hence disposed of."

6. In the light of the settled position of law, this petition cannot be entertained directly by this Court. The petition is, therefore, dismissed. Needless to state, the pendency of this petition from 4.4.2014 till the passing of this order shall be a ground for condonation of delay in preferring an appeal by the petitioners before the appellate forum, in the event, such an appeal is filed within four weeks from the passing of this order.

7. Rule is discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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