

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4651 OF 2012

SHANKAR VITHAL MANDAWKAR

PETITIONER

VERSUS

SIZE CONTROL GAUGES AND TOOLS PVT.LTD.,
AND ANOTHER

RESPONDENTS

Mr.M.L.Bhosle h/f Mr.P.V.Barde, Advocate for the petitioner.
Mr.S.V.Nathu, Advocate for respondent Nos. 1 and 2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/01/2015

PER COURT :

1. This matter was heard for quite some time on 07/01/2015 and the learned Advocates for the respective sides have advanced further submissions today.

2. Having considered the substantial submissions of the respective sides, the whole issue turns upon the payment of bonus as per the settlement/agreement between the parties. In the light of the submissions of the learned Advocate for the petitioner and in light of the record, it is evident that the petitioner preferred application IDA No.377/2006 on 27/11/2006 raising a claim as

regards alleged difference in the payment of bonus amount for the accounting year 1978 till 2005.

3. Section 33(C)(2) of the Industrial Disputes Act, 1947 reads as under :-

"Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf of the appropriate Government (within a period not exceeding three months:]

[Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]"

4. If the petitioner was aggrieved by the non-payment of bonus or any short fall in the payment of bonus from 1978, he could have raised a grievance forthwith or at least within a reasonable time. The contention of the petitioner is that co-workers have been paid bonus @ 20% as per the Payment of Bonus Act, whereas the petitioner was paid @ 8.33%.

5. I am not inclined to accept the contention of the petitioner that a claim for short fall in the payment of bonus can be considered by the Court even after a passage of almost 28 years. If the petitioner was aggrieved by the lesser payment made to him in comparison to the co-workers, he could have promptly raised the said plea.

6. It has been brought on record by the respondent / employer that none of the employees were paid bonus @ 20%. It was paid @ 8.33% on every Diwali Festival coupled with an ex gratia payment, which was linked with the discharge of day to day work and the volume of production. Since the petitioner had not generated production fixed at a particular volume, he earned lesser amount in comparison to those co-workers, who had achieved the said volume of work.

7. The impugned judgment of the Labour Court indicates that the petitioner did not place on record such evidence, which could have established that the employer had not paid bonus @ 8.33% with ex gratia amount, but had paid bonus @ 20%.

8. Considering the material before me, I expressed my view to the

learned Advocates for the respective sides that I was inclined to consider the claim of the petitioner only to the extent of 3 years preceding his date of superannuation in the light of the view taken by the Hon'ble Supreme Court in the matter of Shiv Dass Vs.Union of India and others, 2007(3) All MR 820.

9. The learned Advocates for the respective sides have taken instructions from their respective clients. The petitioner is willing to accept an amount of Rs.25,000/- as a one time comprehensive settlement of the grievance raised by him before the Labour Court in application IDA No.377/2006. The learned Advocate for the respondent submits that the said amount would be paid by the respondent provided this entire litigation as regards the impugned judgment and proceedings before the Labour Court are laid to rest.

10. Learned Advocate for the petitioner confirms that there are no other claims pending or surviving against the respondent/employer.

11. In the light of the above, this petition is disposed of without causing any interference in the impugned judgment dated 23/02/2012 passed by the Labour Court in application IDA No.377/2006, by recording that the respondent / employer shall pay

an amount of Rs.25,000/- only by a demand draft to the petitioner on the address mentioned in the cause title of the petition, within a period of 4 (four) weeks from today, as a full and final settlement of the claim of the petitioner.

(RAVINDRA V. GHUGE, J.)