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

WRIT PETITION NO. 9196 OF 2012

VIJAYKUMAR BASWANTRAO SOLAPURE
VERSUS
THE DIVISIONAL CONTROLLER, M.S.R.T.C.

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Advocate for Petitioner : Mr.Bayas Anandsing.
Advocate for Respondent : Mr.Bagul D.S. a/w Mr.R.N.Jain.

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CORAM: RAVINDRA V. GHUGE, J.
DATE :- 20th July, 2015

Per Court:

1 I had heard this matter on 16.06.2015 and the following order was passed:-

- “1 I have heard the learned Advocates for a short while. The Petitioner is held guilty of misappropriation in the departmental enquiry. There are 14 past punishments awarded to him for having committed 14 misconducts.
- 2 The Petitioner has preferred Complaint (ULP) No.4/2009 challenging the second show cause notice dated 10.02.2009. The Labour Court as well as the Industrial Court are against the Petitioner who has suffered concurrent orders impugned in this petition. The main Complaint (ULP) No.4/2009 is still pending before the Labour Court at Latur.
- 3 Mr.Bayas, learned Advocate for the Petitioner, submits that the complaint could be decided on it's own merits in the light of the fact that the Petitioner has already retired on attaining the age of superannuation on 28.02.2014. The Petitioner has received his leave encashment and provident fund. The gratuity and pension is yet to be released. Mr.Bayas, therefore, submits that the gratuity may be deposited with the Labour Court and kept in fixed deposit. However, the

pension amount be released to ensure survival of the Petitioner.

- 4 *Mr.Bagul, learned Advocate for the Respondent, relies on an order passed by this Court dated 06.05.2014 in Writ Petition No.4001/2014. He further submits that the Petitioner should submit an undertaking supported with an affidavit before the Labour Court that subject to the outcome of the litigation, if it is eventually concluded that the charges are proved against him before the courts, he would return the pension amount that would be paid to him.*
- 5 *Mr.Bayas seeks a short accommodation to take instructions from the Petitioner and make a statement.*
- 6 *Stand over to 26.06.2015 to appear on the supplementary board so as to enable Mr.Bayas to make a statement.”*

2 Shri Bayas, learned Advocate, on instructions from the Petitioner who is present in the Court, in response to the suggestion made by Shri Bagul, which is recorded in paragraph 4 of the order reproduced above, submits that the entire gratuity amount of the Petitioner may be deposited before the Labour Court, which shall invest the same in a nationalized Bank in a Fixed Deposit Receipt. Insofar as the pension is concerned, the Petitioner be paid the pension amount on month to month basis only after the Petitioner submits an affidavit before the Labour Court in Complaint (ULP) No.4/2009 that in the event the Petitioner does not succeed in his legal battle against the Respondent/ Employer, the entire amount of pension paid to him pursuant to this order shall be adjusted by way of recovery from the gratuity amount and the remainder gratuity

amount, thereafter, be paid to the Petitioner.

3 Shri Bagul, learned Advocate for the Respondent submits, on instructions, that only after such an affidavit is filed before the Labour Court, the Respondent/ Corporation shall deposit the gratuity amount and thereafter, shall commence the payment of pension to the Petitioner. He, however, clarifies that this arrangement shall be subject to the litigation pertaining to the disciplinary action against the Petitioner. He further makes a request that the pending complaint be expedited since the pendency before the Labour Court at Latur is not high and the complaint is pending for the last six years.

4 In the light of the above, this Writ Petition is disposed of without touching the rival contentions and merits of the matter, with the following directions:-

- (a) The learned Judge, Labour Court, Latur shall decide Complaint (ULP) No.4/2009 as expeditiously as possible and preferably on or before 30.01.2016.
- (b) The litigating sides shall extend cooperation to the Labour Court and shall refrain from seeking adjournments on unreasonable and trivial grounds.
- (c) The Petitioner shall file an affidavit before the Labour Court

in the said complaint within FOUR WEEKS from today stating therein that in the event he does not succeed in his litigation against the Respondent/ Corporation, the amount of pension paid to him in the interregnum shall be adjusted against the gratuity amount payable to the Petitioner and the Petitioner shall have no grievance about the same.

- (d) After such an affidavit is filed before the Labour Court to the satisfaction of the learned Judge, the Respondent shall deposit the gratuity amount before the Labour Court, which shall be invested in a Fixed Deposit Receipt in a nationalized bank by the Labour Court initially for a period of NINE MONTHS.
- (e) Needless to state, in the event the Petitioner does not succeed against the Respondent/ Corporation before the Labour Court, he may resort to such legal remedies as may be available in law and the above stated affidavit and deposit of gratuity, shall be subject to the litigation initiated by the litigating sides.

(RAVINDRA V. GHUGE, J.)