

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

WRIT PETITION NO.11053 OF 2014

Soma s/o. Rama Pawar,
Age 67 Years, Occ. Nil,
C/o. Marathwada Sarva Udyog
Kamgar Sanghatana,
having its Head Office at
Trade Union Centre,
Maharashtra Housing Society,
Near Water Tank, Barshi Road,
Latur

PETITIONER

VERSUS

- 1] The State of Maharashtra,
[Copy to be served on the
Govt. Pleader, High Court of
Judicature at Bombay,
Bench at Aurangabad].
- 2] The Collector,
Collectorate, Beed,
Taluka and District Beed
- 3] The Tahsildar, Beed,
Taluka and District Beed
- 4] The Sub-Divisional Forest Officer,
Chitlange Building, Nagar Road,
Beed, Taluka and District Beed

RESPONDENTS

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Mr. V.P.Golewar, Advocate for the Petitioner
Mr. A.N.Gaddime, Advocate for the Respondent No.4
Mr. N.B.Patil, AGP for the Respondent – State

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**CORAM: S.S.SHINDE &
P.R.BORA, JJ.**

Reserved on : 28.04.2015
Pronounced on: 30.04.2015

JUDGMENT: [Per S.S.Shinde, J.]:

- 1] Heard.
- 2] Rule. Rule made returnable forthwith heard with the consent of the parties.
- 3] This Petition is filed with following prayer:
 - B] By issuing appropriate writ, order or directions, the respondent No. 1 to 3 may please be directed to recover an amount of gratuity of Rs.74,340/- payable to the petitioner as per the judgment and order dated 27.8.2007, passed by the Assistant Commissioner of Labour and Controlling Authority under P.G.A. in P.G.A. 2/2007 together with interest at the rate of 10% p.a. from the date of retirement of the petitioner i.e. 30.04.2005 till actual realization of the payment to the petitioner.

The relevant facts for the purpose of deciding present Writ Petition, as disclosed in the Memo of the Petition, are as under:

- 4] The Petitioner was working as Forest Watchman with Respondent No.4 and retired from employment of Respondent No.4 on attaining the age of superannuation on

30.04.2005. However, the gratuity amount was not paid to the Petitioner.

5] The Petitioner filed P.G.A. No. 2/2007 before the Controlling Authority, Latur. By the Judgment and Award dated 27.08.2007, the Controlling Authority directed the Respondent No.4 to pay Rs.74,340/- to the Petitioner along with interest at the rate of 10%. However, the Respondent No.4 has not paid the amount. Therefore, the Petitioner filed an Application before the Assistant Commissioner of Labour and Controlling Authority under Payment of Gratuity Act, Latur, for issuance of Revenue Recovery Certificate against the Respondent No.4.

6] On 24.11.2008, the Assistant Commissioner of Labour directed the Respondent No.2 to recover amount of Rs.74,340/- together with interest and costs from the Respondent No.4 as land revenue. However, the Respondent No.2 has not taken any steps. Therefore, the Petitioner, with the aid of Marathwada Sarva Udyog Kamgar Sanghatana, made a representation to the Respondent No. 2 on 21.08.2008 and requested to take suitable action for payment of gratuity to the Petitioner. The Sanghatana

made representations to the Respondent Nos. 2 and 3. However, the Respondents made only correspondence amongst themselves and no effective steps are taken till today.

7] The learned counsel appearing for the Petitioner invited our attention to the Judgment and Award dated 27.08.2007 passed by the Controlling Authority and the Assistant Commissioner of Labour [Exhibit-A Page 12 of the compilation of the Writ Petition], and submits that, the said Judgment and Award attained finality inasmuch as the Respondents have not challenged the same, and therefore, the Respondent was under obligation to pay an amount as indicated in the impugned order. It is submitted that, the Collector is obliged to recover an amount of Rs.74,340/- together with interest and costs from the Respondent No.4 as arrears of land revenue as per the Judgment and Order passed in PGA No.2/2007.

8] The learned counsel appearing for the Petitioner in support of his contention that, the Collector is obliged to recover an amount as per the Recovery Certificate with interest and pressed into service exposition

of the Division Bench of the Bombay High Court in the case of ***Dilip T. Khandar Vs. State of Maharashtra & others¹*** and in the case of ***Satish Arjun Surve Vs. State of Maharashtra²***.

8] On the other hand, the learned AGP appearing for the Respondent – State relying on the affidavit in reply filed, submits that, though the Respondent No.3 could not appear in the proceedings, which were conducted by the Controlling Authority, however, even before initiating of the said proceedings, the Petitioner was granted due amount of gratuity of Rs.28,772/- through Cheque No.67663, dated 19th July, 2005, and therefore, initiation of proceedings for alleged non-payment of gratuity amount by the Petitioner itself was illegal. It is submitted that, since the Petitioner was paid the due amount of gratuity, there is no question of making further payment to the Petitioner. The learned AGP appearing for the Respondent – State invited our attention to the extract from the service record of the Petitioner to show that, as a matter of fact, the amount of Rs.28,772/- was paid towards amount of gratuity. Therefore, the learned AGP submits that, the Petition may be dismissed.

1. 2006 [1] Bom.C.R. 721

2. CLR 2004 [2] 895

9] We have given careful consideration to the submissions of the learned counsel appearing for the Petitioner, and the learned AGP appearing for the Respondent – State, with their able assistance, perused the pleadings in the Petition, annexure thereto, and the reply filed by the Respondent Nos. 1 to 4. It is not in dispute that, there was no challenge to the Judgment and Order dated 27th August, 2007 passed by the Controlling Authority, which is placed on record at Exhibit-A of the compilation of the Writ Petition. By the said Order, the Respondent i.e. Sub-Divisional Forest Officer, Beed, was directed to pay an amount of Rs.74,340/- with interest @ 10% p.a. on the said amount, till disbursement of the said amount and Rs.200/- towards cost. Therefore, the said Judgment and Order attained finality. There is no option to the District Collector but to take immediate steps to recover an amount from the Respondent No.4. It is also not in dispute that, the Recovery Certificate has been issued against the Respondent No.4 by the Competent Authority on 24.11.2008, directing the Respondent No.2 Collector to recover an amount of Rs.74,340/- together with interest @ 10% p.a. and costs from the Respondent No.4 as land revenue.

10] In that view of the matter, we direct the Respondent No.2 to recover an amount of Rs.74,340/- with 10% interest thereon till the disbursement of the said amount, and also costs of Rs.200/-. However, we make it clear that, it would be open for the Respondent No.2 to hear the Petitioner, and deduct the amount of Rs.28,772/-, which is paid towards gratuity, as it is apparent from the extract of the service record of the petitioner, copy of which is placed on record with the affidavit-in-reply. The Respondent No.2 is directed to complete afore-mentioned exercise as expeditiously as possible, however on or before 30th June, 2015, and ensure that, the amount with accrued interest after deducting the amount of Rs.28,772/- is paid to the petitioner towards gratuity.

11] Rule made absolute in above terms. Petition stands disposed of accordingly.

Sd/-

[P.R.BORA]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE

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DDC