

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11700 OF 2014

The District Deputy Registrar,
Cooperative Societies / Liquidator and
Official Assignee, Cooperative Oil
Industries Ltd., Latur, Nanded Road,
Latur, at Post Tq. and Dist. Latur.

..Petitioner

Versus

1. Vitthal Namdeo Kanse,
Age 69 years, Occ. Nil,
R/o at Murud, Tq. and Dist. Latur.

2. Narsing Kisanrao Jadhav,
Age 71 years, Occ. Nil,
R/o Kanheri Road, COIL Nagar,
Latur.

3. Achut Digambarrao Kulkarni
Age 69 years, Occ Nil,
R/o Labour Colony, Latur
Tq. and Dist. Latur.

4. Shivaji Narsingrao Maknikar,
Age 68 years, Occ. Nil,
R/o Behind Old Bus Depot,
Old Ausa Road, Latur

5. Suhas Ratanlal Shah,
Age 62 years, Occ. Nil,
R/o Hatte Nagar, Latur,
Tq. and Dist. Latur.

6. Chandrappa Kasappa Mudale,
Age 78 years, Occ. Nil,
R/o Dalda Factory Compound,
Nanded Road, Latur.

7. Shirajoddin Mahatasab Shaikh,
Age 70 years, Occ. Nil,
R/o Salle Galli, Latur

8. Shivaji Bajirao Deshmukh,
Age 63 years, Occ. Nil,
R/o Latur.

..Respondents

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Advocate for Petitioners : Shri Shahane Parag P.
Advocate for Respondents 2,4 & 6 : Shri Kulkarni Girish N.(Mardikar)
Respondents 1,5 & 8 : Served
Respondent Nos. 3 & 7 : Deleted

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CORAM : RAVINDRA V. GHUGE, J.

Dated: August 05, 2015

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ORAL JUDGMENT :-

1. Heard.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. While issuing notice to the respondents, I had noted the contentions of the petitioner in my order dated 14.1.2015 as follows:-

"1 *The Petitioner is aggrieved by the impugned judgment dated 30.01.2013 delivered by the Controlling Authority under the Payment of Gratuity Act, 1972, on the eight applications and the judgment of the Appellate Authority (Industrial Court, Latur) in Miscellaneous PGA No.1/2013 dated 11.08.2014.*

2 *The Petitioner contends that the eight Respondents were engaged during the period of 1968 to 1970. In 1980, since the Cooperative Oil Industry Limited went into liquidation, all 08 employees were discharged from employment by paying them their legal dues inclusive of retrenchment compensation as well as*

gratuity amount.

3 *It is only in May, 2011, after a period of about 30 years, these eight Respondents filed individual applications seeking payment of gratuity bearing Nos.93 to 100 of 2011. An application for condonation of delay was also preferred by the Respondents. The impugned judgment of the Controlling Authority is dated 30.01.2013.*

4 *The Petitioner seeks leave to gather instructions as to whether the application for condonation of delay was allowed or not, by any order passed by the Controlling Authority.*

5 *The Petitioner preferred a single Miscellaneous PGA No.1/2013, which is an appeal filed under Section 7(7) of the Payment of Gratuity Act, 1972. By the impugned judgment dated 11.08.2014, the said appeal has been rejected.*

6 *The grievance is that when the entire legal dues inclusive of gratuity have been paid to the Respondents, the Controlling Authority as well as the Appellate Authority should have considered these factors. Both the impugned judgments suffer from lack of application of mind.*

7 *Issue notice before admission to the Respondents, returnable on 13.02.2015.*

8 *Till the next date of hearing in this petition, the impugned judgments dated 30.01.2013 passed by the Controlling Authority and dated 11.08.2014 passed by the Appellate Authority shall stand stayed subject to the Petitioner depositing an amount of Rs.2 lacs in this Court on or before 07.02.2015."*

5. I have heard Shri Shahane and Shri Kulkarni, learned Advocates on behalf of the petitioners and the respondents respectively.

6. The eight respondents had preferred eight independent applications before the Controlling Authority under the Payment of Gratuity Act, 1972 ("the said Act"). By judgment and order dated 30.1.2013, in PGA Nos. 93 to 100 of 2001, the claim of the respondents was allowed. While allowing the said claim, the Controlling Authority has observed that the limitation is of 60 days and there appears to be a delay of 23 days.

7. Grievance of the petitioner is that despite the application for condonation having been filed, the Controlling Authority decided all the claims on their merits by making a passing reference to the delay and allowed all the claims of the respondents. The petitioner preferred only one Appeal before the Industrial Court, which is the appellate Court, along with an application for seeking waiver of the deposit of amounts of gratuity as assessed by the Controlling Authority. By the impugned order, dated 11.8.2011, the Industrial Court, Latur has dismissed the application since there is no compliance of the mandatory provision of Section 7(7) of the said Act.

8. The petitioner has preferred this single petition for challenging the impugned order.

9. It is submitted by the petitioner that all the respondents were

discharged from employment in 1980 and the applications for Gratuity Nos. 93 to 100 of 2011 have been preferred after 31 years. Shri Kulkarni contradicts this statement by saying that they were discharged in 1986.

10. Shri Kulkarni has strenuously supported the impugned order. The Industrial Court has rejected the application for not depositing the assessed gratuity amount. The Industrial Court could have directed the petitioner to deposit the gratuity amount and after the amount was deposited, could have considered the appeal.

11. Under orders of this Court dated 14.1.2015, the petitioner has deposited an amount of Rs.2,00,000/-. I am inclined to direct the petitioner to file eight independent gratuity appeals before the Industrial Court, Latur, which is the appellate Court by depositing the residual amount before the Industrial Court and contest the appeals on their own merits.

12. In the light of the above, this petition is partly allowed with the following directions.

(A) The Registry to transmit the amount of Rs.2,00,000/- along with accrued interest to the Industrial Court, Latur.

(B) The petitioner shall deposit the remainder amount as was assessed by the Controlling Authority before the Industrial Court, Latur within three weeks from today.

(C) The appeal already preferred by the petitioner shall be

registered as a Gratuity Appeal only as against Vitthal Namdeo Kanse, who had preferred application PGA No.93 of 2011.

(D) The petitioners shall file seven independent appeals in relation to the applicants in Application PGA Nos. 94 to 100 of 2011, within three weeks from today.

(E) The Industrial Court is directed to decide all these eight appeals on their own merits, considering the rival contentions and averments which are kept open.

(F) The issue of limitation and alleged delay of about 31 years caused will be looked into by the Industrial Court.

(G) It be noted that this Court has not dealt with the merits of the rival contentions of the parties.

13. Needless to state, since the entire amount is now being deposited with the Industrial Court, all recovery certificates dated 26.8.2014 (Exhibit "G" in this petition) are set aside.

14. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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