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

WRIT PETITION NO. 12259 OF 2015

1 The Chairman,
 Bhokardan Taluka Sahakari
 Kharedi Vikri Sangh Ltd.,
 Bhokardan Dist. Jalna.

2 The Manager,
 Bhokardan Taluka Sahakari
 Kharedi Vikri Sangh Ltd.,
 Bhokardan Dist. Jalna

...PETITIONERS

-VERSUS-

 Trimbak S/o Sonaji Danve,
 Age Major, Occu : Nil,
 R/o Javkheda (Kd.),
 Post. Javkheda (Bk.),
 Tq. Bhokardan Dist. Jalna.

...RESPONDENT

**WITH
WRIT PETITION NO. 12260 OF 2015**

1 The Chairman,
 Bhokardan Taluka Sahakari
 Kharedi Vikri Sangh Ltd.,
 Bhokardan Dist. Jalna.

2 The Manager,
 Bhokardan Taluka Sahakari
 Kharedi Vikri Sangh Ltd.,
 Bhokardan Dist. Jalna

...PETITIONERS

-VERSUS-

 Sheshrao S/o Raghu Shinde,
 Age Major, Occu : Nil,
 R/o Belora, Post. Soyagaon,

Tq. Bhokardan Dist. Jalna.

...RESPONDENT

**WITH
WRIT PETITION NO. 12262 OF 2015**

1 The Chairman,
 Bhokardan Taluka Sahakari
 Kharedi Vikri Sangh Ltd.,
 Bhokardan Dist. Jalna.

2 The Manager,
 Bhokardan Taluka Sahakari
 Kharedi Vikri Sangh Ltd.,
 Bhokardan Dist. Jalna.

...PETITIONERS

-VERSUS-

Watchalabai W/o Uttamrao Raut,
Age Major, Occu : Nil,
R/o Borgaon Jahagir,
Tq. Bhokardan Dist. Jalna.

...RESPONDENT

**WITH
WRIT PETITION NO. 12263 OF 2015**

1 The Chairman,
 Bhokardan Taluka Sahakari
 Kharedi Vikri Sangh Ltd.,
 Bhokardan Dist. Jalna.

2 The Manager,
 Bhokardan Taluka Sahakari
 Kharedi Vikri Sangh Ltd.,
 Bhokardan Dist. Jalna

...PETITIONERS

-VERSUS-

Manikrao S/o Narayanrao Sapkal,
Age Major, Occu : Nil,
R/o Jalgaon Sapkal,

Tq. Bhokardan Dist. Jalna.

...RESPONDENT

**WITH
WRIT PETITION NO. 12264 OF 2015**

1 The Chairman,
 Bhokardan Taluka Sahakari
 Kharedi Vikri Sangh Ltd.,
 Bhokardan Dist. Jalna.

2 The Manager,
 Bhokardan Taluka Sahakari
 Kharedi Vikri Sangh Ltd.,
 Bhokardan Dist. Jalna

...PETITIONERS

-VERSUS-

Gayabai w/o Sarjerao Rindhe,
Age Major, Occu : Nil,
R/o At Post Babhulgaon,
Tq. Bhokardan Dist. Jalna.

...RESPONDENT

**WITH
WRIT PETITION NO. 12266 OF 2015**

1 The Chairman,
 Bhokardan Taluka Sahakari
 Kharedi Vikri Sangh Ltd.,
 Bhokardan Dist. Jalna.

2 The Manager,
 Bhokardan Taluka Sahakari
 Kharedi Vikri Sangh Ltd.,
 Bhokardan Dist. Jalna

...PETITIONERS

-VERSUS-

Bhimrao S/o Dadarao Kudar,
Age Major, Occu : Nil,
R/o Bhorgaon Jahangir,

Tq. Bhokardan Dist. Jalna.

...RESPONDENT

...

Advocate for Petitioners : Shri Deshpande Prashant P.

Advocate for Respondents : Shri S.N.Lute.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th December, 2015

Oral Judgment:

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

2 The Petitioner in all these petitions is the Bhokardan Taluka Sahakari Kharedi Vikri Sangh Limited, which is undisputedly the Employer of the Respondents/ Employees.

3 The Petitioner Employer has challenged the judgment of the Controlling Authority dated 11.03.2015 under the Payment of Gratuity Act, 1972 and the judgment of the Appellate Authority which is the Industrial Court dated 02.11.2015.

4 For the sake of clarity, the names of the Respondents/ Employees, numbers of their Applications (PGA), the dates of order of the

Controlling Authority, numbers of Appeals (PGA) and the dates of orders passed by the Industrial Court, are mentioned in the Chart below:-

Sr. No.	W.PNo.	Name	Application (PGA) No.	Order of Controlling Authority	Appeal (PGA) No.	Order of Industrial Court
1	12259/15	Trimbak Sonaji Danve	6 of 2011	11/03/15	8 of 2015	02/11/15
2	12260/15	Sheshrao Raghu Shinde	3 of 2011	11/03/15	5 of 2015	02/11/15
3	12262/15	Watchalabai Uttamrao Raut	5 of 2011	11/03/15	6 of 2015	02/11/15
4	12263/15	Manikrao Narayanrao Sapkal	4 of 2011	11/03/15	7 of 2015	02/11/15
5	12264/15	Gayabai Sarjerao Rindhe	7 of 2011	11/03/15	9 of 2015	02/11/15
6	12266/15	Bhimrao Dadarao Kudar	2 of 2011	11/03/15	4 of 2015	02/11/15

5 Shri Deshpande, learned Advocate for the Petitioner-Employer, submits that the Respondents had filed their applications for seeking payment of gratuity before the Controlling Authority under the Payment of Gratuity Act, 1972. Though they were working till 1996, after the Assistant Registrar, Cooperative Societies, Bhokardan passed an order of liquidation in the Petitioner Society on 08.07.1996, the Respondents were terminated.

7 He further submits that the Respondents filed the applications for seeking gratuity in the year 2011 stating their date of termination as 16.04.2003, after having put in about 29 years in service. It is stated that the Respondents did not mention the date of termination of 1996. He, however, states that after their termination in 1996, they were again reinstated by the Petitioner in 1997-1998 and they continued till they were terminated on 16.04.2003.

8 He then submits that after the appointment of the Liquidator, no claim of any employee can be maintained before any authority, in the light of Section 107 of the Maharashtra Cooperative Societies Act, 1960. The applications for payment of gratuity were, therefore, untenable. The Liquidator was not made a party. No application for condonation of delay was filed by the Respondents even if it is assumed that their termination is dated 16.04.2003. They had filed their applications in 2011. These grounds have not been considered by the Controlling Authority as well as the Appellate Authority.

9 It is further submitted that the issue which required adjudication was whether, the termination of the Respondents of 1996 should be taken into account or whether, it should be 16.04.2003, for computing payment of gratuity. This issue was not decided by the

Controlling Authority as well as the Appellate Authority. It is, therefore, prayed that these petitions be allowed and the impugned judgments be quashed and set aside.

10 Shri Lute, learned Advocate has appeared on behalf of all the Respondents. He has strenuously supported the impugned judgments of the Controlling Authority as well as the Appellate Authority.

11 Shri Lute specifically draws my attention to the observations of the Controlling Authority that the Petitioner herein had only filed the Written Statement with some documents and thereafter, did not participate in the proceedings before the Controlling Authority. Neither was the evidence of the Respondents contradicted, nor did the Petitioner lead any evidence. There was no assistance given by the Petitioner to the Controlling Authority. He, therefore, submits that the Petitioner cannot be permitted to raise all grounds only after coming to this Court in the backdrop of being careless and negligent when the matter was being considered by the Controlling Authority.

12 He further submits that in the entire Written Statement before the Controlling Authority as well as in the appeals before the Appellate Authority, nowhere it was pleaded that the Respondents were terminated

in 1996, followed by a gap of two years or three years they were reinstated and hence, there were breaks in service.

13 He specifically draws my attention to the memo of the Appeal filed by the Petitioner before the Industrial Court and submits that there is not even a whisper in the appeal memo that the Respondents were terminated in 1996 and hence, the gratuity can be computed only till the date of termination of 1996.

14 He further submits that the Respondents were working continuously and had approached the Controlling Authority only when they realized that the Petitioner had no intention to make any payment of gratuity.

15 He, thereafter, once again draws my attention to the appeal memo as well as the Written Statement of the Petitioner to submit that even in the Written Statement, the date of termination 16.04.2003 has not been denied by the Petitioner. The services of the Respondents cannot be said to be automatically terminated. Even if that be so, it amounts to retrenchment and for which a specific order will have to be passed. He submits that neither in the Written Statement, nor in the memo of the appeal, has the Petitioner denied that the Respondents were terminated

on 16.04.2003. He, therefore, submits that the petitions deserve to be dismissed with costs.

16 He hastens to add that the Petitioner was under an obligation to deposit the entire amount of gratuity as was granted by the Controlling Authority along with 9% interest. The Petitioner has deposited only the amount as assessed by the Controlling Authority, but has failed to deposit 9% interest. The appeal was, therefore, untenable before the appellate authority.

17 I have considered the submissions of the learned Advocates as have been recorded herein above.

18 The Petitioner has contended that the Written Statement was filed before the Controlling Authority and the same has been discarded by the Controlling Authority.

19 It is not in dispute that the appointment of the Liquidator dated 08.07.1996 was set aside by the Divisional Joint Registrar, Cooperative Societies, Aurangabad on 23.12.1996. The Principal Secretary, Cooperation and Textile Department, Government of Maharashtra restored the order of liquidation on 29.11.1997. By an order

passed by the learned Division Bench of this Court on 18.01.1999 in Writ Petition No.1944/1998, the order of the Principal Secretary has been stayed. The said interim order is in operation even today.

20 In effect, therefore, the order of the Divisional Joint Registrar, Cooperative Societies, Aurangabad dated 23.12.1996 setting aside the order of liquidation dated 08.07.1996 is brought into operation. As such, the Petitioner is not in liquidation from 23.12.1996.

21 I also find that all the applications for payment of gratuity have been filed in the year 2011 when the Petitioner Society was conducted by the Chairman who is the Petitioner in these petitions. The Petitioner is unable to point out even the date of termination of the Respondents allegedly effected in 1996. It is not disputed by the Petitioner that the Respondents were discharging their duties and were working with the Petitioner till 16.04.2003 when they were discharged.

22 In this backdrop I am unable to accept the strenuous submissions of Shri Deshpande that the moment the Liquidator was appointed, all employees stood automatically terminated and the Liquidator was not required to pass any specific order in that regard.

23 I am also unable to accept the contention of Shri Deshpande that once the Liquidator was appointed, notwithstanding the order dated 23.12.1996 by which the order of liquidation dated 08.07.1996 was set aside, the Respondents should have arrayed the Liquidator in their applications for payment of gratuity. When there was no Liquidator in the light of the order passed by this Court dated 18.01.1999, the Respondents were not required to implead the Liquidator in their proceedings.

24 Considering the fact situation as above, I do not find that the Controlling Authority or the Appellate Authority have committed any error in delivering the impugned judgments. When no order of termination was pleaded, much less proved before the Controlling Authority, the Appellate Authority and even before this Court, the said contention of the Petitioner is rendered fallacious. As there was no Liquidator appointed either on the date of termination of the Respondents 16.04.2003 or on the date of the institution of the gratuity claims and adjudication thereupon, the Respondents were not under any legal obligation to implead a non-existing Liquidator or seek permission from a non-existing Liquidator to raise their claims.

25 In the light of the above these Writ Petitions are devoid of merits and hence, dismissed. Rule is discharged.

26 It is made clear that the Petitioner will have to pay 9% interest on the gratuity amount as directed by the Controlling Authority, to the Respondents within TWELVE (12) WEEKS from today.

(RAVINDRA V. GHUGE, J.)