

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.478/2005

1. State of Maharashtra,
through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai -32.
2. Deputy Conservator of Forest,
Akola Forest Division,
Akola, Railway Station Road,
Akola.

..Petitioners.

..Versus..

1. ~~Ganuji Harisingh Pawar,~~
~~aged 64 Yrs., Occu. Retired,~~
~~R/o Kherda (Bk.), Post Pinjar,~~
~~Tah. Barshitakli, Distt. Akola.~~
- 1(a) Sumanbai wd/o Ganuji Pawar,
aged about Major, R/o Kherda (Bk.),
Post Pinjara, Taluka Barsi Takli,
Distt. Akola.
2. Authority under the Payment of
Gratuity Act and Assistant Labour
Commissioner, Akola.

..Respondents.

Shri Prashant Gode, Advocate for the petitioners.

CORAM : Z.A. HAQ, J.

DATE : 12.8.2015

ORAL JUDGMENT.

CA.O. NO.1395/2015.

For the reasons stated in the application and the fact that it is not opposed by the non-applicants inasmuch as reply is not filed in the matter, the delay in filing the application praying for restoration of the writ petition, is condoned. The civil application is allowed.

M.C.A. STAMP NO.14964/2015.

Accepting the reasons stated in the application, the writ petition is restored. The application stands disposed of.

WRIT PETITION NO.478/2005.

1. As the writ petition is of 2005, it is taken up for final hearing.

Heard Shri Prashant Gode, learned advocate for the petitioners and Shri J. Ahmed, learned advocate for the respondent no.1. The respondent no.2 is the *quasi-judicial* Authority.

2. The petitioner/employer has challenged the orders passed by the Controlling Authority under the Payment of Gratuity Act, directing the petitioners to pay an amount of Rs.40,930/- with interest at the rate of 9% from 1st July, 2000 and an amount of Rs.32,970/- with interest at the rate of 10 % from 1st July, 2000.

3. The contention of the petitioners is that the original respondent no.1/employee was a temporary employee and his services came to be regularized w.e.f. 1st November, 1994. According to the petitioners, the employee retired on attaining the age of superannuation, on 31st May, 2000 and as per Rule 111(1) of the Maharashtra Civil Services (Pension) Rules, 1982, the employee was entitled for gratuity calculated on the basis of 1/4th of the last pay drawn, for every 6 months upto maximum of 16.5

times and as the employee worked for about 5 and ½ years after regularization, the multiplier of 11 will have to be applied. The petitioners have stated that the employee was entitled for Rs.7,645/- towards gratuity.

It is submitted that the Controlling Authority has not given any reason for passing the order dated 3rd August, 2004 directing the petitioners to pay the additional amount of Rs.32,970/- towards gratuity considering the period from 1980 till 30th October, 1994.

4. Shri Ahmed, learned advocate for the legal representative of the employee has supported the impugned orders.

5. After considering the submissions made by the learned advocates for the respective parties, I find that the impugned orders are unsustainable inasmuch as the Controlling Authority has not recorded any reasons and has not explained as to how the amount of gratuity has been worked out. Therefore, the impugned orders are liable to be set aside. However, as the petitioners have accepted the entitlement of the employee for the amount of Rs.7,645/-, the legal representative of the employee is permitted to withdraw the amount of Rs.7,645/- from the amount deposited by the petitioners with the Registry of this Court. The balance amount shall be transmitted to the office of the Controlling Authority.

Hence the following order:

- (i) The impugned orders are quashed.
- (ii) The Controlling Authority is directed to decide the claim of the employee for gratuity afresh, after granting hearing to the parties.
- (iii) The petitioners and the legal representative of the employee undertake to appear before the Controlling Authority under the Payment of Gratuity Act, Akola on

29th September, 2015 at 11 a.m.

As the claim of the employee is very old, the Controlling Authority shall take decision till 30th November, 2015.

(iv) As the petitioners have accepted the entitlement of the employee for the amount of Rs.7,645/-, the legal representative of the employee is permitted to withdraw the amount of Rs.7,645/- along with interest on it, from the amount deposited by the petitioners with the Registry of this Court. The balance amount shall be transmitted to the office of the Controlling Authority.

(v) The amount which will be transmitted to the office of the Controlling Authority, shall be disbursed in accordance with the orders which would be passed by the Controlling Authority.

Rule is made absolute in the above terms.

In the circumstances, the parties to bear their own costs.

JUDGE

Tambaskar.