

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11995 OF 2016
(Sk.Rahimoddin Sk.Raheman Vs. The State of Maharashtra and
another)

Mr.Mukund Ambekar and Mr.A.A.Kokad, Advocate for the petitioner.
Mr.S.P.Sonpawale, AGP for respondent No.1.
Mr.B.S.Deshmukh, Advocate for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/12/2016

PER COURT :

1. I have heard the learned Advocates for the respective sides at length and the vehement objections and contentions put forth by Mr.Deshmukh extensively.

2. In an earlier round of litigation, the respondent/Corporation had filed WP No.7797/2006. By order dated 23/02/2012, this Court dismissed the writ petition and sustained the order of the Labour Court. This Court observed that, "*the petitioner/MSRTC to ensure releasing the amounts to the respondent/employee within 3 months after communication.*"

3. There is no dispute that the Labour Court, by its judgment dated 03/03/2005 allowed the petitioner's Complaint (ULP)

No.2/2002 and he has been granted reinstatement with continuity and 50% back wages from 05/09/1994.

4. The Industrial Court, by its judgment dated 05/08/2006, dismissed Revision (ULP) No.26/2005 filed by the petitioner.

5. As such, since the dismissal was set aside, there is no termination/dismissal in the eyes of law and the petitioner would be entitled for gratuity from his date of appointment till his last date of working with the respondent/Corporation. It appears that in this backdrop, as the services of the petitioner came to an end in 04/10/2010, portion of the gratuity has been paid. Grievance is that the entire gratuity is not paid and hence he preferred a Criminal (ULP) No.12/2012 in which the Labour Court granted one month's time to pay the entire gratuity as well as leave encashment by its order dated 14/10/2012.

6. By the order dated 28/02/2013, the Labour Court issued a process against the respondent Mr.Arun Laxmanrao Karpe, Divisional Controller. The review application filed by the petitioner was rejected on 28/02/2013.

7. The respondent/Corporation filed Revision (ULP) Nos.8/2013 and 15/2013 for challenging the issuance of process by order dated 14/12/2012 and 28/02/2013 which were passed u/s 48(1) of the Act. By the impugned judgment dated 01/08/2016, both the revision petitions were allowed and both the orders of the Labour Court were set aside and the Criminal (ULP) was dismissed.

8. Rather than dealing with this petition on technicalities, I deem it proper to bring the dispute to an end considering the undisputed fact that the petitioner was granted reinstatement with continuity of service and 50% back wages and this Court, by order dated 23/02/2012, directed the releasing of amounts payable to the petitioner. Since the dismissal is set aside and continuity in service is granted, there can be no dispute that the petitioner would be entitled to gratuity for the period from the date of joining till the date of termination. The Industrial Court erred in allowing the revision petitions.

9. Considering the same, this petition is partly allowed. The impugned judgment of the Industrial Court dated 01/08/2016 is quashed and set aside and Revision (ULP) Nos.8/2013 and 15/2013 stand dismissed. Consequentially, Criminal (ULP) No.12/2012 shall

stand restored to the file of the Labour Court, Nanded.

10. In order to bring the dispute to an end, I am granting 2 months time to the respondent/Corporation to calculate the gratuity correctly, as noted above and pay the same to the petitioner alongwith 3% interest on the unpaid amount from the date of his final termination on 04/10/2010, within the said time. Thereafter, Criminal (ULP) No.12/2012 shall stand disposed of by the Labour Court.

11. The petitioner as well as the Advocate/authorized representative of the respondent shall appear before the Labour court on 16/01/2017 and the matter would stand adjourned to 24/02/2017 so as to enable the Corporation to pay the outstanding amount of gratuity to the petitioner. The criminal ULP then can be disposed on 24/02/2017. Failure to comply with this direction of payment of entire gratuity shall then amount to disobedience of the order of this Court.

12. It is, however, clarified that issue of leave encashment cannot be a matter of adjudication in a criminal ULP and the same shall not be considered by the Labour Court. For the said purpose, the

petitioner would be at liberty to make a claim, considering that it is a disputed claim, before an appropriate forum under the Industrial Disputes Act, 1947.

(RAVINDRA V. GHUGE, J.)