

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 4550 OF 2015

Mr. Pratap Vishnu Ghatge & Ors. ... Petitioners.

V/s.

The Saraswat Co-op. Bank Ltd. & Anr. ... Respondents.

Mr. Kuldeep Nikam for the Petitioners.

Mr. K.M. Naik, Sr. Advocate i/b. Sujeet Salkar for Respondent 1.

CORAM : N.M. JAMDAR, J.

DATE : 28 JANUARY, 2016.

ORAL ORDER :-

The Petitioners are aggrieved by the order passed by the Appellate Authority under the Payment of Gratuity Act, 1972 remanding the proceedings to the Competent Authority for reconsideration of the matter on merits.

2. The Petitioners filed an application before the Controlling Authority established under the Payment of Gratuity Act, 1972 (Act of 1972). They claimed that they were employees of Kolhapur Maratha Sahakari Bank, which was merged with the

Respondent – Bank. The Petitioners in their application before the Controlling Authority claimed difference in gratuity. The application was resisted by the Respondent – Bank. By order dated 24 February 2012, the Controlling Authority allowed the application and directed the Respondent to pay gratuity to the Petitioners, with certain directions. The Respondents filed an appeal before the Appellate Authority. The Appellate Authority noted that the Controlling Authority had disposed of the application without giving sufficient time and without framing issues or evidence, in violation of principles of natural justice. In view of this position, by the impugned order dated 26 September 2013, the proceedings were remanded to the Controlling Authority.

3. I have heard the learned Counsel for the parties.

4. The Bank was summoned on 2 February 2011. Thereafter, the Respondent appeared before the Controlling Authority on 8 March 2011. They sought adjournment on the ground that they wanted to be represented by an advocate, and the matter was adjourned on 31 March 2011. It is stated that the Respondent sought time to engage an advocate which was not granted. Thereafter, the parties made their oral submissions and the proceedings were closed on 31 March 2011, wherein seven days time was granted to the Respondents to file a reply. Thereafter, the Vakalatnama of one Advocate Joshi was sought to

be filed, which was refused. The Respondent – Bank placed on record 53 documents with written arguments. After that the matter was kept pending for 12 months by the Controlling Authority. Order was received by the Respondent on 9 March 2012. The Appellate Authority took note of these facts and found that, proceeding in this manner, the Controlling Authority committed breach of principles of natural justice. In the reply filed by the Petitioners, the assertions of the Respondent were generally denied by the Petitioners but there are no specific particulars given by the Respondent.

5. The contention of the learned Counsel for the Petitioners that the matter could be disposed of on arguments alone and elaborate procedure is not necessary, cannot be accepted in view of a specific methodology laid down under the Payment of Gratuity (Maharashtra) Rules 1972. Rule 10 deals with making an application to the Controlling Authority for direction. After the application is filed, the Controlling Authority has to scrutinize the same under Rule 10-A. If the application is not dismissed at the threshold, the Controlling Authority shall issue a notice to the employer. Any person acting on behalf of the employer or nominee shall present letter of authority to the Competent Authority. Thereafter, a procedure is laid down for admission of the documents. Rule 11(4)(a) contemplate hearing on the dates fixed, after evidence, examination of documents, witnesses. Upon such enquiry, the Controlling Authority shall record its findings.

The Controlling Authority is under mandate to pronounce an order unless dictated in the presence of parties. Rule 11-A deals with production of documents where a party desires to tender in evidence any document it shall do so with a list. Rule 12 specifies place and time of hearing. The deposition before the Controlling Authority is on oath to be administered by its office. Rule 14 empowers the Controlling Authority to summon attendance of the witnesses. The Controlling Authority is to maintain Roznama, of the proceedings of every application. The manner in which the summons is to be served is also prescribed, record of each case has to be maintained by the Controlling Authority. This elaborate methodology therefore indicates that the proceedings are not to be disposed of only on oral argument without assessment of any evidence as sought to be contended by the learned Counsel for the Petitioners.

6. The Appellate Authority has rendered the finding of fact that the proceedings were rushed through and the procedure as enumerated above was not adhered by the Controlling Authority. The Appellate Authority was fully justified in remanding the proceedings to the Controlling Authority on the ground of breach of principles of natural justice.

7. In the circumstances, no error can be found with the order passed by the Appellate Authority. The Writ Petition is accordingly rejected.

8. It will be open to the Petitioners to make an appropriate application to the Controlling Authority for expeditious disposal of their application which the Controlling Authority will consider depending on the pendency of the matters before it.

9. If the amount which is deposited before the Appellate Authority is not already withdrawn by the Respondents, they will not do so till the disposal of the application by the Competent Authority.

(N.M. JAMDAR, J.)