

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.10430 OF 2015

M/s. Tops Groups And Another Versus Shri Prabhunath Pandey	...	Petitioners Respondent
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Mr. Rishi Ashok i/b Bekay Legal for the Petitioners.
Ms. Rupali Rane i/b Mr. Ramakant B. Rane for Respondent.

CORAM : S.C.GUPTE, J.

DATE : 5 JULY 2016.

P.C. :

This writ petition challenges an order passed by the Labour Court at Thane in a recovery application under the payment of Gratuity Act, which was confirmed in appeal by the Industrial Court at Thane.

2 The Respondent worked as a Branch Manager of the Petitioners since 1997. His services were terminated on 16 May 2007. On his application to the Competent Authority under the Payment of Gratuity Act, which was heard ex parte by the Labour Court, orders were passed for recovery of gratuity amount of Rs.1,55,769/- and interest of Rs.51,793/-. On the Petitioners' appeal, the Industrial Court affirmed the order of the Labour Court, holding that there was no illegality committed by the Labour Court either in proceeding ex parte against the Petitioners herein or calculating the amount on the basis of material available on record.

3 There is no dispute about the Respondent's eligibility for payment of gratuity. The only dispute raised by learned Counsel for the Petitioners is about actual calculation of the amount of gratuity. It is submitted that the last drawn salary of the Respondent was Rs.7,700/-. Learned Counsel relies on Form 3A filed by the Petitioners before the Provident Fund Authorities, showing the salary of the Respondent as Rs.7,700/-. When the matter came before the Labour Court, the Petitioners neither filed a say nor remained present. On perusal of the documents produced by the Respondent and after considering his affidavit in lieu of examination-in-chief, the Labour Court allowed the application and passed an order for payment of gratuity and interest. A recovery certificate was issued on the basis of that order against the Petitioners. On appeal, the Industrial Court did not accept the Petitioners' case that there was no service of notice of the recovery proceedings on the Petitioners. The Court accepted the Respondent's case of the due service of the summons and found no merits in the challenge on the ground of the Court below heaving proceeded ex parte against the Petitioners.

4 As for the case of error in calculation of the amount, admittedly what was paid to the Respondent was much more than Rs.7,700/- as claimed by the Petitioners. The Industrial Court found that there was no record placed by the Petitioners to show actual wages paid by the Petitioners to the Respondent, such as payment slips or particulars of bifurcation of amounts paid to the Respondent. The Court noticed that from the record placed before the Court by the Respondent employee including his bank passbook, and in the absence of any denial or contrary record from the Petitioners, the finding of the Lower Court about the salary inclusive of

basic and dearness allowance being of Rs.27,000/- could not be said to be illegal or perverse.

5 No fault can be found within the parameters of scrutiny permissible under Articles 226 or 227 of the Constitution of India with respect to either the approach of the Industrial Court or the view taken by it.

6 The writ petition is, accordingly, dismissed. No order as to costs.

(S.C.GUPTE, J.)