IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2929 OF 2000

Dhule Sahakari Khadi Wa Gramodyog
Vikri Mandal,
Through its Managing Committee Member,
Shri. R.N. Patil, Age: Major,
R/o c/o Congress Bhavan,
Lane No.1, Dhule. ..PETITIONER

VERSUS

1. Dhanraj Shankar Kulkarni
   Age: Major, Occu.: -,
   R/o House No. 120,
   Kumar Nagar, In front of Marathi Shala,
   Sakri Road, Dhule.

2. Deputy Commissioner of Labour
   Nashik Division-cum-Appellate Authority,
   Under the Payment of Gratuity Act,
   Wani Patil Circle,
   Ganjmal, Nashik City, Nashik

3. Assistant Commissioner of Labour
   Vivekanand Nagar, Jalgaon. ..RESPONDENTS

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Mr. N.B. Suryawanshi, Advocate for petitioner.
Mr. C.R. Deshpande, Advocate for Respondent No.1.

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CORAM : RAVINDRA V. GHUGE, J.
DATED : 16th JUNE, 2017

ORAL JUDGMENT :

1. The petitioner establishment has challenged the judgment of the appellate authority under the Payment of Gratuity Act, 1972 dated 15th March,

2000 by which the appeal filed by the petitioner was dismissed on the ground that it failed to deposit the amount of gratuity while approaching the appellate forum, under Section 7(7) of the Payment of Gratuity Act, 1972. The petitioner is also aggrieved by the judgment of the controlling authority dated 23rd August, 1999 by which application PGA No. 35 of 1999 filed by the responding was allowed and an amount of Rs.12,848/- alongwith 9% interest has been granted.

2. I have heard the strenuous submissions of Mr. Suryawanshi on behalf of the petitioner and Mr. Deshpande on behalf of Respondent No.1/the original applicant.

3. Respondent Nos. 2 and 3 are authorities under the Act and hence stand deleted from this proceeding.

4. Upon considering the submissions of the learned Counsel, it is apparent that Mr. Suryawanshi, learned Counsel for the petitioner has canvased the following aspects:

A) Whether the controlling authority has rightly calculated the gratuity amount?

B) Whether the controlling authority was justified in granting 9% interest on the amount?

C) Whether the appellate authority was justified in *dismissing the appeal on the ground that the gratuity amount has not been deposited?*

5. There is no dispute that the respondent was working for 17 years as an accountant with the petitioner from 01st September, 1980 till 31st July, 1997. The last drawn salary was @ Rs.1,310/- per month. Based on the same, he claimed gratuity amount of Rs.12,848/- which has been granted. On this count, I do not find that the controlling authority has committed any error.

6. In so far as the interest amount is concerned, Section 7(3-A) of the Payment of Gratuity Act, 1972 reads as under:-

> *"If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3) of the employer shall pay from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may, by notification specify:*
>
> *Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the Controlling Authority for the delayed payment on this ground."*

7. It cannot be disputed that the rate of interest for long term deposits as per central government is a maximum of 10%. The controlling authority has

granted 9% interest. Keeping in view sub-section 3(A) of Section 7, as the controlling authority came to the conclusion that the petitioner was liable to pay gratuity, I do not find that the impugned judgment of the controlling authority could be termed as to be perverse.

8. This Court has dealt with a similar issue in the matter of ***Balvant Mohan Badve Vs. Ahmednagar Municipal Corporation*** reported in ***2016 (3) Mh.L.J. 62*** wherein it was concluded that the onus and burden lies on the employer to pay gratuity to the employee after 30 days of serving employee-employer relationship, unless there is any legal impediment and the gratuity is to be forfeited on account of the dismissal of an employee for the offence amounting to moral turpitude. Considering the law laid down, the impugned judgment of the controlling authority cannot be faulted.

9. In so far as the rejection of the appeal by the appellate authority on the ground of not depositing the gratuity amount assessed by the controlling authority is concerned, Section 7(7) of the Payment of Gratuity Act, 1972 reads as under:-

> *"Any person aggrieved by an order under Sub-section (4), may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate*

Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under Sub-section (4), or deposits with the appellate authority such amount."

10. The payment of Gratuity Act does not prescribe reduction of the deposit or waiver of the deposit as is found under Section 7-O of the EPF and MP Act, 1952 wherein the Provident Fund Appellate Tribunal can consider an application for reduction of deposit or waiver of deposit.

11. This court, in the matter of ***Nanded Zilla Dekhrekh Sahakari Sanstha Maryadit, Nanded Vs. Narhar Pralhadrao Kulkarni*** reported in ***2017 (2) BCR 142,*** has concluded that on the failure to deposit the gratuity amount within a period of 60 days as is mandated under the proviso to Section 7(7) of the Payment of Gratuity Act, the appeal cannot be entertained. Since Payment

of Gratuity Act is a part of social security legislation, the intent and object of the Act cannot be diluted in order to exempt the employer from depositing the gratuity amount.

12. Considering the above, I do not find that the impugned judgment could be terms as being perverse or erroneous.

13. This petition in devoid of merits is therefore dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)

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