

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4052 OF 2002

The Divisional Controller,
Maharashtra State Road Transport
Corporation, Aurangabad Division,
Aurangabad, District Aurangabad.

...PETITIONER

-VERSUS-

Waman Trimbak Khonde,
resident of Dhawani Mohalla,
Aurangabad, District Aurangabad.

...RESPONDENT

...
Smt.R.D.Reddy, Advocate for the Petitioner.
None for the Respondent.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th May, 2017

Oral Judgment :

1 The Petitioner is aggrieved by the judgment of the Controlling Authority under the Payment of Gratuity Act, 1972 dated 18.07.2001 and the judgment of the Appellate Authority dated 20.08.2002 by which the Respondent has been granted gratuity.

2 This Court, while admitting this petition on 20.11.2002,

observed that since the amount of gratuity was already deposited before the Appellate Authority and that has been withdrawn by the Respondent, the said withdrawal would be subject to the result of this petition.

3 The learned counsel for the Petitioner has strenuously criticized the impugned judgment. It is submitted that once the employee is dismissed from service for a proved misconduct of dishonesty, the said employee can never be entitled for gratuity. It is stated that the charge of allowing a truck unauthorizedly in the premises which were being guarded by the Respondent as a watchman and permitting the said truck to flee filled with scrap material illegally, was proved against the Respondent. Reliance is placed upon the judgment of the Honourable Supreme Court in the matter of Jorsingh Govind Vanjari vs. Divisional Controller, Maharashtra State Road Transport Corporation, Jalgaon, 2016. (12) SCALE 511, by which the Honourable Supreme Court has held in paragraph 17 as under:-

"17. *In order to deny gratuity to an employee, it is not enough that the alleged misconduct of the employee constitutes an offence involving moral turpitude as per the report of the domestic inquiry. There must be termination on account of the alleged misconduct, which constitutes an offence involving moral turpitude.*"

4 It is, therefore, submitted that the Honourable Supreme Court

has concluded in Jorsingh Vanjari case (supra) that if an employee is dismissed for proved misconduct of dishonesty or moral turpitude, he can be deprived of gratuity.

5 I could have accepted the submissions of the learned counsel for the Petitioner, but for the fact that after the dismissal of the Respondent was challenged by him in Complaint (ULP) No.341/1988, his complaint was partly allowed and it was held that the charges of misappropriation and fraud are not proved. The Petitioner filed Revision (ULP) No.55/1996 and the Respondent filed Revision (ULP) No.3/1997 before the Industrial Court. Both the revision petitions were dismissed by the Industrial Court by order dated 20.08.1998 and the judgment of the Labour Court was confirmed. It is, therefore, apparent that the Labour Court has concluded that the dismissal shall be treated as discharge simplicitor. The Respondent retired during the pendency of the proceedings before the Industrial Court.

6 The Petitioner had approached this Court in Writ Petition No.253/1999. By judgment dated 29.02.2012, this Court concluded that as the charges were not proved against the Respondent/ Employee, no interference was called for in the judgments of the Labour Court and the Industrial Court.

7 In the above backdrop, it is apparent that the charges of fraud and misappropriation are not proved against the Respondent. The payment of gratuity ordered by the Controlling Authority and the Appellate Authority cannot, therefore, be termed as being perverse or erroneous.

8 Considering the above, this Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)