

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

WRIT PETITION NO. 2886 OF 2015

Sambhaji s/o Dangal Patil
& anr.

...Petitioners

VERSUS

Dhule & Nandurbar Dist.
Central Coop. Bank & ors.

...Respondents

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Shri H.H.Desle, advocate for the petitioner
Smt. Vaishali Patil, A.G.P. for respondent no.1
Shri P.S.Patil, advocate for respondent no.3

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CORAM : S.V.GANGAPURWALA & K.L.WADANE, JJ.

DATED : 25th JANUARY, 2017

O R D E R :

Rule. Rule returnable forthwith. With the consent of the learned counsel for respective parties, the petition is taken up for final hearing.

2. Mr. Desle, learned counsel for the petitioners states that the petitioners were working with respondent/Bank. Criminal case was

filed against the petitioners for offences punishable under Sections 408, 409, 467, 468, 471 477A and 34 of the Indian Penal Code. The departmental inquiry was also initiated against the petitioners. The petitioners are acquitted in the criminal case filed against them on 9.6.2011. The inquiry is not proceeded further. The petitioner no.1, on attaining the age of superannuation has retired in the year 2013 and petitioner no.2 has retired in the year 2015. The amount of gratuity and leave encashment and other retiral benefits are withheld by the respondent/Bank. The petitioners are entitled for the same. After the retirement of the petitioners the employer-employee relationship between the parties do not subsist. As such, the respondent/Bank cannot proceed with the inquiry.

3. Learned counsel for the respondents submits that serious allegations of misappropriation are against the petitioners. Both the petitioners have misappropriated amount

of Rs.13,44,559/-. Some amount is repaid by the petitioners and the amount outstanding to be recovered from the petitioners is Rs.5,91,602/- with interest of 4 per cent per annum from the year 2006 till 2016. The learned counsel further submits that as the allegations are about misappropriation, the inquiry may proceed further and after culmination of the inquiry further decision would be taken about the payment of gratuity, leave encashment.

4. We have considered the submissions advanced by the learned counsel for respective parties.

5. It is not disputed that on attaining age of superannuation the petitioners have retired from service. The rules are not placed before us so as to enable this Court to conclude that even after retirement the respondent/Bank can proceed further with the inquiry. Some of the amount has been recovered from the petitioners and the

petitioners are ready to pay the remaining amount. The inquiry has also become stale. It is said to be pending since the year 2006 and no further progress has been made. So also no rules are pointed out to this Court enabling the respondent/Bank to proceed with the inquiry even after retirement.

6. In the light of above, further proceedings in the departmental inquiry against the petitioners are set aside. The petitioners shall pay the remaining amount payable out of Rs.13,44,559/- to the respondent/Bank. The respondent/Bank may recover the amount from the petitioners from the dues of gratuity and leave encashment payable to the petitioners along with 4 per cent interest on the amount due and outstanding. The deductions from the amount payable to the petitioners from gratuity and leave encashment shall be made commensurate to the deposits made by the petitioners from time to time. The same shall be done expeditiously

preferably within four months.

7. Writ petition accordingly disposed of. No costs. Rule is made absolute in the above terms.

(K.L.WADANE, J.)

(S.V.GANGAPURWALA, J.)

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