

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

WRIT PETITION NO. 5832 OF 2016

Parvez S/o Md. Abrar Shaikh,
Age : 59 Years, Occu. : At Present Nil,
R/o C/o Hotel Sagar, Chalisgaon Road,
Kannad, Tq. Kannad,
Dist. Aurangabad.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai - 32.
2. Accountant General (A & E),
Maharashtra - II, Nagpur,
Dist. Nagpur.
3. The Chief Executive Officer,
Zilla Parishad, Aurangabad,
Dist. Aurangabad.
4. The Deputy Director of Education,
Aurangabad Division, Aurangabad,
Dist. Aurangabad.
5. The Education Officer (Secondary),
Zilla Parishad, Aurangabad,
Dist. Aurangabad.
6. Hazrat Siddique Shah Education
Society, Kannad, Tq. Kannd,
Dist. Aurangabad,

Through its Secretary.

7. The Head Master,
Sanjay Gandhi Urdu High School
and Junior College, Kannad,
Tq. Kannd, Dist. Aurangabad. .. Respondents

Shri Santosh B. Gastgar, Advocate for the Petitioner.
Shri P. S. Patil, Addl.G.P. for Respondent Nos. 1, 2, 4 and 5.
Shri Shaikh Naseer, Advocate h/f Shri M. C. Syed, Advocate for
Respondent Nos. 6 and 7.

**CORAM : S. V. GANGAPURWALA AND
S. M. GAVHANE, JJ.**

DATE : 09TH NOVEMBER, 2017.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. Mr. Gastgar, the learned counsel for the petitioner submits that, the petitioner was appointed as Assistant Teacher on 07.07.1983 and was confirmed on 06.07.1985. In the year 1989 offences punishable U/Sections 465, 468 and 120-B r/w Sec. 34 of the Indian Penal Code was registered against the petitioner. The petitioner was convicted in the said offence and subsequently the respondent No. 6/management terminated the services of the petitioner. The learned counsel submits that, the petitioner is entitled for gratuity, as he has rendered more than ten years of service. The learned counsel relies on Sec. 4(6) of the Payment of

Gratuity Act (for short hereinafter referred as "Act of 1972"). The learned counsel further submits that, payment of gratuity is not a charity, but is a hard earned amount of the petitioner, which the petitioner is entitled to. The respondents cannot deny the benefit of gratuity to the petitioner only on the ground that the service of the petitioner is terminated. The learned counsel submits that, Rule 45 of the Maharashtra Civil Services (Pension) Rules would not apply in the present matter. The same would be restricted to the pensionary benefits and not to the payment of gratuity. The provisions of the Act of 1972 do not in any way debar the petitioner from claiming the amount of gratuity.

3. The learned Additional Government Pleader submits that, the service of the petitioner is terminated for an offence involving moral turpitude. The petitioner having been found guilty of forgery, the conviction having been confirmed upto the Apex Court is not entitled for gratuity.

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

5. Before we proceed to deal with the contentions raised by the learned counsel for respective parties, it would be appropriate to refer to relevant provisions.

6. Section 4 of the Payment of Gratuity Act.

THE PAYMENT OF GRATUITY ACT

1.
2.

4. Payment of Gratuity.- (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-

- (a) on his superannuation, or
- (b) on his retirement or resignation,
- (c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

1[Provided further that in case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is minor, the share of such minor, shall be deposited with the Controlling Authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority].

Explanation.- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the

termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of 2[an employee who is employed in a seasonal establishment, and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days' wages for each season.

3[Explanation.-In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.]

- (3)
- (4)
- (5)

(6) Notwithstanding anything contained in sub-section (i),-

- (a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.
- (b) the gratuity payable to an employee 1[may be wholly or partially forfeited].
 - (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part; or
 - (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

7. Rule 45 of the Maharashtra Civil Services (Pension) Rules.

**THE MAHARASHTRA CIVIL SERVICES (PENSION)
RULES**

1.

2.

45. Forfeiture of service on dismissal or removal.

Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service.

8. Gratuity, as a term itself suggest, is gratuitous payment given to an employee on discharge or retirement. Gratuity is something given voluntarily or beyond obligation usually for some service. An employee expects or deserves as a matter of right some reward when he retires after a long meritorious service. But, now it has acquired the status of a statutory right. Right to receive gratuity is now recognized as a valuable right.

9. The provision of payment of gratuity has been made U/Sec. 4 of the Act of 1972. Sec. 4(1) provides that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years (a) on his superannuation, (b) on his retirement or resignation or (c) on his death or disablement due to accident or disease. Whereas, sub-clause 6 spells out the condition under which gratuity of an employee can be stopped or withheld.

10. While examining import of the aforesaid section, it contemplates following circumstances, under which gratuity can be withheld (a) if order of termination is based upon an act, willful omission or negligence causing any damage or loss to the property belonging to employer, (b) if services of an employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part and (c) if, an employee is found guilty of moral turpitude provided that the said offence has been committed during tenure of his service career.

11. It is undisputed that Act of 1972 is applicable to educational institutions. The Act of 1972 is a complete code.

12. The Act of 1972 is no doubt a piece of social welfare legislation. Welfare and beneficial piece of legislation certainly shall receive liberal interpretation. The rights under Sec. 4(1) of the Act of 1972 to receive gratuity is circumscribed by Sub-Sec. 6 of Sec. 4 of said Act. Sub Sec. 6 of Sec. 4 of the Act starts with the non-obstante clause. Clause (b)(ii) of Sub. Section 6 of Sec. 4 explicitly and specifically prescribes that, if service of an employee has been terminated for an act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment, then the gratuity payable to such employee would stand forfeited.

13. In the present case, the petitioner was working as an assistant teacher at the relevant time. The petitioner was found guilty of increasing marks of the students during the course of his employment. For such an act of malpractice offence was registered against the petitioner U/Sec. 465, 468 and 120-B r/w Sec. 34 of the I. P. Code. The petitioner was convicted for the offences punishable U/Sections. 465, 468 and 120-B r/w Sec. 34 of the Indian Penal Code. The conviction was sustained upto the Apex Court. Pursuant to said conviction the petitioner was terminated from service. The termination order specifically states that his service stands terminated on account of the conviction and his request for compulsory retirement is also rejected. The petitioner was guilty of having indulged in the act of malpractice during the course of examination. The said act was during the course of his employment.

14. The act of the petitioner would come within the ambit and purview of the term moral turpitude. The term moral turpitude is difficult to be defined specifically and would have different shades/meaning in different contexts. The act involving moral turpitude must have been committed by an employee in the course of his employment, to dis-entitle him from gratuity. An employee is acting in the course of his employment, when he is doing something in discharge of a duty to an employer, directly or indirectly, imposed upon him by his contract of service.

15. Rule 45 of the Maharashtra Civil Services (Pension) Rules also categorically provides that dismissal or removal of a Government servant from the post entails forfeiture of his past service.

16. Division Bench of this Court in the case of Jeevan Kashinath Patil and others Vs. State of Maharashtra reported in **2014(5) Bom.C.R. 415** has observed thus :

19. Moreover, in the present facts, Rule 46(1) of the Pension Rules 1982 provides for forfeiture of past service on a person resigning resulting in the respondent State not giving gratuity to the petitioners. This even though it does not allege any misconduct or inefficiency on the part of the petitioners. Therefore, not granting of gratuity would mean imposing penalty upon the petitioners without just cause. Normally only dismissal or removal from a post would entail forfeiture of past service and consequently inter alia the right to receive gratuity.

17. In said judgment the Division Bench was considering Rule 46(1) of the Pension Rules, wherein right to receive gratuity was denied on account of resignation of an employee. While dealing with the said facet of the matter, the Division Bench observed

that, normally only dismissal or removal from a post would entail forfeiture of past service and consequently inter alia right to receive gratuity.

18. In the present case, the termination of the petitioner from service is on account of conviction for offences punishable U/Sections 465, 468, 120-B r/w Sec. 34 of the Indian Penal Code and the act for which he was convicted and terminated is performed during the course of his employment. The petitioner cannot claim any right to the amount of gratuity.

19. The writ petition as such is dismissed. No costs. Rule discharged.

Sd/-
[S. M. GAVHANE, J.]

Sd/-
[S. V. GANGAPURWALA, J.]