

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

Writ Petition No. 0587 of 2017

District : Dhule

Madhukar s/o. Manik Mahale,
Age : 66 years,
Occupation : Retired,
R/o. Jai Malhar Nagar,
Plot No.12, Sakri Road,
Dhule,
Taluka & District Dhule.

.. Petitioner.

versus

1. The State of Maharashtra,
Through its Secretary,
State Transport Division,
Mantralaya, Mumbai - 32.

2. The Divisional Controller,
M.S.R.T.C., Dhule,
Taluka & District Dhule.

.. Respondents.

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Mr. N.L. Choudhari, Advocate, for the petitioner.

*Ms. S.S. Raut, Asst. Government Pleader, for
respondent no.01.*

*Mr. R.N. Jain, Advocate, holding for
Mr. D.S. Bagul, Advocate, for respondent no.02.*

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 20TH FEBRUARY 2017

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

02. Shri Choudhari, learned Advocate for the petitioner has strenuously criticized the impugned judgment dated 05.02.2015, delivered by the Controlling Authority, Ex-officio Labour Court, Dhule, by which his claim for gratuity for the period from 24.03.1973 till 31.08.1978 has been rejected.

03. It is trite law that an order passed by the Controlling Authority under Section 7(4)(c) of the Payment of Gratuity Act, 1972 [**For short, "Act of 1972"**] has to be challenged before the appellate authority, which is the Industrial Court, within 60 days from the date of the receipt of the order. Proviso to Sub-Section 07 of Section 07 of the said Act indicates that the said period can be increased by 60 days. Consequentially, an appeal can be preferred within 120 days from the date of the receipt of the order under Section 7(4) of the Act of 1972.

04. The stamp on the impugned judgment indicates that the petitioner applied for a certified copy on 27.02.2015 and the copy was delivered to him on 03.03.2015. As such, he could have preferred an appeal before the appellate authority on or before

03.05.2015. No such appeal has been filed. This petition has been filed on 09.08.2016.

05. As such, even if the petitioner was to be relegated to the remedy under Section 7(7) of the Act of 1972, I could have allowed him to do so, had he approached this Court within the said 60 days i.e. on or before 03.05.2015, so as to give him the benefit of pendency of this petition which is filed before an incorrect forum. However, the petitioner has approached this Court on 09.08.2016 which is about 15 months beyond the limitation of 120 days. Considering Section 7(7) and the proviso thereunder and the law that is settled, this Court cannot enlarge the limitation period.

06. I have heard Shri Choudhari on the merits of his claim for gratuity for the period from 24.03.1973 till 31.08.1978.

07. Section 2A of the Act of 1972 mandates that the employee has to work for 240 days in each calendar year and such service is to be performed over a continuous period of 05 years so as to be eligible for gratuity.

08. The Controlling Authority has arrived at a finding on facts in the impugned judgment. The petitioner was dismissed from service on 27.11.1974.

Thereafter, he worked intermittently for a period of 132 days between 20.04.1976 till 19.04.1977, 198 days in between 20.04.1977 to 19.04.1978. As such, he was not entitled for gratuity for the period of 05 years, as claimed by him. He has worked continuously from 1978 till he superannuated in 2010 and has been paid his gratuity for this entire period.

09. Considering the above fact situation, even on merits, this petition does not deserve to be entertained. Same is, therefore, dismissed. Rule is discharged.

(Ravindra V. Ghuge)
JUDGE

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