

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

WRIT PETITION NO. 9894 OF 2016

Vasant s/o. Sakharam Birlinge .. Petitioner

Versus

The Managing Director & Anr. .. Respondents

Mr.S.S.Wagh h/f. Mr.S.S. Shelke, Advocate for the petitioner.

Mr.B.S.Deshmukh, Advocate for respondent No.2.

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

DATED : 08.12.2017

P.C. :-

1. The petitioner seeks release of monetary benefit of past service from 1982 to 1988 for the purpose of gratuity, GPF, leave encashment, except back wages. Mr. Wagh h/f. Mr. Shelke, learned advocate for the petitioner submits that the petitioner was appointed as a Conductor on 13.11.1982. On 27.04.1988, the petitioner was dismissed from service. As per the order passed in

appeal, the petitioner was reinstated on 18.08.1988 and on 31.07.2015, he retired from service from the promotional post of Traffic Controller. The petitioner made representations for releasing the amount of gratuity, GPF, leave encashment, but the same are not considered.

2. Mr.Deshmukh, learned advocate for respondent No.2 submits that according to the State Transport Service Rules, more particularly, Rule 94(3), if an employee had willfully left the service or dismissed from the service on account of punishment, then he is not entitled for monetary benefits. The petitioner is paid amount of PF for the said period and leave encashment of 251 days is also paid for 27 years of his service.

3. Rule 94(3) relied by the respondent deals with leave encashment and does not deal with payment of gratuity.

4. Section 4 of the Payment of Gratuity Act, deals with payment of gratuity. As per section 4 of the Payment of Gratuity Act, the gratuity shall be payable to an employee on the termination of his employment after he has rendered service, for not less than five years. The only circumstance in which gratuity can be withheld is provided under sub-section (6) of section 4 of the Payment of Gratuity act. Said section 4(6) reads thus :-

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

(a) the gratuity of an employee, whose services have been terminated for any act, willful 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 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.

5. Reading the said sub-section, it is manifest that the gratuity payment to an employee may be wholly or partly forfeited, if services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part; or 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.

6. In the present matter, the petitioner was terminated on 27.04.1988 after the Departmental Enquiry. In the appeal filed by him, he was reinstated. As per the order of the appellate authority, his past service could not be considered for continuity, nor would be entitled for the benefit of his past service.

7. The order of the appellate authority disentitling the petitioner from the benefit of past service would be relevant to the extent of not counting the past

service for the purpose of continuity, seniority and other purposes. The Payment of Gratuity Act specifically provides that on completion of five years of service, the petitioner is entitled for gratuity and the circumstances under which the petitioner would be debarred from claiming gratuity are spelt-out under section 4(6). Reading the said section in its totality and applying it to the facts of the present case, it does not appear that the case of the petitioner would be covered under section 4(6) of the Act. There is nothing on record to show that the petitioner was terminated in 1988 for any riotous, disorderly conduct or any other act of violence or that he was terminated for any act which constitutes an offence involving moral turpitude and that the act being committed during the course of employment.

8. In the light of above, there will be no impediment to give benefit of payment of gratuity for the period from 1982 to 1988. It is stated that the petitioner is already paid with provident fund amount. In

the light of above, the respondents shall pay the petitioner an amount admissible as gratuity even for the period from 13.11.1982 to 27.04.1988. Same shall be calculated and paid expeditiously, preferably within a period four months.

9. The writ petition is accordingly partly allowed.
No costs.

[S.M.GAVHANE, J.]

[S.V.GANGAPURWALA, J.]