

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8431 OF 2013

1. MIDC through its Chief Executive Officer
Udyog Sarathi Mahakali Gufa Marg,
Andheri (East) Mumbai 23,
2. MIDC through Executive Engineer
Division Latur, Tq. And Dist.Latur – PETITIONERS

VERSUS

Murar Ramchandra Ghatge (deceased)
Through his LR's,
Smt.Sunanda Murar Ghatge,
R/o 300-C Ward, Near Shivaji Market,
Shivaji Putala, Kolhapur – RESPONDENT

Mr.S.S.Dande, Advocate for the petitioners.
Mr.V.P.Golewar, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 14/02/2017

ORAL JUDGMENT :

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

2. The petitioners are aggrieved by the judgment of the Labour Court / Controlling Authority dated 31/12/2011 by which the application of the respondent / deceased employee for gratuity was allowed and he was granted gratuity for an amount of Rs.1,53,135/-

with 10% interest. The petitioners are also aggrieved by the judgment of the Industrial Court/Appellate Authority dated 16/04/2013 by which the appeal preferred by the petitioners has been dismissed. The original claimant Murar Ramchandra Ghatge has passed away and is represented by his widow.

3. The learned counsel for the petitioners has strenuously criticized the impugned judgment. His challenge can be summarized as follows :-

[a] The deceased was not a workman.

[b] The deceased was removed from service for a long period of unauthorized absence.

[c] Rule 101 of The Maharashtra Civil Services (Pension) Rules, 1982 would lead to the forfeiture of gratuity after a government servant is removed from service.

[d] Interest @ 10% granted by the Controlling Authority is exorbitant.

4. Mr.Golewar, learned Advocate for the legal heirs has supported the impugned judgments.

5. I have considered the submissions of the learned Advocates.

6. The contention of the petitioners that the deceased was not a workman and would therefore be disentitled to gratuity, cannot be sustained in the light of the definition of an 'employee' u/s 2(e) of the Payment of Gratuity Act, 1972. Unlike the definition of 'workman' u/s 2(s) of the I.D.Act and the definition of 'employee' u/s 3(5) of the MRTU and PULP Act, 1971, the definition of employee u/s 2(e) of the Gratuity Act has a wider meaning. Since gratuity is a part of social legislation, the definition of an employee is given a broader meaning.

7. It is contended that under Rule 101 of the M.C.S. (Pension) Rules is applicable and the deceased would not be entitled to gratuity as he has been removed from service and Rule 101 leads to forfeiture of gratuity. It is apparent that Rule 101 is pitted against Section 4(6) of the Payment of Gratuity Act. Gratuity payable to an employee under the Gratuity Act can be forfeited only if any of the acts committed by the employee would fall under such offences as have been defined under sub section 6. Section 4(6) reads as under :-

“Notwithstanding anything contained in sub-section (1) -

(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 [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.”

8. I do not find that the contention of the petitioners deserves to be accepted that the act of unauthorized absenteeism would fall within the meaning of 'disorderly conduct'. The word 'disorderly' has been used in Section 4(6)(b)(i) in order to describe the nature of misconducts committed by an employee. If acts like riotous or disorderly or violent behaviour are committed, the gratuity can be wholly or partially forfeited. The word 'disorderly conduct' therefore is to be considered with reference to the entire clause (i).

9. The Black's Law Dictionary describes 'disorder' as being a public disturbance, riot, civil disorder. 'Disorderly conduct' is defined as a behaviour that tends to disturb public peace, undermines public safety or causes an offence to public morals. Similarly, the Oxford Dictionary defines 'disorder' as being a violent behaviour and

outbreak of rioting or public disorder. In this context, the contention of the petitioner that the deceased was absent would mean a disorderly act on his part so as to deprive him of the gratuity, is unsustainable.

10. In so far as the contention of the petitioners is concerned that Rule 101 permits forfeiture of gratuity if a person is removed from service, runs counter to Section 4(6) of the Gratuity Act, which is Central Legislation. In the face of a conflict between the Rules and the provisions of Central Legislation, the latter would prevail. This issue is no longer *res-integra* considering the judgment of the Hon'ble Supreme Court in the matter of Jaswant Singh Gill Vs. Bharat Coking Coal Limited, 2007(112) FLR 196 and E.I.D.Parry (I) Ltd., Vs. Omkar Murthy and others, [2001(89) FLR 844]. As such, the petitioners would not be at liberty to forfeit the gratuity in such a case notwithstanding that the M.C.S.R. (Pension) Rules may appear to give that liberty to the petitioners.

11. In so far as interest on the gratuity is concerned, Section 7(3A) of the Payment of Gratuity Act, reads as under :-

"If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section

(3) the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may, by notification specify.”

12. Considering the above, if an employer fails to pay gratuity to an employee and as a consequence of which the employee is dragged into litigation, it is for the Controlling Authority and/or the Appellate Authority to compute the quantum of interest. Just because a different view or a second view is possible, would not mean that this Court should exercise its supervisory powers in the light of the law laid down by the Hon'ble Apex Court in the matter of Syed Yakoob Vs.K.S.Radhakrishnan and others, reported at AIR 1964 SC 477 and Surya Dev Rai Vs. Ram Chander Rai, reported at 2003(6) SCC 682.

13. Considering the above, this petition, being devoid of merit, is therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)