

WRIT PETITION NO. 2963 OF 1999

V/S

D.P.Pagar & Ors.Respondents

Mr.Makarand Bakare i/by B.J.Sawant for the Petitioner
Ms.Uma Pasule Desai, AGP for the State.
Mr.Santosh Shetty i/by T. S. Shetty & Associates, for Respondent No. 2.

**CORAM : A.A. SAYED &
M.S.KARNIK,JJ.**

DATED : 3 JULY 2017

P.C.:

Learned Counsel for the Petitioner states that he has no instructions in the matter and seeks time. The Petition is of the year 1999. The matter has been called out on a number of occasions earlier and adjourned either because none was present on behalf of the Petitioner or on the request of the learned Counsel for the Petitioner. We are, therefore, not inclined to grant time.

2. By this Petition, the Petitioner has challenged the order dated 01 July 1999 passed by the Appellate Authority under the Payment of Gratuity Act, 1972, whereby the Appeal filed by the Respondent No.2 came to be

allowed and the order of the Controlling Authority dated 03 March 1998 directing the Respondent-Company to pay to the Respondent Rs.1,28,057/- towards gratuity alongwith interest at the rate of 12% p.a., was set aside. The Petitioner claims that by virtue of clause 9 of the Voluntary Retirement Scheme (VRS) the employees opting for VRS were eligible to pro-rata arrears of payments which include payment offered under any other heads and statutory amendment and since the Payment of Gratuity Act is amended from 24-05-1994 raising the gratuity amount from Rs.50,000/- to Rs.1,00,000/- the Petitioner is entitled to additional amount. The Petitioner claims that he ought to be treated as deemed to be in service till he reached the age of 60 years being the age of superannuation and entitled to monetary benefits of difference in gratuity till 60 years under Clause 13 of Settlement dated 08-09-1994 entered into between the Respondent-Company and Association of Engineering Workers.

3. It is an admitted position that the Petitioner had opted for voluntary retirement under the Voluntary Retirement Scheme and accepted monetary benefits including gratuity as far back as on 15-02-1992. In these circumstances, having opted for voluntary retirement, the Petitioner had ceased to be in service from 15-02-1992. Subsequent amendments to the Payment of Gratuity Act is of no consequence. The contention of the

Petitioner that he ought to be treated as deemed to be in service till he reached the age of 60 years being the age of superannuation and entitled to monetary benefits of difference in gratuity till 60 years under Clause 13 of Settlement dated 08-09-1994 entered into between the Respondent-Company and Association of Engineering Workers cannot be countenanced. The Settlement dated 08-09-1994 relied upon by the Petitioner was in respect of employees who were still on the rolls of the Company. VRS envisages voluntary retirement prior to the age of 60 years which is the date of retirement on superannuation. The Petitioner is estopped from claiming any additional gratuity amount.

4. The Petitioner having willingly participated in the proceedings before the Appellate Authority, we are not inclined to go into the contention of the Petitioner that non-Judicial Officer ought not to have heard and decided the Appeal and that Judicial Officer ought to have heard his Appeal. We are informed that the Government has now issued Notification appointing Labour Courts and Industrial Courts as Controlling Authority and Appellate Authority respectively. It is noticed that the Petitioner accepted Voluntary Retirement on 15-02-1992 and belatedly filed the Application for payment under the Payment of Gratuity Act, 1972 only on 31-10-1995.

5. For the aforesaid reasons, we find no merit in the Petition. The Petition is accordingly dismissed. Rule to stand discharged. No costs.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)