

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

WRIT PETITION NO. 7875 OF 2016

The Chairman and Managing Director, .. Petitioners
Bharat Sanchar Nigam Ltd., & others

Versus

Ramesh s/o. Tukaram Diwate & Anr. .. Respondents

Mr.S.C. Arora, Advocate for the petitioners.
Mr.Mohsin Khan, Advocate for respondent No.1.

**CORAM : S.S.SHINDE &
S.M.GAVHANE, JJ.**

**RESERVED ON : 23.01.2018
PRONOUNCED ON : 14.03.2018**

ORDER [PER : S.M. GAVHANE, J.] :-

. By this petition, the petitioners, who are respondent Nos.2 to 5 in O.A. No.661 of 2013 have prayed to quash and set aside the order dated 07.10.2013, passed by the learned Member (Judicial), Central Administrative

Tribunal, Mumbai, [for short "the CAT"] in above said O.A., directing the respondents to make payment of service gratuity due to respondent No.1/original applicant in above said O.A., as per rules along with interest at the rate of 9% p.a. on it from 01.03.2013 till the date of order, within a period of eight weeks from the date of receipt of copy of the said order. Hereinafter the parties are referred to by their original position before the CAT in the original application.

2. The facts giving rise to this writ petition, in short, can be stated as under :-

A) The applicant/respondent No.1 initially joined services with the respondents on 26.12.1977. He retired on superannuation on 28.02.2013, after rendering unblemished service for more than 35 years. No disciplinary proceeding was pending against the applicant at the time of his retirement.

B) According to the applicant, on the basis of complaint lodged by the Secretary, BSNL Association against the applicant on 10.10.2012 alleging his involvement in civil as well as criminal cases by letter dated 24.12.2012, the respondents sought explanation from the applicant. He submitted his detailed explanation on 16.01.2013. However, as the respondents were not satisfied with the explanation, the applicant was put under suspension. Thereafter, he retired on superannuation on 28.02.2013. It was directed that since there was no vigilance clearance, the applicant will be paid post retirement benefit as per existing rules, till final retirement order is issued. It was also directed that the Government/BSNL dues, if any, outstanding against the applicant may be recovered.

C) According to the applicant, even after retirement he was not paid pensionary benefits such as service gratuity, leave encashment, pension etc. Therefore, he submitted a representation on 11.03.2013

followed by reminders. The applicant contents that since no disciplinary proceeding was initiated against him under BSNL (Conduct, Discipline & Appeal) Rules, 2006 (for short "BSNL CDA Rules"), the respondents cannot withhold gratuity, leave encashment and pension, which could be withheld or withdrawn only if he is found guilty of grave misconduct either in a disciplinary proceeding or in a criminal case.

D) It is stated that some private complaint cases have been filed against the applicant, which have no connection with his official duty. Thus, according to the applicant, action on the part of the respondents to withhold the gratuity, leave encashment and pension is illegal.

3. There is no dispute that after filing of the O.A., by the applicant, the respondents have considered applicant's representation for releasing the amount of leave encashment and the same was accordingly released.

So also, he was granted provisional pension, as per rules. Thus, the claim in the O.A. was restricted to withholding amount of service gratuity to the applicant.

4. By common reply dated 26.11.2013, the respondents resisted the claim of the applicant. On denying all the allegations made by the applicant against them, they have contended that while the applicant was working with the respondents, it was found that he was attached to various companies, namely, M/s.Unique Finance/Travels/Auto-Deals, City Limozine, Sigma Motors etc. Taking dis-advantage of his position as BSNL employees, he was successful in attracting number of persons to become members of the scheme introduced by making huge financial investment in the above said companies either in their individual names or in the names of their family members. The applicant managed to collect the amount either under his own signature or with the help of his son, Summit. The applicant has thus contravened the provisions of the CCS (Conduct), Rules,

1964, since he indulged in private business and trading activity. He was also prosecuted by investors in various Criminal Courts as well as before District Consumer Forums. Therefore, before his retirement, on a complaint received against him, he was put under suspension and regular department enquiry was contemplated against him. However, the memorandum/charge-sheet could not be filed before his retirement for short of time. Thus, the action on the part of the respondents in withholding the pensionary benefits is fully justified and calls for no interference in view of the provisions of Rule 61 of the BSNL CDA Rules. Since the complaint lodged against the applicant is being investigated, further necessary steps will be taken depending upon the result of the investigation. Accordingly, the respondents had prayed to dismiss the O.A.

5. It appears that thereafter the applicant filed rejoinder on 16.01.2014. Thereafter, on 12.02.2014, the respondents filed reply to rejoinder and reiterated the

grounds stated in the reply.

6. On considering the pleadings of the parties, relevant BSNL CDA Rules, decisions relied upon by the parties, documents produced on record and submissions made by the learned advocates for both the sides, the learned Member (Judicial) of CAT by the impugned order directed the respondents to pay service gratuity due to the applicant with interest as detailed in the introductory para of this order.

7. Aggrieved by the said order, the petitioners/ original respondent Nos.2 to 5 filed this petition under Articles 226 and 227 of the Constitution of India, requesting to set aside the impugned order, on several grounds mentioned in the petition and more particularly on the ground that respondent Nos.2 to 4 have received the report of the Investigating Officer at later point of time and therefore they were not in a position to bring to the notice of the CAT that the charges levelled

against the applicant under Articles Nos.1,2 and 4 are proved and that charge under Article No.3 is not proved.

8. The applicant/respondent No.1 herein filed affidavit-in-reply and reiterated the contentions, which are referred earlier while referring his case before the CAT. He has denied almost all the contentions in the petition raised by respondent Nos.2 to 4, which are raised against him. He stated that the writ petition is devoid of merits and respondent Nos.2 to 4/petitioners herein may be directed to pay interest at the rate of 9% within shortest period as original gratuity amount has been already paid on 04.03.2017, which shows that the petitioners herein have realized their unlawful action. He is retired in 2013. The disciplinary case was finally ended by imposing penalty on 06.08.2016. It is stated that compensation be granted to the applicant for causing mental agony of all these years from his retirement in 2013.

9. We have heard learned advocates appearing for respondent Nos.2 to 5 (petitioners herein) and applicant (respondent No.1 herein). With their assistance, we have perused the pleadings of the parties, reply affidavit of applicant No.1 and copies of documents produced by the parties. We have also gone through the impugned order.

10. The learned Advocate appearing for respondent Nos.2 to 5/petitioners has submitted that as stated by the applicant/respondent No.1 gratuity amount has been paid on 04.03.2017 to the applicant and he restricted his arguments in the petition only to the extent of interest, awarded on gratuity amount by the CAT as per the impugned order. He submits that the learned Member of the CAT should not have awarded interest on the gratuity amount, as there is no delay in payment of gratuity as the gratuity was withheld according to law and rules and it was not withheld deliberately or intentionally or to harass the applicant.

11. On the other hand, learned advocate appearing for the applicant submits that the amount of gratuity was illegally withheld by the petitioners herein and the same has been paid only after filing of this petition. Therefore, when the amount of gratuity was withheld without any just ground, learned Member of the CAT was right in awarding interest on the gratuity amount as per the impugned order, which needs no interference in the exercise of writ jurisdiction. Thus, it is submitted that the petition is liable to be rejected.

12. On perusal of the impugned order, it is clear that the learned Member (Judicial), CAT directed the respondents to make payment of gratuity due to the applicant with interest at the rate of 9% p.a. from 01.03.2013 till the date of order within a period of eight weeks from the date of receipt of said order. As observed earlier, there is no dispute that during pendency of this petition on 04.03.2017, the respondents have paid gratuity amount to the applicant and the

learned advocate appearing for the petitioners/respondent Nos.2 to 5 has restricted his arguments to the extent of interest amount. Thus, there is no need to consider the aspect whether the directions to the respondents to pay gratuity amount to the applicant as per the impugned order are correct or otherwise. In this view of the matter, the only aspect which is required to be considered is whether the directions as per the impugned order to the respondents to pay interest at the rate of 9% are proper or otherwise.

13. There is no dispute that while under suspension, the applicant retired on superannuation on 28.02.2013. Sub-section(1) of section 4 of the Payment of Gratuity Act, 1972 provides that the gratuity shall be payable to employee on 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, or (c) on his death or disablement due to accident or disease. This provision clearly shows that

on termination of employment of the employee after he has rendered service for not less than five years on his superannuation, he is entitled to gratuity amount. In the present case, when the applicant retired on 28.02.2013, the amount of gratuity was required to be paid to him on 01.03.2013, after his retirement on superannuation. But, admittedly, said amount was not paid by the petitioners. The justification of the present petitioners for not paying the gratuity amount is that there was enquiry against the applicant and till the conclusion of said enquiry, the petitioners authorities were entitled to withhold the gratuity amount. The said contention of the petitioners/respondent Nos.2 to 5 was not accepted by the learned Member of the CAT, as according to learned Member, the articles of charges levelled against accused were not sufficient to state that the applicant caused loss to respondent Nos.2 to 5. The report of enquiry has been produced after passing of the impugned order and as per said report as mentioned in the petition itself article Nos.1,2 and 4 are proved and

Article No.3 is not proved. On perusal of said Article Nos. 1,2 and 4, they do not suggest that the applicant caused any loss to the employer/respondent Nos.2 to 5. Article No.3, which has been proved as per the enquiry report as contended by the present petitioners is also not sufficient to state that the applicant caused loss to the employer by using official mobile phone for carrying out private business. Therefore, the contention of respondent Nos.2 to 5 that gratuity amount of the applicant was legally withheld is not sustainable. In such circumstances, when the gratuity amount was payable to the applicant on 01.03.2013, but it was not paid and when it was unauthorizedly retained till payment on 04.03.2017, the learned Member (Judicial) of the CAT was right in awarding interest on the gratuity amount from 01.03.2013 till the date of impugned order. Therefore, we find no fault in the impugned order to the extent of directing the present petitioners/respondent Nos.2 to 5 to pay interest at the rate of 9% p.a. on gratuity amount to the applicant. Therefore, the impugned order requires

no interference by this Court in the exercise of writ jurisdiction. As such, as there is no merit in the writ petition, the same is dismissed. There shall be no order as to costs.

[S.M.GAVHANE, J.]

[S.S.SHINDE, J.]