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

WRIT PETITION NO. 9592 OF 2017

Nanded District Central Co-operative
Bank Ltd., Nanded, Through its
Authorized Officer,
Shri Raju Rangrao Zambre
Age : 54 years, Occup. Service,
R/o Nanded, Dist. Nanded. .. PETITIONER

Versus

Pralhad Digambar Chavan,
Age : 62 years, Occu : Retired,
R/o Chirli, Post Pimpalgaon,
Tq. Biloli, Dist. Nanded .. RESPONDENT

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Mr Kamlakar J. Suryawanshi, Advocate for petitioner
Mr Ashutosh S. Kulkarni, with Mr A.N. Nagargoje, Advocates for respondent

CORAM : SUNIL P. DESHMUKH, J.
DATE : 6th October, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally by consent.

2. Succinctly referred to, indisputable factual background appears to be, present respondent had joined services with petitioner around May, 1972 as a clerk and had been working with petitioner till 28-02-2006 and had voluntarily retired and been relieved from services while he had been working as branch manager at Kasarali. Respondent's services with petitioner came to an end with effect from 01-03-2006.

Respondent had been served with charge-sheet dated 10-07-2006 post his retirement alleging intentional negligence in crediting payments towards loan in principal account rather than in interest account eventually causing loss to petitioner to the tune of ₹ 4,46,899/-. Petitioner proceeded with enquiry and considered the charges to have been proved. Petitioner had served respondent with show cause on 26-04-2011 as to why said amount should not be deducted from gratuity payable to him and the petitioner had proceeded with recovery of sum of ₹ 2,56,480/- from gratuity payable to respondent.

3. Upon receipt of show cause notice, respondent had approached controlling authority – labour court pursuant to the

Payment of Gratuity Act, 1972 (hereinafter, referred to as '' PG Act '') under proceeding bearing P.G.A. No. 178 of 2015 for recovery deficit gratuity amount. The labour court, under judgment and order dated 10-08-2016, had partly allowed the application directing petitioner to pay to respondent an amount of ₹ 86,328/- towards gratuity with interest at the rate of 10 per cent per annum from the date of retirement till realization. The labour court had considered that pursuant to enquiry, an amount of ₹ 4,46,899/- towards loss caused to petitioner was to be recovered in respect of which a show cause notice had been issued to respondent which he had not replied and a full-fledged domestic enquiry was conducted and the petitioner was liable to pay the amount from ₹ 3,42,808/- gratuity claim of the respondent, out of which, a sum of ₹ 2,56,480/- had been deducted towards loss caused to the petitioner, however, the court had held that recovery of amount of ₹ 86,178/- towards dues of staff society had been illegal, so also tax consultancy fees. Petitioner was, thus, held liable to pay to respondent ₹ 86,328/- with interest at the rate of 10 per cent from the date of respondent's retirement.

4. Respondent as well as petitioner were aggrieved by said order of controlling authority – labour court and had approached appellate authority, namely, the industrial court. The industrial court had dismissed appeal bearing no. 1 of 2017 filed by petitioner and had partly allowed appeal No. [PGA] No. 3 of 2017

preferred by the respondent modifying the order passed by labour court in application bearing PGA no.178 of 2015, with directions to petitioner to pay to respondent herein a sum of ₹ 2,56,480/- with interest at the rate of 10 per cent per annum from the date of resignation of respondent i.e. 01-03-2006 till the date of realization of entire amount accepting the deduction towards dues of the staff society.

5. Petitioner, thus, is before this court under present writ petition questioning legality of orders passed by the controlling authority and the appellate authority under the PG Act.

6. Learned counsel Mr Kkamlakar J. Suryawanshi appearing on behalf of petitioner vehemently submits that the petitioner had sustained loss of ₹ 4,46,899/- which had been established under an enquiry and such a loss was agreed by the respondent to be recovered from gratuity amount payable to him. The action of recovery is legal and proper and cannot be termed to be illegal. It is a legitimate action, since loss had been incurred due to negligence of the respondent. Further, dues of the staff society were required to be paid and have accordingly been deducted from gratuity amount payable to respondent. He submits that since labour court had considered deductions of Rs.86,178 from gratuity amount of respondent towards staff society's dues as also of income tax consultancy charges to be illegal and had directed

petitioner to pay back said amount to the respondent with interest, required the petitioner to assail said order before appellate authority-industrial court.

7. He submits, however, the appellate authority has completely reversed the order of the controlling authority – labour court holding deduction towards staff society dues to be legal and proper, however, further holding that recovery of ₹ 2,56,480/- from gratuity being not proper and terming the same to be illegal. According to him, it is not correct and proper. He submits that neither amount of gratuity nor interest over the same is payable to respondent, for, the bank has suffered loss due to his negligence.

8. Learned counsel additionally submits, in any case, there is huge delay from the date of service of respondent coming to an end and in making demand for payment of gratuity amount and the delay is wholly attributable to the respondent and is not properly accounted.

9. He additionally submits that so far as interest is concerned, present case is squarely covered by proviso to sub-section (3) of section 7 of PG Act. Pursuant to the same, employer cannot be foisted with payment of interest since delay is due to fault of the employee. He further purports to point out that respondent had admitted his guilt of failure to deposit repayment of loan amount in the interest account instead of depositing it in principal account.

He, therefore, submits that the orders passed by labour court as well as industrial court are unsustainable in fact and in law.

10. On the other hand, Mr Ashutosh S. Kulkarni, learned counsel appearing on behalf of respondent – employee contends that under the statute, it is obligatory for employer to pay gratuity to employee immediately upon expiry of 30 days of cessation of employment, whether employee demands it or there is no demand. He submits that in the face of such obligation cast under the statute, resistance to payment of interest on expiry of said period of thirty days which is a mandatory duty cast on employer is unsustainable.

11. He submits that in the first place, respondent under directions of directors of the petitioner had been pressurized to appropriate amount in repayment of loan towards principal account in the case of society of which one of the directors of the petitioner had been president. It also emerges that negligence attributed to respondent is only in respect of loan account of said society and not any other loan account. This gives a clear indication of circumstances in which the same had to be done. He further submits that during the enquiry certain concessions from the respondent had been forced upon him as his other retirement dues were at stake. He submits, however, it may not be of much significance as under the Payment of Gratuity Act, it is the

obligation of employer to pay gratuity immediately on expiry of period referred, else it would carry interest at the rate as specified. He further submits, it would emerge from observations of industrial court that respondent hardly had any participation in the enquiry and the action has been taken. He submits that it is the law which plays a predominant role since it has been enacted benefiting employee, taking within its fold various circumstances which may hamper payment of such benefit to employee and this has ordained and made it obligatory on employer to pay gratuity by adopting procedure under PG Act. He submits that otherwise, an employer would escape liability to pay gratuity raising unlimited pleas and under the pretext of some reason or the other. An employer cannot be relieved from such a statutory obligation for the reasons as are referred to by the petitioner – employer. He submits, even otherwise, doctrine *res ipsa loquitur* would have a prominent role to play in the present matter as the things are as referred to above. He, therefore, submits that there is no substance in the petition and it deserves to be dismissed.

12. In support of aforesaid, learned counsel Mr Kulkarni refers to a decision by supreme court in the case of *Y. K. Sinha vs Punjab National Bank and others,* reported in *MANU/SC/1109/2012 = (2013) 3 SCC 472* and also to one of this court, in the case of *Shri Ganesh Sahakarisakhar Karkhana Ltd. vs. Somath Balaji Darandale*, reported in *MANU/MH/3041/2016 = 2017 (152) FLR 231* discussing gratuity

payable pursuant to section 7 of the Payment of Gratuity Act.

13. Provisions relevant in present matter from Section 7 of the Payment of Gratuity Act read, thus :

> *" 7. Determination of the amount of gratuity.—*
>
> *(1) A person who is eligible for payment of gratuity under this Act or any person authorized, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.*
>
> ***(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.***
>
> *(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.*
>
> ***(3A) 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:***
>
> *Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.*

(4) (a) If there is any dispute to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) …..............

(d) …..............

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit—

(i) to the applicant where he is the employee; or

14. It is not the case of the petitioner that it has complied with provisions of sections 7(2), (3), (4)(a), (b) of PG Act, nor does it appear that the petitioner has followed said provisions nor

15. It emerges that, there is failure to discharge primary duty statutorily cast on the petitioner. In the circumstances, consequences as referred to under the provisions of section 7(3A) of PG Act would follow and is an obligation which is statutory. Having regard to the facts and circumstances, belated demand for gratuity does not appear to be wholly attributable to the respondent, may be request for payment of gratuity under some misapprehension has been delayed.

16. One would have to have regard to a decision by honourable single judge [R. V. Ghuge, J.] of this court in writ petition bearing no. 6789 of 2016 *[Chandrabhaga Machindra Dudhade versus Mahatma Phule Krushi Vidyapeeth]* and companion matters decided on 12-08-2016. That was a group of writ petitions wherein employer – university had believed that gratuity is not payable to the petitioners therein and university's function is not a business carried on for earning profit and it may not bear the burden of interest. Honourable single judge has analyzed the situation precisely and has considered that payment of gratuity and payment of interest on it is a mandate under the statute and cannot be cast off, by taking the cover of reasons as sought to be given in present case by petitioner.

17. Having regard to the facts and circumstances, it does not appear that the decision rendered by appellate authority-industrial court is amenable to any correction.

18. However, some rebate in interest may have to be considered, which, to some extent, would balance the situation, for, there is some element of concession being displayed by the respondent during enquiry and there is some element of laxity.

19. As such, payment of interest would undergo downward modification from 10 per cent per annum to 7 per cent per annum

from the date gratuity amount is payable to respondent to the date of realization. Save this modification, rest of the impugned orders would not undergo any disturbance.

20. With modification as referred to above, writ petitions partially succeed to the extent as aforesaid.

21. Rule made absolute in aforesaid terms.

22. Writ petitions are accordingly disposed of.

SUNIL P. DESHMUKH
JUDGE

pnd/-