

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10165 OF 2017

Manohar S/o. Dnyanoba Kanade .. **Petitioner**
Versus
The State of Maharashtra and others.. **Respondents**

Mr. Kakasaheb B. Jadhav, Advocate for the
Petitioner.

Mr. N. T. Bhagat, A.G.P. for Respondent Nos. 1
and 4.

Mr. Anil M. Gaikwad, Advocate for Respondent No.
3.

Respondent Nos. 2 and 5 - served.

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

DATE: 10th October, 2018

PER COURT :

1. Mr. Jadhav, learned counsel for the
petitioner submits that an amount of
Rs. 4,42,706/- was erroneously deducted by the
respondent from the amount of gratuity. In spite
of specific direction of the Government under
Circular dated 12.10.2012, the amount was retained
by the respondent. The same is refunded only on
29.04.2015. The petitioner is entitled for the

interest on delayed payment. The tribunal has not considered the said aspect. According to the learned counsel, the tribunal has not passed any order on the prayer of the petitioner for the payment of proper amount of leave encashment.

2. Mr. Gaikwad, learned counsel for respondent no. 3 submits that petitioner was initially granted benefit of time bound promotional pay scale on 10.03.1998. The petitioner passed the professional examination on 14.02.2004. The Government Resolution dated 19.10.2001 prescribes that for grant of time bound promotional pay scale the candidate must pass the professional examination, as such, the amount of Rs. 4,42,706/- was paid excess to the petitioner, the same was recovered. However, subsequently another Government Resolution dated 12.10.2012 is issued which states that if in such circumstance payment is made, the same shall not be recovered. It is pursuant thereto further steps are taken and amount of Rs.4,42,706/- is paid. The learned

counsel submits that the interest as such is not payable.

3. It would appear that the respondent recovered the excess amount paid to the petitioner on account of wrong pay fixation from the amount of gratuity. The petitioner had filed Original Application bearing no. 554 of 2012. In the said matter the tribunal under its order dated 10.12.2014 directed respondent no. 3 to pass a detailed order specifying the amount to be refunded as per Circular dated 12.10.2012. The tribunal further directed respondent no. 3 to pay the amount within three months.

4. The amount is paid by the respondent to the petitioner on 29.04.2015.

5. Under order dated 10.12.2014 in Original Application No. 554 of 2012, the tribunal has not directed the respondent to pay the interest on the said amount. In light of that, the subsequent Original Application was filed, the same is

dismissed.

6. The tribunal has not committed any error in negating the claim of the petitioner for interest.

7. As far as, the benefit of leave encashment is concerned, the tribunal has not passed any order. The respondent - employer shall consider the representation of the petitioner (**Page No. 35**) for the amount of leave encashment within a period of four (4) months from today.

8. Writ Petition accordingly stands disposed of.
No costs.

[S. M. GAVHANE, J.] [S. V. GANGAPURWALA, J.]

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