

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRA NO. 174 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE
VERSUS
PRABHAKAR ANANTRAO DEBADWAR

WITH

CRA NO. 175 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE
VERSUS
OMPRAKASH SITARAM JOSHI

WITH

CRA NO. 176 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE
VERSUS
ASHOK RAMRAO KANDKHEDKAR

WITH

CRA NO. 177 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE
VERSUS
ANILKUMAR MOHANLAL VYAS

WITH

CRA NO. 178 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE
VERSUS
SHRIKISHAN NANDALAL PARIKH

WITH

CRA NO. 179 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH ITS CHIEF EXECUTIVE
VERSUS

GORAKHNATH BALAN GUNDALE

WITH

CRA NO. 180 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE

VERSUS

BALJEETKAUR DHARMSINGH KADEWALE

WITH

CRA NO. 181 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE

VERSUS

KRANTIKUMAR RAMRAO KULKARNI

WITH

CRA NO. 182 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE

VERSUS

VIKAS MADHUKARRO MULEY

WITH

CRA NO. 183 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE

VERSUS

DEEPAK PUNDALIKRAO RUDRAKANTHAWAR

WITH

CRA NO. 184 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE

VERSUS

SURYAKANT TRAMBKRAO PANDE

WITH

CRA NO. 185 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE

VERSUS

ARVIND VITTHALRAO LOLGE

WITH

CRA NO. 186 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE

VERSUS

SHRISH TATAYSAHEB PANDE

WITH

CRA NO. 187 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE

VERSUS

ASHOKSINGH CHUNUSIGH THAKUR

WITH

CRA NO. 188 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE

VERSUS

BHASKAR LAXMANRAO CHUNDUWAR

WITH

CRA NO. 189 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE

VERSUS

AVINASH SHRIRANG GADEWAR

WITH

CRA NO. 190 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE

VERSUS

KRISHNA NAGNATHRAO TAMBOLI

WITH

CRA NO. 191 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE

VERSUS

KISHOR MADANLAL SHARMA

WITH

CRA NO. 192 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE

VERSUS

DATTATRAYA RAMBHAU KAWTIKWAR

WITH

CRA NO. 193 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE

VERSUS

LAXMANSINGH CHUNNUSINGH THAKUR

WITH

CRA NO. 194 OF 2018

THE NANDED MERCHANT S COOPERATIVE BANK LTD., NANDED
THROUGH IT S CHIEF EXECUTIVE

VERSUS

ASHOK PRALHADRAO WATMWAR

Mr.G.L.Deshpande, Advocate for the applicant.

Mr.Amol G.Vasmatkar h/f Mr.N.P.Wangikar, Advocate for the respondents.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 30/10/2018

PER COURT :

1. The applicant in all these identical cases is a Co-operative Bank, which is aggrieved by the orders dated 01/09/2018 delivered by the Labour Court, Nanded on the applications Exh.C-4/C-6 filed by this Bank seeking dismissal of the applications seeking payment

of gratuity filed by the respondent/workman. By the impugned orders, the applications filed by the Bank have been rejected and the Labour Court has concluded that it has jurisdiction to entertain the applications.

2. I am not required to advert to the entire pleadings of the parties before the Labour Court since the applications seeking payment of gratuity are pending final hearing. Suffice it to say that the respondents herein, who are the original claimants before the Labour Court, have filed the applications seeking payment of gratuity amounts. Their case is that after their respective retirement from service upon attaining the age of superannuation, they had filed applications for seeking payments of their gratuity amounts. The said amounts were paid as the Bank had ensured their gratuity amounts with the Life Insurance Corporation. After receiving their gratuity amounts and after a passage of a short duration, they realized that they had claimed lesser amounts and they were legally entitled to claim higher amounts of gratuity.

3. The employer Bank has opposed their claims on the ground that as they have accepted the amounts of gratuity as claimed by them, they were estopped from making further claims. Issue of

limitation was also raised and it was contended that the Labour Court is divested of the jurisdiction to entertain the claims of the respondents.

4. I have heard the learned Advocates appearing on behalf of the applicant/bank and the respondents/workmen. The grievance raised in this petition is as regards the order passed by the Labour Court while dealing with application Exh.C-4/C-6 raising objections as against the applications filed by the respondents/workmen under the Payment of Gratuity Act seeking payment of unpaid gratuity amounts. The Labour Court, which is the Controlling Authority, has dealt with the issues extensively in the impugned orders dated 01/09/2018 by which it has negated all the contentions of the bank with regard to limitation and the principle of estoppel.

5. By this order, I am putting to rest the issues of estoppel, limitation and entitlement in this matter, which according to the bank, is a basis for raising objections to the maintainability of their claims and depriving the respondents of the gratuity amounts, over and above the amounts that have been paid to them.

6. The contention of the Bank is that 6 out of the 21 applicants

have lodged their claims before the Controlling Authority after 3 years of their retirement. 15 of them have preferred their claims within 3 years of their retirement. The applicant/Bank had insured the gratuity to be paid to these employees, with the Life Insurance Corporation of India.

7. By an amendment introduced by Act No.15 of 2010 dated 17/05/2010, the maximum amount of gratuity payable to an employee was enhanced from Rs.3,50,000/- to Rs.10,00,000/- w.e.f. 24/05/2010. It is, therefore, admitted by the parties that Section 4(3) of the P.G.Act, 1972 would be applicable to all employees who are in employment on and after 24/05/2010. The issue of entitlement of these respondents to amounts more than what was paid to them by the applicant/Bank, is therefore no longer a matter of debate as they would be entitled to such amount of gratuity as is payable under the provisions of the Act.

8. On estoppel by conduct, the learned Advocate for the Management has strenuously submitted that these respondents have issued a notice under Form I to the employer seeking gratuity. Form I is prescribed under Rule 7 (1) of the Payment of Gratuity (Central) Rules, 1970. The petitioner/Bank relies upon the judgment delivered

by the Hon'ble Apex Court in the matter of State Government Pensioners' Association and others Vs. The State of A.P. [1986 AIR 1907 = 1986 SCC (3) 501] contending that the observations made by the Apex Court in paragraph No.130, on the last page of the judgment lays down the Law that once the workers make a claim for gratuity and the said claim is satisfied, none of these workers would be entitled to claim better benefits of gratuity as they would be estopped by conduct from seeking more benefits.

9. I have perused the said judgment cited which clearly indicates that an upward revision in gratuity amount prescribing a ceiling on the maximum amount of gratuity payable, is applicable prospectively w.e.f. 01/04/1978. The Hon'ble Apex Court concluded that such an increase in the maximum amount of gratuity payable would not be violative of Article 14 of the Constitution of India. The said amendment would apply prospectively unless it is specifically made applicable retrospectively. As such, the contention of the Management that these respondents are estopped by conduct, is a fallacious stand taken and cannot be sustainable in the eyes of law. In fact, the judgment of the Hon'ble Apex Court in State of A.P. (supra) negates the contention of the Bank.

10. There is one more angle to this case. These respondents were totally unaware that an amendment to Section 4(3) was introduced on 24/05/2010. This applicant/Bank unscrupulously ensured that these employees were not made aware of the amendment, though it cannot be an excuse even to these employees to claim that they were unaware of the amendment. The fact remains that a more beneficial provision was made available by the amendment for the benefit of the employees so that they would get more gratuity amount after their retirement. Believing that the maximum gratuity payable is restricted to Rs. 3.5 lacs, these respondents bonafide made applications through Form I claiming lesser amounts. In my view, it was the duty of a law abiding employer to ensure that the employees are given their due amounts. This employer conveniently forwarded the claims of these respondents to the LIC and it appears that the LIC had no reason to notice the fallacy in the claim. Consequentially, the claims were granted as they were, by the LIC.

11. Learned Advocate for the Management relies upon the judgment of the Madras High Court in P.Selvraj Vs. The Management of Shardlow India wherein it was concluded that when the claimant submitted Form 'I' one month prior to his superannuation and was paid the amount to his satisfaction, he cannot raise an objection.

With respect, I would not agree with the said view taken in view of the judgment delivered by this Court in the matter of Chandrabhaga Machindra Dudhade Vs. Mahatma Phule Krushi Vidyapeeth [2016(6) ALL MR 357 = 2016(5) Bombay R. 752] wherein this Court has considered the entire scheme and the origin of payment of gratuity and has concluded that the primary responsibility lies on an employer to pay the gratuity amount without even waiting for an employee to tender form I. The gratuity becomes automatically payable after 1 month of severance of employer-employee relationship and the burden lies on the employer to pay the correct amount of gratuity even before the employee could demand it. In the event, there is a delay in the payment of gratuity by the employer, which therefore compels the employee to raise a claim under Form I, the employer would be liable to pay interest and damages, depending on the facts of each case.

12. Moreover, in P. Selvaraj (supra), the issue was not about an amendment being introduced which raised the ceiling of maximum gratuity payable. It was purely a case of an incorrect calculation made by the employee who may not have the wisdom and legal assistance in a given case to calculate his amounts precisely. In such cases, the burden would be on the employer to verify the claim

made by the workman and if the employer is a law abiding establishment, it is expected that the employer would bonafide indicate to the employee that he is entitled to a higher amount and has erroneously or ignorantly filled in Form I putting forth a lesser claim. In the realm of beneficial legislation, a gullible or an ignorant workman/employee cannot be deprived of the exact amount of gratuity to which he is entitled to and moreso, when the employer unscrupulously accepts a lesser claim gleefully thinking that as a workman has claimed a lesser amount, the employer can save that difference of amount.

13. In view of the above, the conclusions drawn by the Labour Court that the principle of estoppel would not preclude these workmen/employees, who later on realized under fortuitous circumstances that they were actually entitled for more amounts and they have ignorantly put forth claims for lesser amounts. The impugned judgment to this extent is therefore sustainable. As such, the Labour Court would now be justified in permitting the litigants to lead evidence to the extent of the quantum of unpaid amounts of gratuity, meaning thereby, the difference between the amount of gratuity payable and the actual amounts paid to them.

14. There is no provision under the Act by which any claim belatedly filed, would render the claim untenable. The Payment of Gratuity Act has a peculiar provision which is evident from Section 4 and Section 7 which indicates that gratuity would be payable after one month of the employer-employee relationship coming to an end, subject to an employee having put in a minimum of 4 years and 6 months in continued employment. The gratuity becomes payable after 1 month and if the employer fails to make such a payment within time, the employee can thereafter raise a claim when he realizes that the employer is not intending to make the payment.

15. Another facet of these cases is as regards the quantum of amounts to be paid. These employees put forth Form 'I' believing that the Law applicable prior to 24/05/2010 was still applicable. At the same time, the applicant/Management can not espouse a case of a wrong belief contending that it was unaware that the maximum gratuity amount was enhanced from 3.5 lacs to 10 lacs. In this backdrop of both the sides having acted casually without proper application of mind, it will have to be left to the Labour Court to decide the quantum of amounts to be paid to the applicants and interest in view of the time spent without making a proper claim after their retirement.

16. The applicant/Management however has a debatable ground available to the extent of imposition of penalty and interest due to the delayed payment of the difference of gratuity. Learned Advocate for the Bank rightly submits that the employees should have taken proper assistance from legal advisers or advocates and should have put forth proper claims. He, however, concedes that the Bank should have looked into the amended Section 4(3) and could have rectified the situation at the right time since the Bank considers itself to be a model employer. Had this exercise been performed at the end of the establishment, this litigation would not have cropped up and the gratuity amounts, as are mandated by Law, would have been paid to these employees. He, therefore, contends that the issue as to whether this Management should be held liable to pay penalty and interest be kept open and the Labour Court would deal with the said issue after recording of oral evidence since the Management believes that it has not deliberately deprived these employees of higher amounts.

17. In my view, the issue of saddling the employer with interest and penalty would depend upon the facts and circumstances of each case. This issue is still open for both the sides to lead evidence and defend their stand on the issue of penalty amounts. The

submissions of the applicant/establishment on the above issue would therefore be covered by the proviso to Section 7(3-A) r/w Section 7 (2) and 7(3). For assistance, the Labour Court can rely upon the judgment in the case of Chandrabhaga (supra).

18. In view of the above, I sustain the impugned orders of the Labour Court to the extent that the issue of estoppel, entitlement and delay would not affect the claims of these respondents. The issue of penalty and interest and the difference of unpaid gratuity amount are however open for the Labour Court to consider considering the conduct of both the sides and the judgments cited.

19. At this juncture, the learned Advocate for the applicant submits that it has followed the Law u/s 4-A of Compulsory Insurance of the Gratuity amounts. All claims made by these respondents/applicants would therefore be related to the LIC. Learned Advocate for the claimants submits that he is willing to add the LIC as respondent No.2 before the Labour Court so that a ground would not be available to the LIC that its financial burden was increased without an opportunity of hearing, considering that the insurance of the gratuity amounts of these applicants would be privity to a contract between the Bank and the LIC and it will have to

be left to these entities to decide how to work out the modalities and ensure the payments of the due amounts to the applicants.

20. Considering the above, these applications are disposed of. The respondents/applicants would promptly make applications for adding LIC as respondent No.2 within 6 weeks from today. The employer/Bank makes a statement that it has raised a ground that the LIC should be arrayed and therefore will not raise an objection. The Labour Court would accordingly allow the addition of the Life Insurance Corporation as the respondent and shall issue notice to the added respondent.

21. Needless to state, the Labour Court would now decide the issues of unpaid gratuity amounts, the liability to make the payment in view of the disputed issue and whether penalty and/or interest is liable to be paid either by the Bank or by the LIC. The impugned orders of the Labour Court having been sustained, the issues specifically kept open, would be decided by the Labour Court on their merits.

(Ravindra V.Ghuge, J.)