

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 15344 OF 2017
WITH
CIVIL APPLICATION NO.11494 OF 2018

SAINT XAVIERS HIGH SCHOOL
VERSUS
SHAILAJA VISHNU DESHPANDE

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Advocate for Petitioner : Shri Kadam V.S.
Advocate for Respondent : Shri Katkar Avinash B.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 19, 2018

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PER COURT :-

1. By an order of this Court dated 17.1.2018, the petitioner / management was directed to deposit the Gratuity amount of Rs. 575352/- as in January 2018, as was granted by the Labour Court. The said amount has been deposited in this Court on 25.1.2018.

2. The petitioner / management admits that the respondent is entitled for Gratuity strictly as per the definition of Gratuity and the manner and calculations prescribed under the Payment of Gratuity Act, 1972. This Court has also settled the law on Gratuity that once the employer is liable to pay the Gratuity within one month of the severing of employer-employee relationship, the interest on the amount will have to be granted if the employer fails to pay the gratuity amount. An

employee is not expected to approach the employer begging for gratuity.

3. The Labour Court has calculated the gratuity on the gross monthly wages last drawn by the respondent and has granted interest at the rate of 10% p.a. since the employee retired on 30.6.2012 and the gratuity became payable from 30.7.2012. On this count, despite the strenuous submissions of the learned Advocate for the petitioner, I do not find any error committed by the Labour Court in granting interest. His contention that gratuity cannot be calculated on gross salary, is correct and sustainable.

4. The learned counsel for the employee prayed for penalty / damages as the management has made her run from pillar to post for seeking gratuity. Learned counsel for the petitioner / management submits that penalty / damages were not granted by the Labour Court. The employee has not preferred any proceeding before this Court for seeking a relief. In the absence of a prayer, this Court cannot consider granting relief to the respondent in the petition filed by the petitioner. For the present, since no petition has been filed by the respondent, I find that the contention of the petitioner is sustainable.

5. The issue, therefore, remains of calculating the gratuity. The law

mandates that the Basic and the Dearness Allowance components have to be taken into account. Allowances, which would not be a part of the salary component, cannot be included for reckoning the gratuity amount. In the instant case, the salary certificate issued by the management for the month of June 2012, when the petitioner retired, indicates a Basic Pay of Rs.14,230/-, a Grade Pay of Rs.4300/- and Dearness Allowance of Rs. 7,412/-. In the above undisputed backdrop, as Grade Pay is payable to the employee for each month on occupying a particular grade, the said component would become a part of actual Pay and hence, will have to be reckoned with for calculating the gratuity amount.

6. As such, the salary of the employee as per the definition of the 'gratuity amount' would be Rs.25,942/- per month. Her salary per day would be Rs.998/- and her 15 days' salary for one year of service would be Rs.14,970/-. She worked for 22 years. Her gratuity amount, therefore, would be Rs.3,29,348/-. The interest granted by the Labour Court from 1.8.2012 till 25.1.2018 at the rate of 10% per annum, would be an amount of Rs. 1,81,093/-. The costs of litigation granted by the Labour Court is Rs.1,000/-. The gratuity amount would, therefore, be Rs. 5,11,356/-. After the employer has deposited the amount on 25.1.2018, the employer does not have to pay the further interest, though the employee would be entitled to 10% interest granted

by the Labour Court till it is actually paid i.e. till the passing of the order today. As such, for a period of 11 month, the interest would be Rs.30,000/-. Hence, the total amount payable to the employee will be Rs.5,41,356/-.

7. Considering the above, this petition is partly allowed. The judgment of the Labour Court granting compensation with interest is confirmed. However, the calculations done by the Labour Court shall stand modified by the calculations carried out and recorded in this order in the foregoing paragraphs. The respondent / employee would, therefore, withdraw an amount of Rs.5,41,356/- from this Court by filing a proper application with due identification by the learned Advocate. The application would be accompanied by a recent photograph of the employee and a copy of her income tax PAN card and her latest permanent address proof.

8. The civil application, therefore, stands disposed off.

9. After the employee withdraws the above said amount, the management would be at liberty to withdraw the remainder amount from this Court, which includes interest that may have accrued after depositing of the amount, through a duly authorized officer of the institution and on identification by the learned Advocate by the

petitioner.

10. Needless to state that, since the learned Advocate for the petitioner has informed that some other employees have settled their gratuity claims out of Court, this order shall be restricted to the employee in this matter and would not be cited as a precedent in cases, which have already been amicably settled between the parties.

(RAVINDRA V. GHUGE, J.)

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