

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 6757 OF 2016**

Maharashtra State Co-operative Tribal  
Development Corporation Ltd.

...Petitioner

Vs.

Mr.Balkrishna Tanaji Nikumbh

...Respondent

Ms.Amita Chaware I/b. Neelesh V. Kalantri for Petitioner.

Mr.Vaibhav P. Patankar for Respondent.

**CORAM : S.C. GUPTE, J.**

**DATE : 11 JUNE 2018**

**P.C. :**

Heard learned Counsel for the parties.

2           The subject matter of controversy in the present petition concerns gratuity payable to the Respondent. The Respondent was working with the Petitioner corporation as an accountant. He claims to have successfully completed his probation and been confirmed in service. By reason of long absence of about 10 years, he was terminated from service on 8 December 1992. The termination was challenged by the Respondent before the Labour Court on a reference made to it under the Industrial Disputes Act. By its award dated 5 March 2001, the court held that the Respondent was entitled to be reinstated with continuity of service with effect from 21 May 1980. He was, however, not entitled to be paid backwages. This award was challenged by the Petitioner corporation before this court in a writ petition. At the hearing of the petition, the parties arrived at consent terms. The petition was disposed of by this court in

terms of the consent terms. The consent terms *inter alia* provided for reinstatement of the Respondent in his original post. It was agreed that the Respondent would be entitled to continuity of service on the basis of the impugned order of 5 March 2001. The Respondent, however, agreed that he would not claim any amount of wages or difference of wages for the earlier period, i.e. period prior to the proposed order of reinstatement and also would not claim any benefit arising out of his accumulated leave for such period. The Respondent was, accordingly, reinstated by the Petitioner on 15 July 2004 and he continued to work till his superannuation on 16 March 2009. The Respondent claims gratuity on the basis of his continued service till 16 March 2009. It is, however, the Petitioner's case that the years, for which the Respondent did not put in service, ought not to be counted for the purpose of working out the gratuity amount payable to him. Both authorities below have concurrently held against the Petitioner on this point. Both authorities have come to the conclusion that since by an express order of this court the Respondent was granted continuity of service, all benefits accruing from such continuity save and except wages payable for the period of absence and benefits arising out of accumulated leave for such period were admissible.

3           Based on the express stipulations in the consent terms, which were taken on record by this court and in terms of which the Petitioner's earlier writ petition was disposed of, the conclusion of the authorities below appear to be a pre-eminently possible conclusion supported by the record of the case. If the Respondent was entitled to continuity of service, he must get all benefits of such continuity save and except those that are expressly denied to him in the order. The only benefits denied to him are wages for the period of absence and benefits arising from accumulated

leave. Gratuity based on continuous service over the entire period of service cannot be denied to him. There is no interference warranted against this conclusion within the parameters of writ jurisdiction of this court under Articles 226 and 227 of the Constitution of India.

4           The petition is, accordingly, dismissed. The Petitioner is directed to release differential amount of gratuity to the Respondent within a period of six weeks from today.

**(S.C. GUPTE, J.)**