IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Review Petition (ST) NO. 31235 OF 2017
IN
Writ Petition No.4235 of 2017

The Nashik Zilla Stariya Samiti, Nashik ...Petitioner
Versus
Dashrath Lahabu Thete ...Respondent

With
Review Petition (ST) NO. 31560 OF 2017
IN
Writ Petition No.4233 of 2017

With
Review Petition (ST) NO. 31528 OF 2017
IN
Writ Petition No.4236 of 2017

With
Review Petition (ST) NO. 31229 OF 2017
IN
Writ Petition No.4238 of 2017

With
Review Petition (ST) NO. 31509 OF 2017
IN
Writ Petition No.4239 of 2017

With
Review Petition (ST) NO. 31233 OF 2017
IN
Writ Petition No.4240 of 2017

With

Review Petition (ST) NO. 31570 OF 2017
IN
Writ Petition No.4250 of 2017

With
Review Petition (ST) NO. 31514 OF 2017
IN
Writ Petition No.4252 of 2017

With
Review Petition (ST) NO. 31539 OF 2017
IN
Writ Petition No.4270 of 2017

....
Mr. P.N. Joshi, Advocate for the Petitioners.
Mr. Yogendra Pendse, Advocate for the Respondent.
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CORAM : R. G. KETKAR, J.

DATE : 23rd JANUARY, 2018
[IN CHAMBER AT 2:35 P.M.]

P.C.

1. Heard Mr.P.N. Joshi, learned Senior Counsel for the petitioners and Mr.Yogendra Pendse, learned Counsel for the respondent, at length.

2. These Petitions are filed under Section 114 read with Order XLVII of Code of Civil Procedure, 1908 seeking review of the order dated 1.8.2017 passed in the Writ Petitions. The Writ Petitions were filed under Articles 226 and 227 of the

Constitution of India challenging the judgment and order dated 3.10.2015 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (for short, 'Act') / Judge of the Second Labour Court, Nashik (for short, 'Controlling Authority') as also the judgment and order dated 11.1.2017 passed by the Appellate Authority under the Act and Member, Industrial Court at Nashik (for short, 'Appellate Authority'). By these orders, the Authorities below have allowed the applications made by the respondent in each Petition for paying difference of the gratuity together with interest @ 10% from the date of retirement till realization of the amount.

3. In support of these Petitions, Mr. Joshi invited my attention to the Resolution dated 30.10.2009 issued by the Finance Department of Government of Maharashtra and in particular paragraph-4 dealing with the term “Basic Pay”. Clause-4 thereof reads thus:

> “4. The term “Basic Pay” in the revised pay structure means the pay drawn in the prescribed pay band plus applicable grade pay but does not include any other type of pay like special pay, which the Government servant was receiving immediately before his retirement or on the date of his death, for purposes of calculating various pensionary benefits.”

4. He submitted that for the purpose of computing gratuity, dearness allowance will have to be excluded from consideration. Reliance is placed on clause-6 of the G.R., which is to the following effect :

> "6. Retirement/Death Gratuity shall be calculated on the basic pay as mentioned in para 4 of this Government Resolution. A Government Servant who has retired on or after 1st January, 2009 to 31st August, 2009 will be eligible for retirement gratuity equal to one-forth of his pay for each completed six monthly period qualifying service, subject to a maximum of 16 and ½ times the pay or Rupees Five lakhs whichever is less. A Government Servant who has retired from on or after 1st September, 2009 will be eligible for retirement gratuity equal to one-forth of his pay for each completed six monthly period qualifying service (maximum of 16 and ½ times the pay) or Rupees Seven lakhs whichever is less."

5. He also invited my attention to Annexure-I and in particular the term "Basic Pay" appearing in Column Nos.4 and 5. The relevant portion of Annexure-I of the G.R. reads thus:

M.C.S. (Pension) Rules 1982	Length of service	Pension	Pro-rate service gratuity	Retirement Gratuity
Rule 110(1) & Rule 111(1)	Less than 10 years	Not eligible for pension	at the rate of half month's **basic pay** of every completed six monthly period of qualifying service	at the rate of one forth of month's **basic pay** of every completed six monthly period of qualifying service.

[emphasis supplied]

6. Mr. Joshi invited my attention to the compromise entered into by and between the petitioner and some of the employees. Some of the employees with whom the petitioner entered into compromise, gave up the amount towards the leave encashment. He submitted that the respondent hardly worked for one and half years in the revised pay-scale of 6^{th} Pay Commission. Before implementation of the revised pay-scale the respondent was paid Rs.10,118/- towards the salary. He, therefore, submitted that the gratuity will have to be computed on the basis of Rs.10,118/- and not Rs.25,655/- which was paid to the respondent on the basis of the revised pay-scale of 6^{th} Pay Commission. He submitted that the Court committed serious error in relying upon the definition of "wages" in Section 2(s) of the Act. For all these reasons, he submitted that Review Petitions deserve to be allowed.

7. On the other hand, Mr. Pendse supported the order under review and submitted that no case is made out for reviewing the order.

8. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also

perused the material on record. Mr. Joshi heavily relied upon the definition of term “Basic Pay” made in the Government Resolution dated 30.10.2009 and submitted that the Court committed error in computing gratuity on the basis of the definition of expression 'wages' in Section 2(s) of the Act. It is not possible to accept this submission. In the first place, the G.R. will not override the statutory provisions contained in Section 2(s) of the Act. Secondly, Section 2(s) of the Act which defines the expression 'wages' includes dearness allowance. In view thereof, the contention advanced by Mr. Joshi that while computing the gratuity only basic pay is to be considered in view of paragraphs-4 and 6 as also Annexure-I of G.R. dated 30.10.2009 cannot be accepted.

9. Mr. Joshi relied upon the compromise entered into by and between the petitioner and some of the employees who gave up the amount of leave encashment.

10. Having regard to the definition of the term 'wages' contained in Section 2(s) of the Act, it is evident that the leave wages is not included in the said definition. This position is not disputed by the learned Counsel for the parties. In view thereof,

nothing turns on the fact that some of the employees, who entered into compromise with the petitioner, giving up amount of leave encashment.

11. In view thereof, no case is made out for review of the order dated 1.8.2017. Petitions fail and the same are dismissed.

12. At this stage, Mr. Joshi orally prays that the order dated 1.8.2017 may be stayed for a period of four weeks from today. In any case, the respondent may be permitted to withdraw the amount of gratuity deposited by the petitioner excluding the component of dearness allowance. Mr. Pendse opposes this application on the ground that while granting stay for a period of 10 weeks, the assurance of the petitioner that no application for extension of interim order will be made, was recorded. It was made clear that no application for extension of interim order will be entertained. In view thereof, oral application made by Mr. Joshi is rejected more so when the definition of 'wages' in Section 2(s) of the Act includes 'dearness allowance'.

(R. G. KETKAR, J.)