IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 453 OF 2018

M/s.Terna Engineering College ...Petitioner
Vs.
Shri Nandgaonkar S. Dharma ...Respondent

Mr.Mahesh A. Shukla for Petitioner.
Mr.Avinash R. Belge for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 13 AUGUST 2018

P.C. :

Heard learned Counsel for the parties.

2 The subject matter of the controversy in the present petition is the gratuity payable to the Respondent. The Respondent was admittedly working as an Assistant Professor with the Petitioner college since 21 January 2004. It is the case of the Petitioner that though the Respondent worked from January 2004, he was made permanent with effect from 21 January 2007 and that his last drawn salary was Rs.26,999/-. Before the controlling authority, it was alleged by the Petitioner that for the purposes of computation of gratuity, the Respondent's service may be reckoned with effect from 21 January 2007 when he was made permanent. The controlling authority held that the entire service of the Respondent, i.e. from the date of his appointment, should be reckoned. The controlling authority without any further discussion proceeded on the basis that the last drawn salary of the Respondent was Rs.26,099/-, i.e. basic salary of Rs.21,050/- and D.A. of Rs.5,049/-. This order was challenged both by the

Petitioner college as well as the Respondent professor. Whereas the Petitioner's challenge on the basis of continuous service with effect from 21 January 2007 and also on the ground that the Respondent being a lecturer is not an employee within the meaning of Payment of Gratuity Act was repelled by the appellate authority, the appellate authority allowed the Respondent teacher's appeal partly holding that the grade pay of Rs.7000/- payable to the Respondent teacher and reflected in his salary slip was not taken into account whilst calculating the last drawn wages. Accordingly, the appellate authority recalculated the wages for the purposes of computation of gratuity at Rs.33,099/- per month and reworked the gratuity amount payable to the Respondent. The original gratuity amount of Rs.1,65,627/- was reworked to Rs.2,10,051/-.

3 No infirmity can be found either with the incidence of the gratuity payable by the Petitioner college to the Respondent teacher or the date of service to be reckoned for the purposes of considering the continuous service of the Respondent. There is no substance in the contention that the Respondent was not an employee of the Petitioner college. The definition of 'employee' under the Payment of Gratuity Act does not leave any manner of doubt that he was an employee. So also it is not in dispute that the Respondent worked with the Petitioner college since 21 January 2004. There is no reason why this date should not be treated as the date of commencement of service. The confirmation of the Petitioner after rendering three years' of service, i.e. with effect from 21 January 2007, does not reflect on the correct date of commencement of service.

4 Insofar as the computation of gratuity is concerned, learned Counsel for the Petitioner finds fault with the impugned order of the

appellate authority. Learned Counsel submits that the salary slip was produced for the first time before the appellate authority and is not an admitted document. There is nothing to indicate that the production of the salary slip or its authenticity was in any way contested by the Petitioner when the salary slip was produced before the court. The salary slip is issued by the Petitioner college itself. There is no other salary slip produced by the Petitioner college in support of its case that the grade pay of Rs.7,000/- per month was not part of wages payable to the Respondent. In the premises, no fault can be found with the impugned order of the appellate authority for the purposes of considering a challenge under Articles 226 and 227 of the Constitution of India.

5 Accordingly, there is no merit in the writ petition. The writ petition is dismissed.

(S.C. GUPTE, J.)