

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 2972 OF 2018

Raja Basu.

..Petitioner.

V/s.

The Union of India & anr.

..Respondents.

Mr. Mohan Rawat a/w. Mr. Pramod Yadav & Mr. Akash Mane I/b. R.G. Panchal, advocate for petitioner.

Mr. Arsh Mishra I/b. M.V. Kini & Co., advocate for Shipping Corporation of India.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : SEPTEMBER 19, 2018.

P. C. :

1 Heard learned Counsel for the petitioner. The prayer in this petition is for seeking release of the petitioner's gratuity and compliance with the section 7(4)(d) and (e) of the Payment of Gratuity Act, 1972.

2 It is pertinent to note that the Shipping Corporation of India is not a party to the petition. The learned Counsel Mr. Arsh Mishra suo motu appeared for the Shipping Corporation of India and had requested this Court to direct the learned Counsel for the petitioner to give a copy of the petition. According to the learned Counsel for the petitioner, Shipping Corporation of India is not a necessary party as the gratuity is to be paid by the respondents herein, who are as follows :

Talwalkar

1. The Union of India,
Through its Secretary, Ministry of Labour &
Employment, Shram Shakti Bhavan,
Rafi Marg, New Delhi-110 001.
- 2 Assistant Labour Commissioner,
Central-III, Mumbai having office at Shram
Raksha Bhawan, 3rd floor, Opp. Priyadarshini,
Shiv Shrushti Road, Eastern Express Highway,
Sion, Mumbai, Maharashtra 400 022. ..Respondents.

3 The learned Counsel for the petitioner has vehemently submitted that Shipping Corporation is not a party and has sought to place implicit reliance upon section 7 of the Payment of Gratuity Act. Attention is drawn on Section 7(4)(d) and section 7(4)(e) of the said Act which read as follows :

“7(4)(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.”

7(4)(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit -

(i) to the applicant where he is the employee;

4 Learned Counsel has also drawn attention of this Court to the Judgment of Hon'ble Apex Court in the case of **Netram Sahu v/s. State of Chhattisgarh & anr. Reported in AIR 2018 SC 1545**. The Hon'ble

Apex Court observed thus:

State to voluntarily pay the gratuity amount to the appellant rather than to force the employee to approach the Court to get his genuine claim – It is really unfortunate that the genuine claim of the appellant was being denied by the State at every stage of the proceedings up to this Court and dragged him in fruitless litigation for all these years. Have regularized the services of the appellant, the State had no justifiable reason to deny the benefit of gratuity to the appellant which was his statutory right under the Payment of Gratuity Act."

5 At this juncture, learned Counsel for the Shipping Corporation of India has placed before this Court a copy of affidavit in reply of the Shipping Corporation filed in Writ Petition No. 2178 of 2018 which is pending before the Hon'ble Division Bench of this Court and notice was issued to the Shipping Corporation of India. The respondent has filed affidavit in reply. In the said petition, the present petitioner is praying for releasing of retiral dues in Writ Petition No. 2178/18.

6 It is apparent on the face of the record that the Petitioner herein is seeking relief of release of gratuity before two different forums of this Court. It is submitted by the Counsel that after the notices were issued in Writ Petition No. 2178/18, the gratuity has been deposited with the authorities of Shipping Corporation of India.

Talwalkar

7 The whole issue before this Court was as to whether the prejudice would be caused to the petitioner by adding Shipping Corporation of India as a party respondent in the present petition. The learned counsel for the petitioner had refused to add them as a necessary party and was only seeking release of gratuity. In fact, what appears from the affidavit in reply is that establishment had various reasons for withholding the retiral dues including gratuity. In any case, this Court is of the opinion that the Shipping Corporation of India was a necessary party to this Petition. The learned Counsel insisted that since the petition was only for seeking gratuity, it was not necessary without showing any cause as to how the petitioner can ask for gratuity before two different forums of the same bench. Since the issue is covered before the Division Bench, present petition is being disposed of as dismissed without observing anything in respect of the claim of the petitioner, as far as gratuity is concerned.

[SMT. SADHANA S. JADHAV, J.]

Digitally
signed by
Aruna
Sandeep
Talwalkar
Date:
2018.09.25
12:18:06
+0530

Talwalkar