

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4968 OF 2016

(Gulab s/o Pandurang Talmale vs. Zilla Parishad, Nagpur thr. its CEO & Ors.)

AND

CONTEPT PETITION NO. 160 OF 2017

IN WRIT PETITION NO. 4968 OF 2016

(Gulab s/o Pandurang Talmale vs. Shri Swarup Kharje, Chief Officer, Municipal Council, Kuhi,
Tq. Kuhi, District - Nagpur)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's Orders.

Court's or Judge's orders.

**CORAM : B.P. DHARMADHIKARI &
ARUN D. UPADHYE, JJ.
FEBRUARY 27, 2018.**

Heard Shri N.S. Warulkar, learned counsel for the petitioner and Shri M.M. Sudame, learned counsel for respondent Nos. 1 & 2 in writ petition and for the respondent sole in contempt petition. Nobody appears for respondent No. 3 – Municipal Council, Kuhi.

2. This Court has on 17.01.2017 allowed writ petition and directed employer to pay the petitioner an amount of Rs.50,000/- and thereafter to work out his entitlement as per law within next two months.

3. The employer – Zilla Parishad, accordingly has paid the amount of Rs.50,000/- but then it approached this Court in CAO No. 1742 of 2017, pointing out that number of employees with respondent No. 3 was always less than 10 and hence the Payment of Gratuity Act, 1972, (hereinafter referred to as Gratuity Act) is not attracted. Similarly, it is

pointed out that in the absence of specific rules framed by Gram Panchayat/ respondent No. 3, leave encashment also does not exist.

4. After hearing the learned counsel, in CAO No. 1742 of 2017, on 06.02.2018 we have recalled the order dated 17.01.2017 and restored Writ Petition for further consideration. At that time, the petitioner was asked to deposit an amount of Rs.10,000/- with the Registry of this Court and accordingly that amount has been deposited by him. For balance amount of Rs.40,000/-, the petitioner claims that appropriate security has been furnished in CA No. 1742 of 2017 with the Registry of this Court.

5. A perusal of order dated 25.05.2016 passed by the Zilla Parishad reveals that number of sanctioned posts with Gram Panchayat, when the petitioner retired, was less than 10. A communication dated 18.03.2015 sent by the Block Development Officer, Panchayat Samiti, Kuhi, to Zilla Parishad shows that as per sanctioned strength, Gram Panchayat had six employees while for proper working, seven more employees were appointed and thus at the relevant time, total 13 employees were on roll of Gram Panchayat.

6. Shri Warulkar, learned counsel, has attempted to urge that in terms of letter dated 02.05.1984 forwarded by the State Government to all Zilla Parishad, the State Government upheld leave encashment in the case of the

petitioner. The said communication expressly shows that the concerned Gram Panchayats have to prepare Rules as per Rule 8 of the Bombay Village Panchayat Employees Recruitment and Conditions of Service Rules, 1930. Whether the Rule has been framed accordingly, is not pointed out to this Court.

7. The prayer in this petition is to direct the employer to pay to the petitioner gratuity amount of Rs.1,90,000/- and leave encashment of Rs.80,000/- with interest calculated at 18% per annum.

8. Shri Sudame, learned counsel has pointed out that the issue regarding gratuity can be looked into in terms of Payment of Gratuity Act, by the competent authority.

9. In this situation, taking overall view of the matter, we find it appropriate to direct the parties to appear before the Competent Authority under the Gratuity Act, on 19.03.2018, and to abide by its further instructions in the matter. The said authority shall enable the parties to file their affidavit and then peruse the records and determine entitlement of the petitioner to gratuity in terms of Section 7 of the Gratuity Act. The petitioner can also claim interest and other amounts in terms of those provisions in the said proceedings.

10. Needless to mention that the respondent shall not claim benefit of law of limitation in the said

proceedings.

11. Similarly, we grant the petitioner leave to move appropriate representation to the Chief Officer of Zilla Parishad, as per rules, if any, empowering the employees of Gram Panchayat to benefit of leave encashment. After the said representation is made within six weeks from today, the authority shall examine it independently, within next three months.

12. The security furnished by the petitioner and the amount deposited by him with this Court shall continue and remain valid with the Registry of this Court till the appropriate orders are passed by the authority under the Gratuity Act, in the proceedings mentioned supra.

13. After such orders, we grant the parties leave to move appropriate civil application for withdrawal/appropriation of the amount in deposit.

14. With these directions, we dispose of the present writ petition as also Contempt Petition. However, there shall be no order as to costs.

JUDGE

JUDGE

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