

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 2063 OF 2012

Vasudeo Murlidhar Parlay

Petitioner

Versus

State of Maharashtra
& others

Respondents

Mr. S.S. Bora, Advocate for the petitioner.

Mr. S.G. Karlekar, AGP for respondents No. 1 and 4.

Mr. S.B. Pulkundwar, Advocate for respondent no. 3.

**WITH
WRIT PETITION NO. 2071 OF 2012**

Vasudeo Murlidhar Parlay

Petitioner

Versus

State of Maharashtra
& others

Respondents

Mr. S.S. Bora, Advocate for the petitioner.

Mr. S.G. Karlekar, AGP for respondents No. 1 and 4.

Mr. S.B. Pulkundwar, Advocate for respondent no. 3.

**CORAM: PRADEEP NANDRAJOG, CJ &
R.G. AVACHAT, J.**

DATE: 25.09.2019

PER COURT :

1] Writ petitioner of both the petitions joined service under the State Government as Junior Engineer in the year 1972 and earned promotion to the post of Sub-Divisional Engineer in the year 1979. In the year 1995, the Government took a decision to place Sub-Divisional Engineers in a higher pay scale and after ten years realising that the said decision was wrong, an order was passed reverting the Sub-Divisional Engineers to the junior scale. Recoveries were ordered to be effected in 30 instalments. The petitioner was facing a departmental enquiry when he submitted an application seeking to be voluntarily retired and on 29.03.2006, necessary order was passed accepting his application but with a stipulation that enquiry would continue and with further direction that before he is relieved, all recoveries should be given effect to. The departmental enquiry resulted in the petitioner being exonerated on 11.02.2009.

2] Since retiral benefits were not paid on account of enquiry pending, provisional pension was sanctioned but gratuity was withheld. Computing gratuity payable in the sum of Rs.5,00,000/-, recovery of Rs.73,020/- towards the excess salary paid, balance was paid to the petitioner on

16.10.2010. He went marching to the Maharashtra Administrative Tribunal and filed two Original Applications No.557/2011 and 582/2011. In the former, he prayed for interest on the delayed payment of gratuity. In the second, he questioned recovery being made from the gratuity paid. Vide order dated 17.01.2011, Original Application No.557/2011 has been dismissed and vide order dated 17.01.2012, Original Application No.582/2011 has been dismissed.

3] The reason to dismiss Original Application No. 557/2011 is that, in the Original Application claim for interest on delayed payment of gratuity was not prayed for.

4] This is incorrect. We have perused the Original Application. There is a prayer for interest.

5] The contention of learned counsel for the petitioner is that Enquiry Report dated 11.02.2009 completely absolved the petitioner of the charge and therefore learned counsel states that interest should be directed to be paid as contemplated by Rule 129(a) of the Maharashtra Civil Services

(Pension) Rules, 1982. The rule in question requires gratuity to be paid within three months and if not paid, interest @ applicable to deposits in the General Provident Fund account.

6] Clause (c) of Rule 130(1) of the same Rules states that no gratuity shall be payable to a Government servant until conclusion of a Departmental Enquiry. It hardly matters whether the petitioner was ultimately absolved of the charge for the reason gratuity could not have been paid till the enquiry was over. However, the enquiry being over on 11.02.2009, the gratuity ought to have been paid within three months thereof i.e. by 11.05.2009. The gratuity was paid on 16.10.2010. Thus, we declare that the petitioner would be entitled to interest on gratuity @ payable on deposits under General Provident Fund account for the period 11.05.2009 till 16.10.2010.

7] As regards the recovery of Rs. 73,020/- from the gratuity, the facts noted hereinabove would show that salary in the higher pay scale was paid from the year 1995 to the year 2005. It is not the case of the respondents that this was on account of any mis-representation of a fact or fraud played

by the petitioner. In view of decision reported as AIR 2015 SCC 696 State of Punjab v. Rafiq Masih, no recovery of excess payment can be made for a period in excess of five years before the order of recovery was due. Further, no recovery can be made from a retired employee or the employees who are due to retire within one year of the order of the recovery.

8] Thus, the petitioner would be entitled to be paid balance gratuity in the sum of Rs. 73,020/- with interest thereon @ payable for deposits in General Provident Fund account.

9] Both the petitions are disposed of directing :-

(1) The petitioner shall be paid Rs. 73,020/- together with interest @ applicable to deposits in the General Provident Fund account reckoned from 11.05.2009 till the date of payment.

(2) The petitioner shall be paid interest @ payable for deposits in the General Provident Fund

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account for the period 11.05.2009 till 16.10.2010
when gratuity in the sum of Rs. 5,00,000/- minus
Rs.73,020/- was paid.

(R.G. AVACHAT, J.)

CHIEF JUSTICE

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