

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**903 CIVIL APPLICATION NO. 6563 OF 2019 WITH
CIVIL APPLICATION NO. 10039 OF 2019 IN
WRIT PETITION NO.10470 OF 2018**

**SUBHASH MADHAVRAO BHOGADE
VERSUS
SUPERINTENDING ENGINEER THE MAHARASHTRA
ELECTRICITY DISTRIBUTION COMPANY AND ANOTHER**

...
Advocate for the Applicant : Shri A. R. Borulkar
Advocate for the Respondents : Shri A. S. Bajaj
...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 26th SEPTEMBER, 2019.

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PER COURT :

1. These two Civil Applications have been filed by the respondent employee. In the first Civil Application, he prays for withdrawal of amount and in the second Civil Application, he prays for direction to the petitioner Management to re-calculate the suspension allowance from 30/03/2010 to 12/07/2011 and from 16/04/2013 to 31/01/2015 by including the yearly increments.

2. I have heard the learned Advocates for the respective sides.

3. It is settled law that unless the increments are extendable to an employee by virtue of a long term settlement signed under Section 2(p) of the Industrial Disputes Act, no employee has a right to increments. As such, the issue of increments cannot be taken up by this Court in a matter which does not involve the said aspect.

4. *Insofar* as the calculations of the back wages is concerned, the petitioner Management has deposited an amount of Rs. 21 Lakhs in this Court. In the event of there being any shortfall in the said deposit, that would be considered while deciding the Writ Petition. However, it is made clear that the issue of yearly increments would not be taken up in this Writ Petition considering that it is a litigation which originates from the Labour Court.

5. In view of the above, the second Civil Application No. 10039/2019 stands rejected.

6. *Insofar* as the first Civil Application filed by the workman

seeking withdrawal of amount is concerned, the learned Advocate for the petitioner points out the conduct and the attitude of the respondent from the revision application that he had filed before the Industrial Court under Section 44 of the MRTU and PULP Act, 1971. He had himself drafted the said revision application and by repeatedly taking the name of the Labour Judge practically in every alternate paragraph in the revision application, he has cast aspersions upon the Labour Judge. In the affidavit which is at page 202, he has used the most foul language which is more than an abusive language against the Labour Court Judge by taking his name even in the affidavit.

7. This Court has admitted this petition and has stayed the impugned judgment on the condition that the back wages would be deposited in this Court. An order to the Registry to invest the said amount with a Nationalized Bank in Fixed Deposit Receipt has already been passed on 09/01/2019.

8. The applicant prays for gratuity.

9. The learned Advocate for the Management submits that the total gratuity payable to the respondent is Rs. 13,66,252/- after presuming that the impugned judgment of the Industrial Court would be sustained. If the period from termination till reinstatement granted to the workman is kept aside and keeping in view his date of superannuation as being 31/01/2015, his gratuity will have to be reduced for a period of 2 years as this Court had earlier reduced the service benefits period by 2 years by order dated 09/01/2019.

10. It is conceded that the employee has been paid a part of the gratuity which is Rs. 7,05,737/- and he would be entitled for the residual portion of the gratuity which would be Rs. 6,60,515/-, till superannuation. The learned Advocate for the petitioner makes a statement on instructions from his instructing client present in the Court that an order of forfeiture of gratuity has not been passed against the employee.

11. In my view, even if the Management succeeds in this petition, the employee will have to refund only Rs. 90,000/-

considering that he is being paid gratuity for 2 years under the assumption that the Industrial Court's order would be applicable.

12. As such, the first Civil Application No. 6563/2019 would be partly allowed only to the extent of permitting the applicant workman to withdraw Rs. 6,60,000/- from this Court under proper identification, a copy of his recent photograph, a copy of his recent permanent address proof and his Election Commission Voter's ID Card or UID Aadhar Card.

13. Needless to state, in the event, the Management succeeds in this petition, the respondent employee would be liable to refund only Rs. 90,000/- which he shall deposit in this Court within EIGHT WEEKS in the event the judgment of this Court is adverse to him. He would therefore, file an affidavit undertaking while withdrawing the amount to this extent.

(RAVINDRA V. GHUGE, J.)

shp/-