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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9296 OF 2017

The Post and Telecom Co-operative Society Ltd.	..Petitioner
Vs.	
Shrikant Atmaram Jagtap	..Respondent

....
Shri Nitin A. Kulkarni for petitioner.
Shri Murlidhar L. Patil for respondent.

....

CORAM : M.S.KARNIK, J.

DATE : 3rd APRIL, 2019

P.C. :

Rule. Rule made returnable forthwith by consent of the parties and heard finally.

2. The challenge in this Petition under Article 226 and 227 of the Constitution of India is to an order passed by the Competent Authority dated 23/5/2014 under the Payment of Gratuity Act Application (PGA) No.40/2011 and in Misc. (PGA) No.1/2014 and in Appeal (PGA) No.3/2015.

3. Learned Counsel for the petitioner would contend that the impugned order is passed by the authority without giving proper opportunity to the petitioner to represent their case. It is the petitioner's case that no notice was given to the petitioner of the proceedings before the Competent Authority. In the submission of learned Counsel for the petitioner, there were two separate proceedings. According to him, one such proceeding was in the nature of conciliation. In so far as conciliation proceedings, a notice was served on the petitioner. However, in so far as the proceeding for payment of gratuity before the Competent Authority is concerned, the said application came to be decided without giving any notice to the petitioner. According to the petitioner, the notice in the conciliation proceedings is taken to mean by the Competent Authority as a good service of notice in the proceedings under the Payment of Gratuity Act.

4. Learned Counsel for the petitioner would further submit that the respondent is not entitled to gratuity and the

incentive of Rs.23,02,531/- was paid to the respondent which he has accepted. According to him, now the petitioner is claiming the difference on the basis of the 6th Pay Commission which the petitioner is not entitled.

5. Learned Counsel for the respondent on the other hand invited my attention to the findings of the authorities below and pointed out that the petitioner was duly served. The case of the respondent is that the respondent is entitled to the arrears towards difference in gratuity amount as determined by the Competent Authority. Though contention is raised by the petitioner that the amounts which were paid to the respondent are in the nature of incentives, nothing has been brought on record to indicate this.

6. Heard learned Counsel for the parties.

7. I find that the Competent Authority under the Payment of Gratuity Act has awarded a sum of Rs.80,479/- being difference of the gratuity amount payable to the

respondent. The Competent Authority has further granted an interest of 10% with effect from 1/4/2019 till the date of actual payment. From the proceedings I find that the petitioners were duly noticed. In fact the Competent Authority has recorded the submission of the petitioner that the amounts which are paid to the respondent are not difference as per the 6th Pay Commission but they are clearly in the nature of incentives.

8. Having stated thus I do not find that the explanation of the petitioner that they were not given any opportunity to appear before the Competent Authority is satisfactory. The Competent Authority upon consideration of the materials on record came to a conclusion that the respondent is entitled to the gratuity amount of Rs.3,37,954/-. The Competent Authority upon deducting Rs.2,57,475/- which was already paid, found that Rs.80,479/- is due and payable to the respondent. Thus, having regard to the findings recorded by the Competent Authority, on account of pay revision as per recommendation of 6th Pay Commission, there has been a consequential difference of gratuity which is payable to the respondent. The Competent

Authority has observed that nothing is brought on record by the petitioner to indicate as to why such a large sum was paid to the respondent as incentive. Immediately upon payment, the respondent started getting benefits of revised pay scales as per 6th Pay Commission recommendations. In these circumstances, if the Competent Authority concluded that the said amount was paid towards arrears of gratuity, I see no reason to interfere with this finding. Consequently, the Competent Authority rightly came to the conclusion that respondent is entitled to arrears of gratuity. I do not find any error in the findings recorded by the Competent Authority.

9. It is clarified that this order is passed in the peculiar facts of the case. The respondent retired in March, 2009.

10. The Petition is devoid of any merits and hence dismissed.

11. Rule is discharged with no order as to costs.

(M.S.KARNIK, J.)