

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

WRIT PETITION NO.6769/2018

Shegaon Shri Agrasen Credit Co-operative Society.

Vs.

Hemant Govind Anekar & others.

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

Court's or Judge's Orders.

Shri D.I.Jain, Advocate for petitioner.

Shri P.N.Verma, Advocate for respondent no.1.

CORAM : A.S.CHANDURKAR, J.

DATED : July 15, 2019.

The challenge raised in the present writ petition filed under Article 227 of the Constitution of India is to the order passed by the Appellate Authority in exercise of powers under Section 7(7) of Payment of Gratuity Act, 1972 (for short, 'the said Act') thereby confirming the order passed by the Controlling Authority on 06.06.2015 and holding the respondent no.1 entitled to receive the amount of gratuity.

The facts in brief are that the respondent no.1 was in employment with the petitioner-Society since 01.04.1992. After completing service of about 13 years 7 months, the respondent no.1 resigned from the service on 31.03.2006. He thereafter preferred an application for grant of gratuity. However, the petitioner did not accept that claim and therefore the respondent no.1 approached the Controlling Authority under the provisions of the said Act. The parties led evidence before the Controlling Authority and after considering the same it was held that the respondent no.1 was entitled to receive the amount of gratuity and only on the ground that the respondent no.1 completed the age of 58 years, he could not be denied such benefit. Accordingly, the

respondent no.1 was held entitled to receive the amount of Rs.33,115/- with interest.

In the appeal preferred by the petitioner-Society, it was sought to be urged that there was no evidence to indicate employment of more than 10 persons with the Society prior to 01.04.2000. Reference was made to the Notification dated 20.08.1997 requiring engagement of 10 or more persons for applicability of the provisions of the said Act. This contention was not accepted and the appeal came to be dismissed.

Shri D.I.Jain, learned counsel for the petitioner reiterated the same contentions that were raised before the Appellate Authority. According to him, in the absence of there being any evidence to indicate engagement of 10 or more employees from 01.04.2000 with the Society, the provisions of the said Act could not have been applicable. He further submitted that since the respondent no.1 continued in service beyond the period of 58 years, the service rendered after that age could not be taken into consideration for computing benefits to receive gratuity. The respondent no.1 was not covered under the Group Gratuity Scheme and hence he was not entitled to receive those benefits. This aspect was not considered by the Appellate Authority vitiating its order.

Shri P.N.Verma, learned counsel for the respondent no.1 supported the impugned order. According to him, the burden to prove engagement of less than 10 employees was on the Society and the same was not discharged. Placing reliance on the decision in ***Bakshish Singh Vs. M/s.Darshan Engineering Works, AIR 1994 SC 251*** it was submitted that since the respondent no.1 had rendered necessary qualifying service he was rightly held entitled to receive gratuity. His continuation in service beyond the age of 58 years cannot be a reason to deny him any benefits as the respondent no.1 was entitled to continue in services till the same were terminated. The Notification dated 20.08.1997 could not be applied to defeat the claim of the respondent no.1.

I have heard the learned counsel for the parties and have perused the documents on record. It has been found by the Controlling Authority that the total service rendered by the respondent no.1 exceeded the qualifying service that was required to be rendered for being entitled to receive gratuity. There is no evidence on record brought by the Society to indicate that less than 10 persons were employed by the Society. On the contrary, it was rightly found by the Appellate Authority that the Society had applied to the Life Insurance Corporation for being insured under the provisions of the said Act. In other words, applicability of the provisions of the said Act were admitted by the Society itself. The Appellate Authority has thereafter considered the decision of Hon'ble Supreme Court in *Bakshish Singh* (supra) to conclude that the respondent no.1 was entitled to receive gratuity. There is no material on record brought by the petitioner-Society to indicate that the Notification dated 20.08.1997 would be applicable to the case in hand. The continuation of the respondent no.1 in service beyond the age of 58 years has rightly been considered in the light of the fact that his services were never terminated by the Society.

In that view of the matter, it is found that the Controlling Authority as well as the Appellate Authority have concurrently held that the respondent no.1 was entitled to receive the amount of Rs.33,115/- with interest as the amount of gratuity. There is no jurisdictional error in the aforesaid adjudication. The writ petition is therefore dismissed. No costs.

JUDGE

Andurkar.