

Vdk

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2197 OF 2016

Bhanudas s/o Kishanrao Giram
Age : 69 years, Occu: Retired S.T.
Conductor, R/o Giram Galli,
karanja Road, Beed, Dist. Beed

.....Petitioner

VERSUS

1. The Chairman,
M.S.R.T.C. Central Office,
Maharashtra Vahatuk Bhawan,
Dr. Anandrao Nayar Marg,
Mumbai-400 008
2. The General Manager,
(Personnel and Industrial Relations)
M.S.R.T.C., Maharashtra, Vahatuk
Bhawan, Dr. Anandrao Nayar Marg,
Mumbai- 400 008
3. The Divisional Controller,
MSTRC, S.T. Beed- 431122

..... Respondents

.....

Mr. Suresh B. Deshmukh, Advocate for the petitioner
Mrs. D. S. Jape, Assistant Government Pleader for
respondents no. 1 and 2
Mr. D. S. Bagul, Advocate for respondent no. 3

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[CORAM : SUNIL P. DESHMUKH AND
B. U. DEBADWAR, JJ.]

DATE : 25th February, 2020

ORAL JUDGMENT (PER – SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally by consent.

2. Petitioner is before this court against communication dated 7th August, 2015 purporting to refuse payment of gratuity pursuant to request made by him as well as because of non-consideration of demand and discrepancies appearing in calculation in respect of back wages under application dated 3rd March, 2015 not being attended to.

3. Factual background may have better reflection on the grievance made in the writ petition.

. Petitioner had joined duty as conductor with respondent no. 3 in July, 1969. In August, 1976, he was terminated. Dispute which ensued from aforesaid termination, had been rejected by Labour court in 1990. Against the same, petitioner had preferred writ petition bearing no. 3274 of 1990. Said writ petition had been rejected by learned single judge of this court on 21st August, 2007. Petitioner had been in letters patent appeal no. 1 of 2014 against order of learned single

judge. On adjudication, the division bench of this court on 24th February, 2015, had passed the following operative order in the letters patent appeal;

- “ 1) *The letters Patent Appeal is allowed;*
- 2) *The Judgment and order dated 21.08.2007 passed by learned single Judge in Writ Petition no. 3274/1990 and Award dated 2.3.1990 passed by learned Judge of Labour court, Aurangabad, are quashed and set aside;*
- 3) *Termination order dated 30.08.1976 passed by Respondent/Corporation, also stands quashed;*
- 4) *The Respondent/Corporation is directed to pay to the appellant 50% of the back wages of the entire relevant period, i.e. from the date of his termination till date of his superannuation i.e. 31st July, 2004 within the period of three months from the date of this order;*
- 5) *No order as to costs.*
- 6) *In view of disposal of the appeal, Civil Application No. 1080/2015 does not survive and the same stands disposed of. ”*

4. In purported compliance of order dated 24th February, 2015 while petitioner has been paid amount towards back wages, yet, petitioner appears to have certain grievance in respect of calculations about the amount and of gratuity. He, thus, raised certain demands under application dated 3rd March, 2015 (annexure at page no. 18), which does not appear to have been responded to by respondent no. 3 – The

divisional controller, MSRTC, S.T., Beed. The petitioner had also applied for payment of gratuity under application dated 6th August, 2015, however, the same has been declined by respondent no. 3 under its communication dated 7th August, 2015 referred to supra, for the reason that, entitlement to payment of gratuity pursuant to section 4(1) of The Payment of Gratuity Act, 1972, would be only in the case of employees who worked for 240 days in a year. While the petitioner had worked from 6th July, 1969 to 30th August, 1976, gratuity for this period had already been paid. As the petitioner was not in the service of respondent no. 3 during the period from 31st August, 1976 to 31st July, 2004, had not completed 240 working days in a year during said period, as such, gratuity for said period would not be payable to petitioner.

5. Learned counsel for petitioner submits that appreciation of provisions of Payment of Gratuity Act, 1972 by respondent no. 3 is patently erroneous. As a matter of fact, section 4(1) does not speak about such requirement. He submits that section 4 of the Payment of Gratuity, Act, 1972, on the contrary, ordains the employer to pay gratuity when there is continuous service for not less than 5 years. He submits that

the order is absolutely capricious and arbitrary and based on erroneous assumption of provisions of law.

6. He submits that his termination in 1976 has been proved to be wrongful and thus all the incidental and consequential benefits are flowing from direction by the High court.

7. Division bench in letters patent appeal had set aside termination order directing respondent no. 3 – divisional controller, MSRTC, to pay to the appellant 50% of the back wages of the entire relevant period i.e. from the date of his termination till date of his superannuation i.e. 31st July, 2004. Undercurrent of the order appears to be that he is deemed to have retired on superannuation.

8. Learned counsel Mr. D. S. Bagul, appearing for respondent no. 3, contends that, may be reference about section 4(1) of the Payment of Gratuity Act, 1972 under impugned communication dated 7th August, 2015 is an error and as a matter of fact, it ought to have been section 2-A (2) (a) (ii) instead. He accordingly purports to resist the claim under writ petition in respect of payment of gratuity .

9. Looking at the provisions about payment of gratuity, it appears to be mandatory under section 2-A as it refers to that an employee should be deemed to be in continuous service if he had been in uninterrupted service of the employer for the purpose of payment of gratuity. Section 2-A speaks about treatment to be given to interruption in service and an employee is said to be in continuous service for the period if he has, for that period, been in uninterrupted service, including the service which may be interrupted on account of lock-out, strike, or cessation of work not due to any fault of employee, whether such uninterrupted or interrupted service had been rendered before or after the commencement of the Act. In the present case, termination of petitioner had been set aside by high court directing payment of back wages from the date of termination to date of superannuation, gives an indication of that interrupting in service due to termination has been made good treating petitioner to be in service upto superannuation.

10. The judgment in letters patent appeal no. 1 of 2014 rendered by the division bench as well as it being not at all a case of respondent that the cessation/interruption of work of

petitioner had been due to fault of petitioner, he would be deemed to be in continuous service, additionally he had benefit of section 2-A of Payment of Gratuity Act, 1972.

11. Having regard to aforesaid submissions on behalf of petitioner, which carry lot of substance and going by the provisions, particularly, section 4 about the payment of gratuity and other provisions, it is not only imperative but incumbent that gratuity shall be paid to petitioner who is deemed to have retired on superannuation, as observed under clause (4) in the operative part of order dated 24th February, 2015 passed by division bench of this court in aforesaid letters patent appeal.

12. Impugned communication dated 7th August, 2015, in the circumstances, is rendered unsustainable and thus is quashed and set aside.

13. Petitioner's application for payment of gratuity pursuant to order dated 24th February, 2015, passed in letters patent appeal including interest, be considered afresh. The request of petitioner also has been in respect of discrepancies in the calculation of payment of back wages. Respondents to

address the issue and respond to the request of petitioner.

14. Aforesaid exercise may be completed by respondents, as expeditiously as possible, preferably, within a period of 3 (three) months from the date of receipt of writ of this order.

15. With aforesaid directions, writ petition is disposed of.

16. Rule is made absolute accordingly.

[B. U. DEBADWAR]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

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