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

**WRIT PETITION NO.3962 OF 2019**

Avinash s/o Divakar Yadav,  
Age 59 years, Occ. Retired as  
Additional Executive Engineer  
(Distribution), R/o Indira Nagar,  
Nashik, Tal. & District Nashik

... PETITIONER

**VERSUS**

1. Maharashtra State Electricity  
Distribution Company Ltd.,  
Through its Managing Director,  
Prakash Gad, Bandra (West),  
Mumbai
2. The Chief Engineer,  
MSEDCL, Jalgaon Zone,  
Jalgaon, District Jalgaon
3. The Executive Engineer  
(Distribution), Chalisgaon Division,  
Chalisgaon, District Jalgaon

... RESPONDENTS

.....  
Mr. S.S. Thombre, Advocate for the petitioner  
Mr. Uday S. Malte, Advocate for respondents No.1 & 3  
.....

**CORAM :**    **SUNIL P. DESHMUKH AND**  
                                 **R. G. AVACHAT, JJ.**

**DATE :**        **13<sup>th</sup> OCTOBER, 2020**

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

1. Rule. Rule made returnable forthwith and taken  
up for final hearing with the consent of learned counsel for the  
parties.

2. The petitioner is before the court under present writ petition, primarily making grievance against the action pursuant to and communication dated 01-02-2019 of respondent No.3, the Executive Engineer (Distribution), Maharashtra State Electricity Distribution Company Ltd., Chalisgaon Division that gratuity amount be paid to petitioner on the condition of returning/ refunding the same if the petitioner is convicted in a pending anti-corruption case, with a further instruction to deposit gratuity amount of Rs. 18,38,450/- vide demand drafts No. 283713 for Rs. 10,00,000/- and No. 283714 for Rs. 8,38,450/- in labour court. Accordingly, it appears that, the amount is lying in the labour court.

3. Learned counsel for the petitioner submits that, the action pursuant to aforesaid communication dated 01-02-2019 is beyond powers and authority of respondent No.3. He submits that, the petitioner is entitled to gratuity under the Payment of Gratuity Act, 1972 ('Gratuity Act') and payment of gratuity cannot be held back save the circumstances as referred to in the provisions. He particularly points out Section 4 and sub-section (6) thereof. He further goes on to submit that, none of the conditions enumerated and referred to under the Gratuity Act are subsisting which would detain or for that matter, or may require remitting the

amount to labour court. He submits that, it is only under the circumstances as would be referable to sub-section (6) of Section 4 of the Gratuity Act, the amount can be forfeited and pending anti-corruption case is not covered under the same.

4. Learned counsel for the petitioner submits that, there is unequivocal declaration of law that gratuity cannot be withheld for pendency of an anti-corruption case. He refers to Supreme Court judgment in the case of *State of Jharkhand & ors. Vs. Jitendra Kumar Srivastava & ors.*, reported in *AIR 2013 SC 3383*. He refers to that, in said case the high court's order, directing the employer to release the withheld dues were underscored and upheld by the Supreme Court. He points out that in *Hira Lal Vs. State of Bihar & ors.*, reported in *AIR 2020 SC 1027*, the Supreme Court had allowed the appeal preferred against decision of high court dismissing the claim for pension and gratuity until conclusion of criminal trial.

5. He submits that, the respondents have not pointed out any rule which would enable them to withhold pension or gratuity. Pension and gratuity are hard earned amounts and those cannot be deprived of without authority of law and that those are not bounties. He, therefore, urges this court to quash the impugned communication and direct the respondents to pay his retiral dues legitimately due to him.

6. Learned counsel Mr. Malte appearing for respondents vehemently submits that, the petitioner is being prosecuted in a criminal case under Prevention of Corruption Act and the case is pending and having regard to the seriousness of the offence charged against the petitioner, action taken pursuant to impugned communication is not liable to be found fault with. He submits that, the respondents are careful and want to be secure in respect of the amount, in case the petitioner is convicted in the ongoing criminal case. In the circumstances, gratuity amount has been sent to labour court. He further submits that, the petitioner has to follow online procedure for getting the amount of provident fund and adverts to that ninety percent of the amount of provident fund has already been paid to the petitioner.

7. Though the arguments are advanced on behalf of the respondents as aforesaid, the decision in *State of Jharkhand & ors.* (supra), the Supreme Court has observed that, pension and gratuity are hard earned benefits and the employee cannot be deprived of pension and gratuity without authority of law. Pension and gratuity are not bounties and employee earns these benefits by dint of long service and these benefits are in the nature of property.

8. While the respondents have not been able to show that the action taken by them is supported by any authority of law or under any rule, and while no case for forfeiture of amount referable to provisions of law has been made out on behalf of the respondents, we deem it appropriate that the amount which has been deposited by the respondents pursuant to the impugned communication may be called back by them. The petitioner is required to be paid gratuity amount in right earnest.

9. The amount of gratuity be paid to the petitioner within a period of three months from the date of receipt of writ of this order without detaining payment with reference to deposit in labour court. For amount of provident fund, the petitioner may follow the procedure as would be applicable.

10. With the above directions, the petition is disposed of. Rule is made absolute in above terms.

**[R. G. AVACHAT]**  
JUDGE

**[SUNIL P. DESHMUKH]**  
JUDGE