

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

WRIT PETITION NO. 3440 OF 2020

Kalyani Shivling Masalkar	... Petitioner
Versus	
The State of Maharashtra and others	... Respondents

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Mr. Nitin T. Tribhuwan, Advocate for petitioner
 Mr. K. N. Lokhande, AGP for respondent No.1-State
 Mr. K. J. Ghute Patil, Advocate for respondent No.2

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**CORAM : S. V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATED : 15th DECEMBER, 2020

PER COURT :-

1. Mr. Tribhuwan, learned counsel for the petitioner submits that the respondents No. 1 and 2 have not paid retiral benefits to the petitioner. According to the learned counsel, the only reason mentioned by the respondents is that the pendency of the writ petition which is filed by them against the judgments of the Labour and Industrial Court. According to the learned counsel, the petitioner is also acquitted in a criminal case filed against him on 13.03.1997. The petitioner has retired on attaining the age of superannuation on 08.12.2018. Still the retiral benefits have not paid.

2. Mr. Ghute, learned counsel for the respondent No.2 submits that the petitioner was dismissed from service. He had filed proceedings before the Labour Court, which came to be allowed. The revision filed by the respondents was dismissed. The respondents have filed Writ Petition No.683 of 2007 before this Court, the same is pending. The stay has been granted to the backwages. In view of pendency of Writ Petition No.683 of 2007 the petitioner is not entitled for any retiral benefits.

3. It is not disputed by the parties that criminal case was filed against the petitioner being Crime No.72 of 1994, the same is disposed on 13.03.1997. The petitioner is acquitted. It is also matter of record that the petitioner was dismissed from service. The petitioner filed Complaint (ULP) No.38 of 2004 before the Labour Court. The Complaint ULP No.38 of 2004 was allowed. The order of dismissal was set aside and the respondent No.2 was directed to reinstate the petitioner with continuity in service and 75% back wages of salary. Respondent No.2 filed revision before the Industrial Court. The Industrial Court dismissed the revision. Aggrieved thereby, respondent No.2 filed Writ Petition No. 683 of 2007 before this Court. Rule has been granted and stay to the back wages is

granted. However, this Court did not stay the judgment of the Industrial and the Labour Court. Eventually, the petitioner on attaining the age of superannuation retired from service.

4. In the light of the aforesaid facts, the respondent employer is bound to pay the retiral benefits to the petitioner. Such as, P. F., Gratuity and all other retiral benefits as an employee on attaining the age of superannuation is entitled to.

5. In light of the above, we pass the following order:

ORDER

- (i) Respondent No.2 shall within a period of three months from today, pay the entire retiral benefits to the petitioner as an employee retiring on age of superannuation is entitled to.
- (ii) If the respondent No.2 does not pay all the retiral benefits to the petitioner within three months as directed above, then respondent No.2 shall be liable to pay interest at the rate 9% p.a. on the said amount.

(iii) The petitioner may file undertaking with the employer that in case the respondent No.2 succeeds in writ petition, then he would pay the amount as may be directed by the Court in Writ Petition No.683 of 2007.

(iv) The writ petition is accordingly allowed. No costs.

[SHRIKANT D. KULKARNI]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

SMS