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

WRIT PETITION NO.18 OF 2020

(The Maharashtra Agro Industries Development Corporation Limited thr. Shri Anil Shamrao More Vs. Shamrao Namdeorao Budhe)

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders.	*Court's or Judge's orders.*

Shri K.B. Zinjarde, Advocate for Petitioner.

CORAM: RAVINDRA V. GHUGE, J.
DATE: 13th JANUARY, 2020.

1] The petitioner management is aggrieved by the judgment dated 02.05.2018 delivered by the Controlling Authority by which, Application (PGA) No.8/2015 was allowed and the differential amount of gratuity of Rs.44,310/- with interest thereon, has been directed to be paid. The petitioner is also aggrieved by the judgment of the Appellate Court dated 11.03.2019 by which, Appeal (PGA) No.17/2018 preferred by the petitioner, has been dismissed.

2] I have considered the strenuous submissions of the learned Advocate for the petitioner. He has relied upon the two interlocutory orders passed by this Court at the principal seat dated 13.08.2018 in Writ Petition Stamp No.2168/2018 and the order dated 20.06.2019 in Writ Petition No.1287/2019, by which the recovery of interest amount has been stayed.

3] After considering the extensive submissions of the learned Advocate for the petitioner, I have gone through the petition paper book with his assistance.

4] The undisputed factors are that the respondent joined service with the petitioner on 01.02.1980 and is superannuated from employment on 31.05.2012. There was a pay revision by the 6th pay commission recommendations dated 01.01.2016. A circular was issued by the petitioner on 24.06.2014 declaring that the said 6th pay commission recommendations would be applicable with retrospective effect from 01.01.2006. It would apply to those candidates who have been in employment till 30.04.2014. The respondent was in employment till 31.05.2012. The said circular declared that gratuity on the difference of pay scale would not be payable.

5] Considering the above, the respondent preferred an application for seeking gratuity under section 7 of the Payment of Gratuity Act, 1972 on 26.02.2015. Contention was that once the revision in salary is made as per the 6th pay commission recommendations w.e.f. 01.01.2006, the gratuity would become payable as the pay scale of the employee would be revised and on the date of his superannuation, his pay scale would be higher in view of the recommendations having been made with retrospective effect. It was also his case that he would be paid the revised pay scale difference amount and as such his last drawn salary as on the date of superannuation would be higher. He claimed gratuity and interest on account of being deprived of gratuity though the pay scale was revised.

6] It is equally undisputed that the petitioner issued a new circular on 21.07.2016 and declared that even difference of gratuity would be payable to such employees. Based on the said circular, as the petitioner realized its mistake of refusing gratuity, the difference of amount of Rs.44,310/- was calculated and paid to the respondent during the pendency of the proceedings before the Controlling Authority, on 21.03.2017.

7] The learned Advocate for the petitioner strenuously submits that gratuity was earlier not payable as per the petitioner department and subsequently it realized that as gratuity is to be calculated on the last drawn wages/salary, the pay revision would place the respondent and similarly situated workmen on a higher pay scale and gratuity will have to be calculated based on the said pay scale. Therefore, the difference of gratuity was paid before the Controlling Authority on 21.03.2017.

8] Section 4 of the Payment of Gratuity Act, 1972 reads as under:

> *4. **Payment of gratuity**.— (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,—*
>
> *(a) on his superannuation, or*
> *(b) on his retirement or resignation,*
> *(c) on his death or disablement due to accident or disease:*
>
> *Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:*
>
> *[Provided further that in case of death of the*

employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is minor, the share of such minor, shall be deposited with the Controlling Authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority].

Explanation.—For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of [an employee who is employed in a seasonal establishment, and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days' wages for each season.

[Explanation.—In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.]

(3) The amount of gratuity payable to an employee shall not exceed [In section 4 of the principal Act, in sub-section (3), for the words "ten lakh rupees", the words "such amount as may be

notified by the Central Government from time to time" shall be substituted.]

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1),—

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee [may be wholly or partially forfeited].

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part; or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

9] It is obvious that gratuity becomes payable to an employee upon his termination, retirement, resignation or superannuation or even in case of death, if he has put in five years in continuous employment. Section 4(2) mandates that the gratuity would be computed on the basis of the last drawn wages of an employee.

10] When the respondent retired from employment, his pay scale was not revised. Such revision occurred by the circular dated 24.06.2014 and based on the said circular, the 6th pay commission recommendations were made applicable to all employees as like the respondent. It is specifically stated that the moment the salary was revised, the petitioner calculated the difference in salary and made payments to the workers.

11] It is settled law that the employer is duty bound to pay gratuity to an employee after one month of severing of employer – employee relationship. Failure to pay gratuity after one month would make the employer liable for payment of interest since the employee is not expected to approach the employer begging for gratuity (***D.D. Tewari (D) through Lrs. v. Uttar Harayana Bijli Vitran Nigam Limited*** reported in ***2014 AIR (SC) 2861***).

12] The Labour Court – Controlling Authority held that as the pay revision has occurred on 24.06.2014 and the employee was liable to be paid gratuity on 01.07.2012, the difference of gratuity amount of Rs.44,310/- having not been paid, would make the petitioner liable to pay interest at the rate of 10% as per the scheme under the Payment of Gratuity Act, w.e.f. 01.07.2012. In my view, the Labour Court has apparently erred in drawing such conclusion as the pay revision took place only on 24.06.2014 and the difference in gratuity was calculated on 03.12.2014 which was accordingly paid to the employee on 25.10.2016.

It needs clarification that the date 25.10.2016 has emerged when the petitioner called upon the respondent to collect the difference of arrears of gratuity and since he did not come forward, the said amount was deposited before the Controlling Authority on 21.03.2017.

13] The above error committed by the Labour Court was rightly noticed by the Appellate Authority – Industrial Court which modified the judgment of the Controlling Authority and held that the claimant would be entitled for interest on the gratuity only from 03.12.2014 till 25.10.2016 and not from 01.07.2012 till 21.03.2017.

14] I find that the Appellate Court has correctly rectified the mistake committed by the Controlling Authority. As the gratuity was payable on 24.06.2014, which the petitioner employer initially refused to pay and subsequently amended its mistake by the circular dated 21.07.2016 and offered difference in gratuity amount on 25.10.2016, the interest on the difference amount of Rs.44,310/- would be liable for interest at the rate of 10% only for the period 03.12.2014 to 25.10.2016. This conclusion of the Appellate Authority is within the scheme of law and is well placed.

15] This petition, being devoid of merit, is therefore, dismissed.

(Ravindra V. Ghuge, J.)

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