

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

WRIT PETITION NO.3945 OF 2020

**SUKHDEO TATYARAO CHOUDHAR
VERSUS
THE GENERAL MANAGER TELECOM, BHARAT SANCHAR NIGAM LTD.
AND OTHERS**

...
Advocate for Petitioner : Mr. Bide Dnyaneshwar A.
Advocate for Respondents : Mr. S. C. Arora
...

**CORAM : RAVINDRA V. GHUGE AND
S. G. MEHARE, JJ.**

DATE : 29th SEPTEMBER, 2021

PER COURT :

1. The petitioner has put forth prayer clause B, C and D as
under :-

"B) The Hon'ble High Court may be pleased to issue Writ of Certiorari or any other appropriate writ order or direction in the nature of writ thereby directing the respondents to restore the payment of pension of the petitioner as per last basic pay drawn on 31.03.2019 which is Rs.30,720/-, with further directions to pay the arrears of pension along with 18% interest.

C) The Hon'ble High Court may be pleased to issue Writ of Certiorari or any other appropriate writ order or direction in the nature of writ thereby directing the respondents for releasing the withheld amount of gratuity, leave encashment amount and commuted value of pension amount along with 18% interest.

D) The Hon'ble High Court may be pleased to issue Writ of Certiorari or any other appropriate writ order or direction in the nature of writ thereby directing the respondents to grant compensation of Rs.5,00,000/- for bringing mental agony and hardship to the petitioner along with cost of this litigation."

2. We have considered the extensive submissions of the learned advocates for the respective sides. The learned advocate for the respondents has also placed before us a copy of the query raised by the competent authority on 07-03-2019, an order of punishment issued to the petitioner dated 13-07-2003 and an undertaking dated 01-11-2018 which has been executed by the petitioner. Reliance is placed on the judgment delivered by the Hon'ble Apex Court in the matter of *Chandi Prasad Uniyal and Others Versus State of Uttarakhand and Others [(2012) 8 SCC 417]*.

3. Having heard the submissions of the learned advocates for the respective sides, it is obvious from the impugned order dated 31-03-2019, that an amount of Rs.10,13,886/- is sought to be recovered from the petitioner and the amount towards leave encashment of Rs.6,13,716/- is to be adjusted and the balance amount that has been withheld from the gratuity would be Rs.4,00,170/-. However, an opportunity of hearing before passing the impugned order, at the stroke of his retirement which has taken place on 31-03-2019, has not been given to the petitioner. The petitioner did not have even a chance to explain to the employer that the amount sought to be recovered is unjust and should not be recovered from him.

4. In view of the above, since there has been no opportunity to the petitioner to show cause with regard to the order of recovery and certain amounts that have been withheld, without hearing the petitioner, that we are entertaining this petition. In view of the above, this petition is partly allowed. The impugned order dated 31-03-2019 is quashed and set aside only to enable the petitioner to be heard as against the action of recovery.

5. The learned advocate for the petitioner, at this stage, submits that the undisputed amount of Rs.4,00,170/- can be paid to him, having regard to the amount that the respondents desire to recover towards gratuity amount, and he prays that the respondents should release that amount.

6. The learned advocate for respondents fairly submits that the proposal for waiver of recovery of the amount of Rs.10,13,886/- has already been forwarded by the Bombay Office of the respondents to their Delhi Office on 16-09-2020.

7. In the above backdrop, we expect respondent No.1 to pursue the proposal for waiver of the recovery amount with its Delhi Office and seek a decision on the said proposal, on or before 30-11-2021. If the proposal is accepted, the grievance of the petitioner would be redressed. However, if the proposal is turned down, respondent No.1 would expeditiously intimate the petitioner

about the said decision, on or before 31-12-2021.

8. In the event of the rejection of the proposal for waiver, we direct as under :-

- a) The petitioner shall appear before respondent No.1 on 10-01-2022 at 12.00 noon.
- b) He would be permitted to address the mind of the said authority against the recovery sought to be initiated.
- c) Written notes of submissions, if felt necessary, can also be submitted.
- d) The hearing on the issue shall be concluded on or before 25-01-2022, after granting reasonable opportunity of hearing to the petitioner.
- e) Thereafter, the said authority shall proceed to pass a reasoned order on or before 15-02-2022.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)