

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

WRIT PETITION NO.6077 OF 2016

1. Nagesh s/o Jagdishrao Deshpande,
(original petitioner),
Died through L.Rs.

1a. Namita Nagesh Deshpande,
Age 56, Occu. Housewife,

1b. Nilesch Nagesh Deshpande,
Age 34 years, Occu. Service,

1c. Nitesh Nagesh Deshpande,
Age 28, Occu. Service,

All Residing at Plot No.78,
Maya Nagar, N-2, Cidco,
Aurangabad – 431 003

...PETITIONER

VERSUS

01. State of Maharashtra,
Through its Secretary,
Social Justice Department,
Mantralaya, Mumbai – 32

02. Managing Director,
Maharashtra State Other Backward
Class, Finance and Development
Corporation Ltd.,
4th Floor, R.C. Chmburkar Marg,
Chembur, Mumbai – 71

...RESPONDENTS

Mr V.D. Gunale, Advocate for the petitioners;
Mr P.N. Kutti, A.G.P. for respondent no.1;
Mr Amit A. Yadhikar, Advocate for respondent no.2

**CORAM : UJJAL BHUYAN
AND
M.G. SEWLIKAR, JJ.**

(Date of reserving the judgment : 6th April, 2021

Date of pronouncing the judgment : 7th May, 2021)

JUDGMENT (PER UJJAL BHUYAN, J.)

We have heard Mr Gunale, learned Counsel for the petitioners; Mr Kutti, learned A.G.P. for respondent no.1; and Mr Yadkikar, learned Counsel for respondent no.2.

2. Rule. Rule made returnable forthwith. Heard learned Counsel appearing for the parties finally by consent.

3. By filing this petition under Article 226 of the Constitution of India petitioners seek quashing of order dated 17th February, 2016 passed by respondent no.2 and further seek a direction to respondent no.2 to pay gratuity and earned leave encashment with interest at the rate of 9% per annum. It may be mentioned that initially the writ petition was filed by Nagesh Jagdishrao Deshpande but after his death he has been substituted by his legal heirs i.e., wife and two sons vide order of this Court dated 26th February, 2021.

4. It may also be mentioned that the writ petition was allowed by this Court vide order dated 7th January, 2019 by

directing respondent no.2 to pay gratuity to the original petitioner within three months and also to take a decision regarding payment of leave encashment within three months. However, on a review application filed by respondent no.2 being Review Application (Civil) No.259 of 2019 order dated 7th January, 2019 was reviewed and re-called whereafter the present writ petition was heard afresh.

5. For a proper adjudication of the lis, the relevant facts as pleaded may be briefly noted at the outset.

5.1. The original petitioner i.e., Nagesh Jagdishrao Deshpande (referred to as the “petitioner” hereinafter) was initially appointed as Accounts Officer in the year 1988 in Maharashtra Electronic Corporation Ltd. (MELTRON). He served in MELTRON as a permanent employee till the year 2003. For various reasons MELTRON was closed down whereafter petitioner was absorbed in the Maharashtra State Other Backward Class Finance and Development Corporation Ltd. (briefly the “respondent no.2” hereinafter) in the year 2003 with continuity of past service in MELTRON.

6. While the petitioner was working as District Manager at Aurangabad, a show cause notice was issued to him on 3rd April, 2008 calling upon the petitioner to show cause on certain allegations made against him while discharging duty as District Manager. The allegations pertained to disbursement of loans to fictitious beneficiaries or ineligible beneficiaries leading to non recovery of the disbursed loan amounts. Petitioner submitted show cause reply pointing out therein that the list of beneficiaries was prepared by the district level committee constituted by respondent no.2 with the Collector of the district as the head. Loan amounts were sanctioned by respondent no.2 as per list of beneficiaries so prepared. Petitioner was in no way connected with the sanction or disbursement of loan. Being the District Manager he had no role to play. Regarding recovery of loan amounts the same was done from the share of the beneficiaries as per their own request. Neither the beneficiaries suffered nor there was any loss to respondent no.2. On the other hand, there was 100% recovery of the disbursed loan amounts. The loans were disbursed by way of crossed account payee cheques. Question of misappropriation of such amount did not arise.

6.1. However, without considering the show cause reply submitted by the petitioner, another show cause notice was issued to him which was also replied back. Finally he received charge-sheet from respondent no.2 on 7th August, 2008. Reply was submitted by the petitioner on 29th August, 2008 controverting and denying the charges. It appears respondent no.2 was not satisfied with the reply submitted by the petitioner and decided to hold enquiry. As a result, one Shri N.G. Gaikwad, retired Deputy Collector was appointed as Enquiry Officer for conducting enquiry against the petitioner. On being asked, petitioner nominated next friend to defend him in the enquiry. However, Enquiry Officer prepared report of enquiry and submitted the same to respondent no.2. Upon receipt of enquiry report, respondent no.2 issued notice to the petitioner on 8th June, 2010 seeking his response on the enquiry report and also as to why penalty of removal from service should not be imposed on him. Petitioner submitted his response on 25th June, 2010.

7. At that stage petitioner approached the Labour Court by filing complaint challenging the legality and validity of the notice of respondent no.2 dated 8th June, 2010. On 1st July, 2010 the Labour Court while framing a preliminary issue as to the

jurisdiction of the Labour Court directed maintenance of *status quo* as regards service of the petitioner.

8. By order dated 7th March, 2011 Labour Court dismissed the complaint filed by the petitioner.

9. Against the aforesaid order petitioner preferred revision petition before the Industrial Court. Initially a *status quo* order was passed on 13th March, 2011. However, the Industrial Court referred the matter back to the Labour Court to decide the matter afresh and till the matter was decided to continue with the *status quo* order.

10. On remand, Labour Court heard the matter and thereafter passed an order dated 3rd September, 2011 holding that while the enquiry conducted against the petitioner was not legal and proper, it did not have the jurisdiction to adjudicate the same.

11. Being aggrieved by that portion of the aforesaid order dated 3rd September, 2011 holding that Labour Court lacked jurisdiction, petitioner filed revision petition before the Industrial Court. Respondent no.2 also challenged the said order

whereby Labour Court held the enquiry against the petitioner to be not legal and proper before the Industrial Court by filing a separate revision. Initially the Industrial Court passed an order of *status quo*. Subsequently by the order dated 16th November, 2011, revision filed by the petitioner was dismissed whereas the revision filed by respondent no.2 was allowed.

12. Aggrieved by the aforesaid order dated 16th November, 2011 petitioner filed Writ Petition No.8952 of 2011 before this Court. Vide order dated 23rd November, 2011 this Court directed the parties to maintain *status quo*, which order was continued thereafter. During this period, petitioner was transferred to the head office of respondent no.2 and was given additional charge of Accounts Officer.

13. On attaining the age of superannuation i.e., 58 years respondent no.2 passed office order dated 31st December, 2013 retiring the petitioner from the service of respondent no.2 on 31st December, 2013.

14. On 2nd April, 2014 Writ Petition No.8952 of 2011 was disposed of by this Court as having been rendered infructuous.

15. It may be mentioned that petitioner had filed another writ petition before this Court being Writ Petition No.677 of 2013 challenging the notice issued to him by the disciplinary authority on 8th June, 2010 proposing to impose the penalty of removal from service. On 26th June, 2014 when it was submitted before the Court that petitioner had retired from service on attaining the age of superannuation and that he had only assailed a show cause notice in the writ petition, this Court disposed of the said writ petition by taking the view that petitioner had retired from service on attaining the age of superannuation and the challenge was only to the show cause notice; therefore the Court need not entertain the writ petition.

16. After his retirement from service petitioner submitted an application on 2nd January, 2014 before respondent no.2 requesting the latter to pay the petitioner his due gratuity amount as well as the earned leave encashment. According to the petitioner he is entitled to gratuity of Rs.7,84,605/- and leave encashment of Rs.4,65,532/-. Petitioner was informed by respondent no.2 on 7th February, 2014 that since the writ petitions filed by him were pending before this Court, gratuity and leave encashment could not be determined and paid to the petitioner.

17. Being aggrieved by such a response of respondent no.2, petitioner filed Writ Petition No.3545 of 2014 before this Court. The said writ petition was disposed of by order dated 17th December, 2015 by directing respondent no.2 to decide the representation filed by the petitioner for payment of gratuity and leave encashment within six weeks. While directing the respondent no.2 as above, this Court mentioned about disposal of the previous writ petitions which we have already noted above.

18. Instead of deciding payment of gratuity and leave encashment to the petitioner as directed by this Court, respondent no.2 issued the impugned order/communication dated 17th February, 2016 dismissing the petitioner from service with effect from 31st December, 2013 i.e., the date of superannuation. It has also been held that since petitioner had caused financial loss to respondent no.2 he is not entitled to receive gratuity as per Rule 4 (6) (a) (b) (ii) of the Payment of Gratuity Act, 1972. Similarly, he would also not be entitled to leave encashment which stood forfeited to compensate the loss of respondent no.2, further stating that for recovery of the remaining amount civil suit would be instituted against the petitioner.

19. Aggrieved, petitioner has filed the present writ petition assailing the legality and validity of the aforesaid order dated 17th February, 2016 and seeking a direction to respondent no.2 for payment of gratuity and leave encashment.

20. As already mentioned above during the pendency of the present writ petition, petitioner had expired and he has since been substituted by his legal heirs.

21. Respondents have filed reply affidavit. Detailed averments have been made on the merit of the charges brought against the petitioner in the departmental proceeding.

21.1. It is stated that a charge-sheet was issued to the petitioner for committing financial irregularities of more than Rs.1 crore while disbursing the loans to beneficiaries when he was working at Aurangabad District Office of respondent no.2. An enquiry was conducted whereafter final show cause notice was issued to the petitioner on 8th June, 2010. Petitioner had approached the Labour Court and thereafter the Industrial Court at Latur and had obtained stay. Though the stay was vacated by the Industrial Court, petitioner filed Writ Petition No.8952 of

2011 before this Court and obtained stay. Since the stay order was operational, respondent no.2 could not take disciplinary action against the petitioner. Petitioner retired from service on attaining the age of superannuation on 31st December, 2013. Writ Petition No.8952 of 2011 and another writ petition filed by the petitioner being Writ Petition No.677 of 2013 were disposed of by this Court as infructuous in view of petitioner's superannuation from service. After disposal of both the writ petitions there was no stay order in operation. Therefore, respondent no.2 passed order dated 17th February, 2016 dismissing the petitioner from service with retrospective effect from 31st December, 2013.

21.2. As the petitioner was dismissed for financial irregularities, gratuity amount and leave encashment payable to the petitioner stood forfeited. Referring to order of this Court dated 17th December, 2015 passed in Writ Petition No.3545 of 2014, it is stated that direction of the Court was to consider the representation of the petitioner for payment of gratuity and leave encashment and not for payment. Accordingly, it was considered and thereafter decision was taken that since the petitioner had caused heavy financial loss to respondent no.2, therefore respondent no.2 forfeited the amounts of gratuity and leave encashment payable to the petitioner.

21.3. It is stated that petitioner was issued charge-sheet levelling seven charges against him on 7th August, 2008. Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 is applicable to respondent no.2 and the departmental proceeding against the petitioner was conducted thereunder.

21.4. Entire amount of gratuity payable to the petitioner has been forfeited under Section 4 (6) (a) (b) (ii) of the Payment of Gratuity Act, 1972 as the misconduct of the petitioner falls under 'moral turpitude'. Likewise, leave encashment of the petitioner has also been forfeited due to financial irregularities committed by him. Since the above two amounts have been forfeited, question of delay in payment of the same does not arise.

21.5. Reliance has been placed on a decision of the Supreme Court in **U.P. State Sugar Corporation Ltd. vs. Kamal Swaroop Tandon**, AIR 2008 SC 1235, in support of the contention that steps for recovery of loss sustained by the employer due to negligence of delinquent employee can be continued even after retirement of the employee and can be recovered from his retiral benefits.

21.6. In the circumstances, respondents contend that there is no merit in the writ petition and therefore, the writ petition should be dismissed.

22. Petitioner has filed a longish re-joinder affidavit to the reply affidavit of the respondents. Stand taken is that after disposal of Writ Petition Nos.8952 of 2011 and 677 of 2013, respondent no.2 was not entitled to terminate the service of the petitioner retrospectively from the date of superannuation. Therefore, the impugned order/communication dated 17th February, 2016 is illegal. Such action has been done deliberately and with *mala fide* intent to defeat the legal rights of the petitioner. Direction of this Court dated 17th December, 2015 passed in Writ Petition No.3545 of 2014 has been deliberately misconstrued to deny legitimate dues of the petitioner. In fact, such order passed by respondent no.2 amounts to committing contempt of court.

22.1. On merit, it is submitted that there is no single charge of misappropriation against the petitioner; therefore, the question of such a charge being proved or not been proved in the enquiry does not arise. There was no charge of moral turpitude

against the petitioner. Therefore, his gratuity amount cannot be forfeited on the ground that misconduct of the petitioner is of moral turpitude.

22.2. Petitioner has reiterated his explanations given to the authority against the allegations brought against him.

22.3. Regarding application of the Maharashtra Civil Services (Discipline and Appeal Rules), 1979 it is contended that there is no notification making such Rules applicable to respondent no.2. No retirement benefit can be withheld under the garb of disciplinary proceeding. In this connection, reliance has been placed on a decision of the Supreme Court in **Dev Prakash Tewari vs. U.P. Cooperative Institutional Service Board, Civil Appeal No.5849 of 2014**, decided on 30th June, 2014.

22.4. In the circumstances petitioner submits that impugned order/communication dated 17th February, 2016 is wholly unsustainable in law and the same is as such liable to be set aside and quashed with further direction to respondent no.2 to pay the admissible gratuity and leave encashment to the petitioner.

23. It may be mentioned that a sur-rejoinder has been filed by the respondents to the re-joinder affidavit filed by the petitioner wherein it is asserted that impugned action taken by respondent no.2 is as per the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and based upon the enquiry report submitted by the Enquiry Officer. Respondent no.2 had adopted resolution on 25th February, 2004 to the effect that the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 would be applicable to respondent no.2 till separate service rules were framed. Petitioner had played a crucial role in disbursement of loans to the beneficiaries and therefore, cannot escape accountability for causing huge financial loss to respondent no.2. Charges levelled against the petitioner would come under the expression 'moral turpitude'.

24. Learned Counsel for the petitioner has assailed the impugned order/communication dated 17th February, 2016 on several counts. Firstly, he submits that in the facts and circumstances of the case petitioner could not have been dismissed from service retrospectively from the date of superannuation i.e., 31st December, 2013, i.e., after almost three years of retirement. Secondly, he submits that by passing such an order respondent no.2 has tried to over-reach the

orders of this Court whereby earlier two writ petitions were disposed of as infructuous in view of superannuation of the petitioner and in the last writ petition direction was given to respondent no.2 to consider payment of gratuity and leave encashment to the petitioner. Instead of doing that, respondent no.2 illegally dismissed the petitioner from service with retrospective effect. On the decision of respondent no.2 to forfeit gratuity he submits that having regard to the overriding provisions of the Payment of Gratuity Act, 1972, such a course of action is not open to respondent no.2. That apart, when the impugned order is legally unsustainable and the order of dismissal from service is illegal, question of withholding or forfeiture of gratuity would not arise. Likewise, decision of respondent no.2 to forfeit leave encashment of the petitioner is not at all justified; rather it is wholly illegal and liable to be appropriately interfered with by this Court. In support of his submissions, Mr Gunale, learned Counsel for the petitioner has placed reliance on a number of decisions of the Supreme Court as well as of this Court.

25. Per contra, Mr Yadkikar, learned Counsel for respondent no.2 submits that show cause notice was issued to the petitioner on 7th August, 2008 when the petitioner was in

service. It is now a settled legal position that when a departmental proceeding is initiated against a delinquent employee in the course of his employment, intervening superannuation of the delinquent would not debar the employer from carrying forward the departmental proceeding post superannuation to its logical conclusion and impose adequate penalty if so warranted. He submits that respondent no.2 was constrained from passing an appropriate order of penalty because of pendency of the writ petitions with an order of *status quo*. After the writ petitions were disposed of as having been rendered infructuous, there was no impediment upon respondent no.2 for passing the impugned order of penalty. Subsequent order of the High Court dated 17th December, 2015 directing respondent no.2 to consider entitlement of the petitioner to gratuity and leave encashment has to be understood in the overall context. No direction was issued for payment of gratuity and leave encashment to the petitioner. Respondent no.2 was well within its right to impose the impugned penalty having initiated the departmental proceeding.

25.1. Insofar forfeiture of gratuity and leave encashment is concerned, he submits that action of respondent no.2 is fully justified and in accordance with the provisions of the Payment

of Gratuity Act, 1972. Section 4 (6) (a) (b) (ii) clearly empowered respondent no.2 to forfeit the gratuity of the petitioner. On similar basis leave encashment of the petitioner has been forfeited.

25.2. Learned Counsel for the respondents has placed heavy reliance on a decision of the Supreme Court in **Chairman-cum-Managing Director, Mahanandi Coalfields Limited vs. Sri Rabindranath Choubey, AIR 2020 SC 2978**, and submits that respondent no.2 is fully justified in not only dismissing the petitioner from service but in also forfeiting the gratuity and leave encashment of the petitioner.

26. Learned A.G.P. submits that it is a matter between the petitioner and respondent no.2. Respondent no.1 has no role to play.

27. Submissions made by learned Counsel for the parties have received the due consideration of the Court. Also perused the materials on record and considered the citations referred to and relied upon by the rival parties at the bar.

28. From an analysis of the pleadings and submissions made what is discernible is that the impugment is to the order/communication dated 17th February, 2016 passed by respondent no.2. The said order/communication can be bisected into two parts. The first part provides for termination of service of the petitioner by way of dismissal with retrospective effect from the date of superannuation i.e., 31st December, 2013. Second part deals with forfeiture of gratuity for causing financial loss to respondent no.2 and also on account of misconduct of the petitioner being in the category of 'moral turpitude'. Similarly, leave encashment due to the petitioner is being forfeited to compensate the loss of respondent no.2.

29. Before we deal with challenge, it would be apposite to briefly highlight the admitted facts which are relevant for adjudication.

30. There is no doubt that the charge-sheet was issued to the petitioner on 7th August, 2008 when he was in service of respondent no.2. Show cause reply filed by the petitioner to the charge-sheet was found to be not satisfactory. Consequently, enquiry was ordered. Enquiry Officer after holding enquiry submitted enquiry report. Respondent no.2 accepted the report

of enquiry and issued notice to the petitioner on 8th June, 2010 seeking his comments on the enquiry report and also on the proposed penalty of removal from service. Petitioner submitted his response on 25th June, 2010. At this stage we may mention that while respondent no.2 has contended that the departmental proceeding against the petitioner was conducted in terms of the Maharashtra Civil Service (Discipline and Appeal) Rules, 1979, the same is being disputed by the petitioner. Without entering into this controversy, at this stage we may mention that petitioner had unsuccessfully moved the Labour Court and thereafter the Industrial Court against the notice dated 8th June, 2010 whereafter petitioner filed Writ Petition No.8952 of 2011 before this Court in which *status quo* order was passed on 23rd November, 2011. Subsequently petitioner also filed Writ Petition No.677 of 2013 directly assailing the aforesaid notice dated 8th June, 2010. While the two writ petitions were pending before this Court, respondent no.2 passed office order dated 31st December, 2013 declaring that petitioner had retired from service on attaining the age of superannuation on 31st December, 2013. We may mention that in the said office order dated 31st December, 2013 it was not indicated that a departmental proceeding was pending against the petitioner and that such superannuation was subject to out-come of the

departmental proceeding. It was also not indicated therein that service of the petitioner stood notionally extended post superannuation for the purpose of the pending departmental proceeding. Be that as it may, Writ Petition No.8952 of 2011 was disposed of on 2nd August, 2014 by taking the view that since petitioner had retired from service upon superannuation, the writ petition had been rendered infructuous. Similarly, Writ Petition No.677 of 2013 was disposed of by this Court on 26th June, 2014 by taking the view that since the petitioner had retired on attaining the age of superannuation and the challenge was only to the show cause notice the Court need not entertain the writ petition. When the petitioner's request for payment of gratuity and leave encashment was not favourably considered by respondent no.2, petitioner filed Writ Petition No.3545 of 2014 before this Court which was disposed of on 17th December, 2015 by directing respondent no.2 to decide the representation of the petitioner regarding release of gratuity and leave encashment within six weeks. It was thereafter that the impugned order/communication came to be passed on 17th February, 2016.

31. Let us now examine the impugned order/communication dated 17th February, 2016. After narrating that memo dated 7th

August, 2008 was issued to the petitioner under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 it is stated that respondent no.2 decided to initiate departmental enquiry on the various charges levelled against petitioner. Shri N.G. Gaikwad, retired selection grade Deputy Collector was appointed as Enquiry Officer. He conducted enquiry and thereafter submitted enquiry report to respondent no.2 on 22nd October, 2009. Petitioner was informed vide letter dated 6th November, 2009 to record his statement on the enquiry report which the petitioner did on 8th December, 2009 but the statement of the petitioner was found to be not satisfactory. Disciplinary authority agreed with the enquiry report whereby all the seven charges against the petitioner stood proved. Because of reckless distribution of loans by committing financial irregularities most of the loans would not be recovered putting respondent no.2 at a financial loss. Thus, conduct of the petitioner was not honest. Notice dated 8th June, 2010 was issued to the petitioner as to why penalty of removal from service should not be imposed on the petitioner. Explanation furnished by the petitioner was found to be unsatisfactory. It is stated that respondent no.2 suffered financial loss of Rs.81.51 Lakhs which should be recovered from the petitioner and one Shri Bhale in the ratio of 50 : 50. The order referred to the stay

order granted by the Labour Court which was vacated by the Industrial Court and also to the two writ petitions filed by the petitioner stating that the High Court had rejected both the writ petitions and that petitioner had superannuated from service on 31st December, 2013. Respondent no.2 has taken the view that there is no stay order of any Court to the proposed action as per notice dated 8th June, 2010. Considering the seriousness of the charges which stood proved in the departmental enquiry petitioner was dismissed from service with retrospective effect from the date of superannuation i.e., 31st December, 2013. Relevant portion of the order/communication dated 17th February, 2016 pertaining to dismissal from service of the petitioner is extracted hereunder :-

“The Inquiry Report submitted by the Inquiry Officer has been accepted by the Managing Director and ‘Disciplinary Authority’ and he is agreed with the Inquiry Report. The charges of serious nature have been proved against you in the Departmental Inquiry. Considering the gravity of the charges it was required to award you the harsh punishment under Rule 9 of the Maharashtra Civil Service (Discipline & Appeal) Rules. Due to your misconduct and financial irregularities committed by you the corporation and consequently the government is at financial loss.

According to the report submitted by the Inquiry Officer, all the 7 charges framed against you are proved

completely. According to that you have disbursed the loans without following prevailing method, by the wrong way, unlawfully, without following the norms of Corporation, and committed financial irregularities. Out of which most of the loan amount will never be recovered. Due to which the Corporation is at financial loss in lakhs of rupees. While performing the duty of District Manager your conduct was not honest and dutiful. Since you are a government servant your conduct is unbecoming of a government employee. Therefore, you have committed breach of the provisions of rule 3(1)(one)(two)(three) and 3 (3) of the Maharashtra Civil Service (Conduct) Rules, 1979.

As the serious charges leveled against you are proved, why the action of removal from the service should not be taken against you. Similarly, in spite of giving the benefit of the debt waiver to the concerned beneficiaries as per government rule, the Corporation is at the financial loss of Rs.81.51 Lakh. The directions regarding the explanation as to why the said amount should not be recovered from you and Shri. Bhale individually 50% from each one of you, had been issued to you through the notice by Corporation letter bearing no. OBCFDC-2010/Manag.of.Corpo/477 dtd. 08/06/2010. Accordingly you have submitted your explanation by the letter dtd. 25.06.2010. The explanation submitted by you is found unsatisfactory therefore it has been rejected.

The stay order was granted to you by the Labour Court, Latur against the proposed dismissal notice. That order was rejected by the Hon'ble Industrial Court, Latur. However, you had preferred Writ Petitions no.8952/2013 and 677/2013 to the Hon'ble High Court of Bombay,

Aurangabad Bench. Then after your retirement on superannuation from the Corporation service on dtd. 31.12.2013 you have submitted the said information to the Hon'ble High Court through your advocate and the Hon'ble High Court has rejected both the writ petitions. Hence, now there is no stay order of any Court to the proposed action as per the notice dtd. 08.06.2010.

As you are retired on superannuation and in view of the Court's stay order, your retirement order has been issued on dtd. 31/12/2013. However, at present there is no stay order, against the charges of illegal loan disbursement and other serious charges are also proved against you in the Departmental Inquiry, therefore it became required to award you harsh punishment as per Maharashtra Civil Service Rules. Therefore you have been dismissed since dtd. 31.12.2013."

31.1. Though in the notice dated 8th June, 2010 petitioner was informed that respondent no.2 had proposed to impose the penalty of removal from service, in the final order/communication dated 17th February, 2016 the penalty that is imposed is dismissal from service. While in service jurisprudence there is a distinction between the penalties of removal from service and dismissal from service, we need not labour much on it for the simple reason that the original petitioner is no longer alive; that apart he had retired from service on attaining the age of superannuation with effect from 31st December, 2013. Having retired from service and having

expired, the minute distinction between the two concepts may not have much relevance.

32. We have already noticed that petitioner had filed Writ Petition No.8952 of 2011 against the decision of the Industrial Court rejecting the revision of the petitioner assailing the decision of the Labour Court on the notice dated 8th June, 2010. The High Court had initially passed a *status quo* order on 23rd November, 2011. Subsequently petitioner filed another writ petition being Writ Petition No.677 of 2013 directly assailing the legality and validity of the notice dated 8th June, 2010. In the meanwhile petitioner attained the age of superannuation on 31st December, 2013 and respondent no.2 issued an office order on the same day relieving the petitioner from service having attained the age of superannuation. But as we have pointed out above, in the said office order it was not indicated that departmental proceeding was pending against the petitioner and that such superannuation would be subject to the out-come of the departmental proceeding or that service of the petitioner stood notionally extended post superannuation to await final decision in the departmental proceeding. Subsequently both the writ petitions were disposed of on 2nd August, 2014 and 26th June, 2014 respectively as having been rendered infructuous.

The two writ petitions were not dismissed by this Court as has been urged by respondent no.2 in the impugned order/communication dated 17th February, 2016 and certainly were not dismissed on merit. From a perusal of the two orders dated 2nd August, 2014 and 26th June, 2014 it becomes quite clear that High Court had taken the view that since the petitioner had superannuated from service, the show-cause notice dated 8th June, 2010 had lost its force and ceased to have effect. Therefore the writ petitions were closed. When the petitioner's request for payment of gratuity and leave encashment was not favourably considered by respondent no.2, petitioner had approached this Court by filing Writ Petition No.3545 of 2014 which was disposed of on 17th December, 2015 by directing respondent no.2 to decide on the representation filed by the petitioner regarding release of gratuity and leave encashment. Instead of taking a decision on such representation of the petitioner, what respondent no.2 did was to pass the order/communication dated 17th February, 2016 dismissing the petitioner from service giving retrospective effect to such dismissal from the date of his superannuation.

33. In the light of the admitted factual position as stated above, we cannot help but harbour a feeling that respondent

no.2 acted in a manner as if to circumvent the orders of this Court. We have already noted and would like to reiterate that when respondent no.2 had passed the office order dated 31st December, 2013 relieving the petitioner from service on his attaining the age of superannuation there was no indication or condition in such order that service of the petitioner stood notionally extended so as to give effect to the departmental proceeding drawn up against the petitioner or that such superannuation was subject to out-come of the departmental proceeding drawn up against the petitioner in pursuance of which notice dated 8th June, 2010 was issued to the petitioner. Therefore, a view can legitimately be taken that respondent no.2 had unconditionally released the petitioner from service on attaining the age of superannuation on 31st December, 2013. If that be so, the relationship of master and servant or employer and employee stood breached and that relationship no longer existed between respondent no.2 and petitioner post 31st December, 2013. In such circumstances it cannot be said that respondent no.2 had any administrative or disciplinary control over the petitioner. Therefore, the dismissal order of the petitioner after superannuation that too giving retrospective effect from the date of superannuation becomes untenable in law.

34. In **S.B.I. vs. A.N. Gupta, (1997) 8 SCC 60** Supreme Court took the view that disciplinary proceedings cannot be permitted after an employee has ceased to be in the service of the bank as service rules do not provide for continuation of disciplinary proceedings after the date of superannuation. Again in **Bhagirathi Jena vs. Board of Directors, (1999) 3 SCC 666**, Supreme Court held that after retirement of the delinquent employee a pending departmental enquiry lapses in absence of a specific provision for its continuation after retirement.

35. We have carefully perused the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 but we do not find any provision therein which provide for continuation of enquiry post superannuation. We also do not find any such provision therein for extension of service of a Government servant post superannuation for the purpose of completion of disciplinary proceeding which was initiated while the Government servant was in service.

36. However, we find that Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 confers right to the

Government to withhold or withdraw pension. As per sub-rule (1) the appointing authority may by order in writing withhold or withdraw a pension or any part of it whether permanently or for a specified period and also order recovery from such pension the whole or part of any pecuniary loss caused to the Government if the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement. Such guilt must be found or proved in a departmental or judicial proceeding. The two provisos to sub-rule (1) are not relevant for the present discourse and are therefore not referred to.

36.1. Clause (a) of sub-rule (2) provides that the departmental proceedings referred to in sub-rule (1) if instituted while the Government servant was in service whether before his retirement or during his re-employment shall after the final retirement of the Government servant be deemed to be proceedings under Rule 27 and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

36.2. Clause (b) of sub-rule (2) deals with institution of departmental proceedings post superannuation. The same is not relevant for the present case and, therefore, need not be dealt with.

36.3 Rule 27 (1) and (2) (a) being relevant is extracted hereunder :-

“27. Right of Government to withhold or withdraw pension.-(1) [Appointing Authority may], by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview:

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

(2) (a) The Departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by

the authority by which they were commenced in the same manner as if the Government servant had continued in service.”

36.4. At the first glance, from a reading of the aforesaid provision one may gather an impression that a departmental proceeding if instituted while the Government servant was in service shall be deemed to be proceedings under Rule 27 even after retirement of the Government servant and shall be continued and concluded by the authority in the same manner as if the Government servant had continued in service.

37. Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 came up for consideration before a Single Judge of this Court in **Chairman/Secretary of Institute of Acharya Ratna Deshbhushan Shikshan Prasarak Mandal, Kolhapur vs. B.B. Patil, 2003 (3) Mh.L.J. 602**. After an indepth analysis of the aforesaid provision, learned Single Judge held that this rule nowhere empowers the Government to initiate or continue disciplinary proceedings after the employee attains the age of superannuation. The rule is meant for and confined to the power of the Government to reduce or withdraw the pension of a pensioner on account of proven grave misconduct or negligence of such pensioner while he was in service. Such proceedings would be deemed to have been continued post

superannuation only for the purpose of action relating to pension and not for disciplinary purpose. Provisions of Rule 27 disclose that departmental proceedings spoken thereof are wholly and solely in relation to the issue pertaining to payment of pension. Those proceedings do not relate to disciplinary enquiry which can otherwise be initiated against the employee for any misconduct on his part and continued till the employee attains the age of superannuation. Even here also the fact that proceedings are continued post superannuation only to deal with the issue of withdrawal of pension is necessarily required to be made known to the employee. It has specifically been held that proceedings under Rule 27 after attaining the age of superannuation can be only for the purpose of deciding the issue of pension and cannot have any link with the disciplinary proceedings.

38. The above decision of the learned Single Judge of this Court was approved by a Division Bench of this Court in **Manohar B. Patil vs. State of Maharashtra, 2013 (6) Mh.L.J. 311**. In the said decision Division Bench held that on a conjoint reading of sub-rules (1) and (2) of Rule 27 it is obvious that in departmental proceedings initiated after retirement no penalty can be imposed on a Government servant in accordance with

the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The departmental enquiry can be initiated after superannuation only for the purpose of withholding the whole or part of the pension. Reference was also made to another Division Bench judgment of this Court in **Dhairyasheel A. Jadhav vs. Maharashtra Agro Industrial Development Corporation Ltd., 2010 (2) Mh.L.J. 618** wherein it was held that if a Government servant is not in service then none of the penalties provided for in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 can be imposed. Adverting to Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 the Division Bench held that the said rule permits institution of departmental proceedings after superannuation of an employee only for the purposes of taking action contemplated under sub-rule (1) of Rule 27 in relation to pension and in the said proceedings no penalty can be imposed in accordance with the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Relevant portion of paragraph 15 of the said judgment in Manohar B. Patil (supra) is extracted hereunder :-

“15. * * * *

Thus we hold that Rule 27 permits institution of departmental proceedings after superannuation of an employee only for the purposes of taking action contemplated by Sub-Rule (1) of Rule 27 in

relation to pension and in the said proceedings, no penalty can be imposed in accordance with the Discipline and Appeal Rules. To that extent, we approve the view taken by the learned Single Judge in the case of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal, 2003 (3) Mh.L.J. 602 = 2003 (5) Bom. C.R. 197."

39. Consequently and in the light of the above, we hold that the order/communication dated 17th February, 2016 dismissing the petitioner from service retrospectively from 13th December, 2013 is unsustainable in law and is accordingly set aside and quashed.

40. If the order of dismissal is interfered with in the above manner, question of forfeiture of gratuity and leave encashment would not arise. None the less, to complete the narrative we may advert to that portion of the order dated 17th February, 2016 whereby gratuity and leave encashment of the petitioner have been forfeited. Relevant portion of the order dated 17th February, 2016 is extracted hereunder :-

"You have intentionally caused a financial loss to the Corporation as per the charges proved against you in the Departmental Inquiry. Moreover, your misconduct falls under the category of moral turpitude hence you are not entitled to receive the amount of gratuity as per Rule IV (6) (a) (b) (2) of the Gratuity Act, 1972 therefore said amount has been forfeited. Similarly, the leave encashment amount which was entitled to you has been

forfeited to compensate the loss of Corporation and for the recovery of remaining amount civil suit will be filed against you.”

41. We find from the above that according to respondent no.2 petitioner had intentionally caused financial loss to it and that petitioner’s misconduct fell in the category of ‘moral turpitude’. Therefore, the gratuity has been forfeited under Section 4 (6) (1) (a) and (b) (ii) of the Payment of Gratuity Act, 1972. Thus gratuity has been forfeited both for causing financial loss to respondent no.2 and on the ground of the misconduct falling in the category of ‘moral turpitude’. On similar ground the leave encashment has also been forfeited.

42. Payment of gratuity to a employee by a employer is covered by the Payment of Gratuity Act, 1972 (briefly the “Act” hereinafter). The Act provides for a scheme for payment of gratuity to an employee. It is a welfare piece of legislation. Gratuity is a statutory right of an employee under the Act. Withholding of such statutory right to an employee is not permissible under any circumstances other than those mentioned in Section 4 (6) of the Act. The conditions under which the statutory right of gratuity can be forfeited are mentioned in sub-section (6) of Section 4 of

the Act which is extracted hereunder :-

“4 (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.”

43. Thus, from the above what is noticeable is that gratuity of an employee can be forfeited if his services have been terminated for committing any act of misconduct causing damage or loss but forfeiture of the gratuity can only be to the extent of the damage or loss so caused. While still on clause (a) we may summarize the position that for forfeiture of gratuity two conditions are required to be fulfilled. Firstly, service of the employee should be terminated for an act of misconduct which caused damage or loss to the employer and secondly, forfeiture of gratuity shall be to the extent of the damage or loss so

caused. Therefore, to invoke the provision of Section 4 (6) (1) (a) quantification of the extent of damage or loss so caused due to the misconduct of the terminated employee is essential.

44. Constitutional validity of the Act, more particularly Section 4 (1) (b) was challenged in Bakshish Singh vs. Darshan Engineering Works, AIR 1994 SC 251. Though the High Court had initially struck down the said provision as being unconstitutional, decision of the High Court was reversed by the Supreme Court. While upholding validity of the aforesaid provision Supreme Court made a detail survey of the relevant law and held as under :-

“7. The aforesaid survey of the relevant authorities shows that in labour jurisprudence the concept of gratuity has undergone a metamorphosis over the years. The dictionary meaning may suggest that gratuity is a gratuitous payment, a gift or a boon made by the employer to the employee as per his sweet-will. It necessarily means that it is in the discretion of the employer whether to make the payment or not and also to choose the payee as well as the quantum of payment. However, in the industrial adjudication it was considered as a reward for a long and meritorious service and its payment, therefore, depended upon the duration and the quality of the service rendered by the employee. At a later stage, it came to be recognized as a retiral benefit in consideration of the service rendered and the employees could raise an industrial dispute for introducing it as a condition of service. The industrial adjudicators recognized it

as such and granted it either in lieu of or in addition to other retiral benefits such as pension or provident fund depending mainly upon the financial stability and capacity of the employer. The other factors which were taken into consideration while introducing gratuity scheme were the service conditions prevalent in the other units in the industry and the region, the availability or otherwise of the other retiral benefits, the standard of other service conditions etc. The quantum of gratuity was also determined by the said factors. The recognition of gratuity as a retiral benefit brought in its wake further modifications of the concept. It could be paid even if the employee resigned or voluntarily retired from service. The minimum qualifying service for entitlement to it, rate at which it was to be paid and the maximum amount payable was determined likewise on the basis of the said factors. It had also to be acknowledged that it could not be denied to the employee on account of his misconduct. He could be denied gratuity only to the extent of the financial loss caused by his misconduct, and no more. Thus even before the present Act was placed on the statute book, the Courts had recognized gratuity as a legitimate retiral benefit earned by the employee on account of the service rendered by him. It became a service condition wherever it was introduced whether in lieu of or in addition to the other retiral benefits. The employees could also legitimately demand its introduction as such retiral benefit by raising an industrial dispute in that behalf, if necessary. The industrial adjudicators granted or rejected the demand on the basis of the factors indicated above. It is true that while doing so, the industrial adjudicators insisted upon certain minimum years of qualifying service before an employee could claim it whether on superannuation or resignation or voluntary retirement. This was undoubtedly inconsistent with the concept of the gratuity being an earning for the services rendered. What is, however, necessary to remember in this connection is that there is no fixed concept of gratuity or of the

method of its payment. Like all other service conditions, gratuity schemes may differ from establishment to establishment depending upon the various factors mentioned above, the prominent among them being the financial capacity of the employer to bear the burden. There has commonly been one distinction between a retiral benefit like provident fund and gratuity, viz., the former generally consists of the contribution from the employee as well. It is, however, not a necessary ingredient and where the employee is required to make his contribution, there is no uniformity in the proportion of his share of contribution. Likewise, the gratuity schemes may also provide differing qualifying service for entitlement to gratuity. It is true that in the case of gratuity an additional factor weighed with the industrial adjudicators and Courts, viz., that being entirely a payment made by the employer without there being a corresponding contribution from the employee, the gratuity scheme should not be so liberal as would induce the employees to change employment after employment after putting in the minimum service qualifying them to earn it. But as has been pointed out by this Court in the Straw Board Mfg. Co. Ltd. case (AIR 1977 SC 941) (supra), in view of the constantly growing unemployment, the surplus labour and meagre opportunities for employment, the premise on which a longer qualifying period of service was prescribed for entitlement to gratuity on voluntary retirement or resignation, was unsupported by reality. In the face of the dire prospects of unemployment, it was facile to assume that the labour would change or keep changing employment to secure the paltry benefit of gratuity."

44.1. Supreme Court further held that it is apparent both from its object as well as its provisions that the Act was placed on the statute book as a welfare measure to improve the service

conditions of the employees. The Act has laid down gratuity as one of the minimal service conditions available to employees covered by the Act. Payment of gratuity under the Act is thus obligatory being one of the minimum conditions of service.

45. Supreme Court in **Jaswant Singh Gill vs. Bharat Cooking Coal Ltd., (2007) 1 SCC 663**, held that the Act provides for a close-knit scheme for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which an employee may be denied gratuity. The amount liable to be forfeited would be only to the extent of damage or loss caused which has to be quantified and while quantifying the said amount an opportunity of hearing must be given to the employee. This is because payment of gratuity is a statutory right of an employee covered under the Act.

46. In **Y.K. Singla vs. Punjab National Bank (2013) 3 SCC 472** Supreme Court referred to Section 14 of the Act which says that provisions of the Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith

contained in any enactment other than the Act or in any instrument or contract having effect by virtue of any enactment other than the Act. Supreme Court has observed that in view of Section 14 there is no doubt that superior status has been vested in the provisions of the Act vis-a-vis any other enactment inconsistent therewith . Supreme Court further held that under the Act an employee would be entitled to interest on account of delayed payment of gratuity in consonance with Section 7 (3-A) of the Act.

47. Thus, from the above it becomes evident that imposition of penalty of dismissal from service on an employee would not automatically lead to forfeiture of gratuity of the employee. To withhold or to make forfeiture of gratuity the employer is first required to quantify damage or loss caused due to the misconduct of the employee. In the exercise of such quantification the employee must be put on notice and must be given a reasonable opportunity of putting forward his case. Only after the damage or loss is quantified, withholding or forfeiture of gratuity would be permissible that too to the extent of damage or loss so quantified and caused due to the misconduct of the employee.

48. Insofar forfeiture of gratuity on account of moral turpitude as is contemplated in Section 4 (6) (1) (b) (ii) of the Act is concerned, the expression 'moral turpitude' is an expression of serious import and consequence. Though it is not a defined expression, we may say that it is something which is to describe a conduct which is inherently base, vile, depraved or having any connection showing depravity. Thus, to arrive at the conclusion or finding that misconduct of the delinquent employee falls within the ambit of 'moral turpitude' there must be application of mind to the above aspect by the employer and after due deliberation a finding has to be reached. Just by making a sweeping statement without any deliberation that the misconduct of the employee falls in the category of moral turpitude, the statutory right of an employee to receive gratuity cannot be snatched away. As in the case of quantification of damage or loss, in the case of moral turpitude too an employee is required to be put on notice and heard before he is denied gratuity.

49. In the instant case neither was there any quantification nor any serious deliberation on the aspect of petitioner's misconduct falling under the category of moral turpitude.

50. However, we have already come to the conclusion that dismissal of the petitioner from service in the manner in which it has been done cannot be sustained legally. If that be so and in any view of the matter, neither gratuity nor leave encashment of the petitioner can be withheld and forfeited.

51. Before we wind up our deliberation, we may refer to the decision of the Supreme Court in *Rabindranath Choubey* (supra) on which much emphasis was placed by learned Counsel for the respondents. In the facts of that case, Supreme Court considered two questions. The first question was whether it is permissible for an employer to withhold payment of gratuity payable to an employee even after his superannuation from service because of pendency of disciplinary proceedings? The second question posed by the Supreme Court for its consideration was where departmental enquiry was instituted against an employee while he was in service and continued after he had attained the age of superannuation, whether punishment of dismissal can be imposed? In that case the respondent was an employee of the appellant governed by the Conduct, Discipline and Appeal Rules, 1978 ("CDA Rules") While in service a departmental proceeding was initiated against respondent under the CDA

Rules. In due course he retired from service on superannuation. However, at the time of superannuation the departmental enquiry against him remained pending. Therefore, the appellant withheld gratuity due to the respondent. When the respondent claimed gratuity, the same was turned down by the authority on the ground that a disciplinary proceeding was pending against him. Respondent challenged the said decision by filing a writ petition in the High Court. Learned Single Judge dismissed the writ petition on the ground of non availing the alternative remedy of appeal. Writ appeal filed by the respondent was allowed by a Division Bench of the High Court. Division Bench held that since respondent had retired from service on superannuation question of imposing major penalty of removal from service would not arise. Therefore, the gratuity amount could not be withheld. It is in that context that Supreme Court framed the above two questions for its consideration.

51.1. Supreme Court referred to Rule 34 of the CDA Rules which permits the management to withhold gratuity during pendency of disciplinary proceedings. More specifically, Rule 34.2 permits the disciplinary proceedings to be continued and concluded even after the employee has attained the age of

superannuation, provided the disciplinary proceedings were instituted while the employee was in service. It further provides that such disciplinary proceedings shall be deemed to be the proceedings and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service. Further, Rule 34.3 permits withholding of gratuity during the pendency of the disciplinary proceedings. It was held that in view of such a provision even a retired employee who was permitted to retire on attaining the age of superannuation can be subjected to major penalty provided the disciplinary proceedings were initiated while the employee was in service. Therefore, the amount of gratuity can be withheld till the disciplinary proceedings are concluded. The second question was also answered by holding that considering Rules 34.2 and 34.3 of the CDA Rules departmental enquiry can be continued post superannuation given the deeming fiction that the employee continued in service and therefore, post superannuation appropriate punishment can be imposed. In the facts of that case, the employer was directed to conclude the disciplinary proceedings within four months.

52. Admittedly, facts of the present case are clearly distinguishable. Unlike in Rabindranath Choubey (supra), in the present case a dismissal order has been passed whereafter gratuity and leave encashment has been forfeited. In Rabindranath Choubey (supra) Supreme Court held that in the light of Rules 34.2 and 34.3 of the CDA Rules, the employer has a right to withhold gratuity post superannuation till conclusion of departmental proceeding and that if the disciplinary proceedings remained pending at the time of superannuation of the employee, the employee would be deemed to have continued in service post superannuation till conclusion of disciplinary proceedings. Supreme Court accordingly directed the employer to conclude the disciplinary proceeding at the earliest. In the instant case, firstly the dismissal order has been found to be unsustainable in law as there is no such provision in the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 as well as in the Maharashtra Civil Services (Pension) Rules, 1982 like Rules 34.2 and 34.3 of the CDA Rules. Additionally, forfeiture of gratuity has been found to be without following the due procedure laid down in Section 4 (6) (1) (a) and (b) of the Act. So also leave encashment.

53. Thus, having regard to the discussions made above and upon thorough consideration of the matter, we are of the view that impugned order/communication dated 17th February, 2016 is wholly unsustainable in law. The same is accordingly set aside and quashed. Consequently, respondent no.2 is directed to release the admissible gratuity to the petitioners (legal heirs of the original petitioner) with interest under Section 7 (3-A) of the Act. Likewise, respondent no.2 is directed to release the due leave encashment to the petitioners. Both the amounts as directed above shall be paid to the petitioners within a period of eight weeks from the date of receipt of a copy of this order. Writ Petition is accordingly allowed. However, there shall be no order as to costs.

54. Rule made absolute in above terms.

(M.G. SEWLIKAR)
JUDGE

(UJJAL BHUYAN)
JUDGE

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