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

959 WRIT PETITION NO.13680 OF 2018

**DAMODAR DASHRATHRAO SHINGARE  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS**

...  
Mr K. J. Suryawanshi, Advocate h/f Mr L. H. Kawale, Advocate for  
petitioner;  
Mr S. R. Yadav-Lonikar, A.G.P. for respondent Nos.1 to 4;  
Mr D. J. Chaudhari, Advocate h/f Mr B. B. Bhise, Advocate for  
respondent No.5

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

**DATE : 15th July, 2021**

**PER COURT:**

1. On 08/07/2021, we had passed the following order :

*1. The petitioner superannuated on 31.07.2017 after putting in approximately 37 years in employment. Respondent No.5/ employer passed a defective resolution No.13(c) and (d) on 02.06.2017 as regards the payment of gratuity. The said resolution was forwarded to respondent No.4. After realizing the mistake, respondent No.5 passed a new resolution on 13.11.2017 and forwarded it to respondent No.4. The same is stated to be pending at the doorstep of respondent No.4.*

(2)

2. *There is no dispute that the pension proposal has been sanctioned and the petitioner is being paid pension on regular basis.*

3. *It calls for no debate that the gratuity amount is payable after 30 days of severing the employer-employee relationship, save and except in cases of forfeiture of gratuity as is prescribed in law. There is no dispute that the petitioner is entitled for gratuity.*

4. *In view of the above, we direct respondent Nos.4 and 5 to remain personally present in this Court on 15.07.2021 and ensure that the amount of gratuity payable to the petitioner, which is admittedly Rs.10 lac (though the gratuity amount calculated could be Rs.17 lac) as per the ceiling prescribed under the Payment of Gratuity Act. On the next date, we would decide as to which of these two respondents is to pay interest on the gratuity amount to the petitioner from 01.09.2017.*

5. *Stand over to 15.07.2021 (Thursday) at 02:30 PM.”*

2 The learned A.G.P. submits on instructions from respondent No.4 that it is not within the domain of respondent No.4 to make the payment of gratuity amount to the petitioner. The Payment of Gratuity Act, 1972 clearly mandates that the employer has to pay the gratuity amount to the extent it is admissible/admitted, after one month of severing the employer-employee relationship. Respondent No.5 is the employer who is duty bound to make the payment.

(3)

3. Mr Chaudhari, learned Advocate appears on behalf of respondent No.5 and fairly submits that without going into any further controversy as to which amount would be admissible, respondent No.5 has itself issued a statement which is at page 103 of the petition paper book indicating a total amount of Rs.34,31,865/- as being payable to the petitioner. This includes the gratuity amount.

4. The learned Advocate for the petitioner submits that his calculations are set out at page No.102 of the petition paper book which indicate an amount of Rs.45,87,260/-. He, however states that the admissible amount of Rs.34,31,865/- may be paid within two weeks along with 10% interest and the petitioner would agitate for the disputed amount before the appropriate forum. The learned Advocate for respondent No.5 submits that the amount would be paid within four weeks. He prays that respondent No.5 be excused from paying interest.

5. In view of the above, this petition is disposed off with the following directions:

(4)

- a) Respondent No.5 shall pay an amount of Rs.34,31,865/- with interest @ 4% from July 2017 on or before 21-08-2021, failing which it would carry interest @ 8% from July 2017 until it is actual paid.
- b) Insofar as the disputed amount is concerned, the petitioner is at liberty to avail of a remedy as may be permissible in law under the respective enactments.
- c) Since the petitioner has spent time in this Court from December 2018 till today, this period shall be excluded from the limitation period, if any.

6. We deem it appropriate to record that presence of respondent No.4 was directed in view of the statement made by the petitioner on the last date and under the directions from respondent No.5 - Mr Santosh Deshmukh, Secretary, APMC, Beed. We, therefore, observe that Shri. R. M. Mote, respondent No.4, was not responsible for causing the delay in payment of legal dues of the petitioner.

**(S. G. MEHARE, J.)**

**(RAVINDRA V. GHUGE, J.)**

sjk