

Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5017 OF 2021

City Industrial Development Corporation
of Maharashtra Ltd.

...Petitioner

V/s.

Mr. Jagdish Boddula

...Respondent

Ms. Harsha Asnani with Mr. Gaurav Jain i/b. The Law Point for Petitioner.
Mr. Vaibhav Jagdale for Respondent.

CORAM : G. S. KULKARNI, J.
DATE : NOVEMBER 15, 2021

PC :

1. Heard learned counsel for the petitioner and learned counsel for the respondent.

2. This is a petition filed under Article 226 of the Constitution of India assailing the order dated 5 January, 2021 passed by the Appellate Authority under Payment of Gratuity Act, whereby the petitioner's appeal against the judgment and order dated 31 October, 2018 passed by the learned Controlling Authority under Payment of Gratuity Act, Thane and the First Labour Court, Thane, stands dismissed. It is appropriate to note the order passed by the Controlling Authority, directing the payment of gratuity by the petitioner which reads thus:-

“

ORDER

1) The application is hereby allowed.

- 2) The opponent is directed to pay gratuity amount of Rs.10,00,000/- alongwith 10% interest to the applicant from the date of superannuation.
- 3) Accordingly, application stands disposed of.”

3. An appeal against the above order was filed, however there was delay in filing of the appeal. The delay condonation application was allowed by the Appellate Authority by an order dated 13 September, 2019. The said order reads thus:-

“ **Order**

1. The application is allowed subject to condition that the applicant shall deposit an amount of Rs. 20,000/- (Rs. Twenty Thousand only) with this Appellate Authority or with the Ld. Controlling Authority under the P. G. Act, Thane.
2. The applicant is directed to pay cost of Rs. 500/- (Rs. Five Hundred Only) to the opponent.
3. This order to be complied within 15 days from today.
4. After compliance of the order, the office of the Court is directed to register the appeal, as per rules.”

4. However, what has transpired before the Appellate Authority passed the above order is significant and needs to be noted. The petitioner accepted the order dated 31 October, 2018 passed by the learned Controlling Authority and made the payment of gratuity to the extent of Rs.9,80,000/- on 15 January, 2019 which itself was the majority of the amount. In so far as the balance amount of Rs.20,000/- is concerned, it was deposited before the Appellate Authority on 30 September, 2019 in pursuance of the order dated 13 September, 2019 passed by the Appellate Authority. This amount was withheld by the petitioner as the petitioner

contended that the enquiry was pending at that time against the respondent.

5. Admittedly, the departmental enquiry has not culminated into any order of dismissal which would entitle the petitioner as per the provisions of Section 4 (6)(a) of the Payment of Gratuity Act, 1972 to withhold/forfeit the gratuity amount as the learned counsel for the petitioner has stated that in the departmental enquiry an amount of Rs.20,000/- was ordered to be recovered from the respondent.

6. It is thus quite clear that the petitioner had no authority whatsoever to withhold and forfeit the gratuity amount as payable to the respondent. As noted above, in the final order which is passed on the appeal which is challenged in this petition, the Appellate Authority has dismissed the appeal with direction that an amount of Rs.20,000/- which was withheld and which was directed to be deposited with the Appellate Authority be paid to the respondent-employee. It was also directed that from the date of superannuation of the respondent i.e. from 31 January 2017 the petitioner be paid interest on the gratuity amount.

7. I find that the petitioner has not made out any case to assail the impugned orders more particularly in the clear facts of the case, there was

no justification to withhold the gratuity amount payable to the respondent. The petitioner hence would be liable for payment of interest to the respondent on the amount so withheld from the date it was paid.

8. The petition is accordingly dismissed. No costs.

9. The petitioner is directed to pay the interest amount within two weeks from today.

(G. S. KULKARNI, J.)

Digitally
signed by
PRAJAKTA
SAGAR
VARTAK
Date:
2021.11.15
17:54:07
+0530