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

WRIT PETITION NO. 2041 OF 2021

Divisional Controller Maharashtra State Road Transport Corporation	..Petitioner
vs.	
Dattatray Bapusaheb Patil	..Respondent

Mr. D.D. Rananaware for the petitioner.	
Mr. U.R. Mankapure for the respondent.	

CORAM : M.S.KARNIK, J.

DATE : AUGUST 31, 2021

P.C.

Heard learned counsel for the parties.

2. The State Road Transport Corporation has challenged an order passed by the Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the said Act' for short) by which, the order passed by the Controlling Authority granting the claim of gratuity payable to the respondent - workman is upheld.

3. The respondent was working as a conductor. Suffice it to observe that on the charges of misappropriation, a departmental inquiry was held against the respondent. The charges were held to be proved. The respondent was dismissed from the services. This Court by an order passed in the year 2015 dismissed Writ Petition

No. 2032 of 2002 filed by the respondent. The order of dismissal attained finality in 2015. Thereafter, the respondent claimed gratuity. The claim for gratuity is denied placing reliance on sub-section (6) (b) (ii) of Section 4 of the said Act. The provision relates to the forfeiture of gratuity payable to an employee which may be wholly or partially forfeited, 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.

4. In the present case, admittedly there was no criminal prosecution initiated against the respondent whereby the offence of moral turpitude punishable under the criminal law could be said to be proved against the respondent. In this view of the matter and as held by the Hon'ble Supreme Court in the case of **Union Bank of India and others vs. C.G. Ajay Babu and another**¹, only because the charge of misappropriation is proved in a departmental inquiry, the same cannot be the basis for forfeiture of the claim of gratuity under Section 4 (6) (b) (ii) of the said Act.

5. I have gone through the detailed reasoning of the authorities below. I see no reason to interfere with the said findings.

6. The next contention urged by learned counsel for the petitioner is that the claim of gratuity is hopelessly barred by the

¹ (2018) 9 SCC 529

law of limitation. In support of his submission, learned counsel relied upon the decision of this Court in the case of **Chanda Khand Sahakari Shetkari Kharedi Vikri Sanstha vs. Dattatraya Ramchandra Gaund**². According to him, the authorities below are not justified in entertaining the application as apart from the claim is hopelessly barred by the law of limitation. He submits that the authorities have committed an error in granting interest at the rate of 10% on the unpaid amount of gratuity. The Appellate Authority has taken into consideration that so far as challenge to the order of dismissal is concerned, Writ Petition No. 2032 of 2002 which was filed in this Court was ultimately dismissed in the year 2015. It is only after filing of the application claiming gratuity, the forfeiture order was passed. In this case there has been a failure on the part of the employer to comply with the obligation under Section 7(2) of the said Act and hence question of limitation would not arise. In these circumstances, in my opinion, no error can be said to have been committed by the authorities below if the application for payment of gratuity is entertained and rightly not dismissed as barred by time. Consequently the Writ Petition is dismissed.

7. The amount of gratuity and the interest thereon has already been deposited by the petitioner before the Appellate Authority. The respondent - workman is permitted to withdraw the said amount.

2 2016(5) ALL.M.R. 324

8. The Writ Petition is disposed of.

(M.S.KARNIK, J.)

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