

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

LETTERS PATENT APPEAL NO.248/2008 IN C.A. NO.4645/2007 AND 7776/2007

IN

WRIT PETITION NO. 4319/2001 (D)

Nanuram Mohanlal Varma,
age 66, Ex.Clerk, MSRTC, Divisional Office, Akola,
R/o Shanta Sadan, Asra Colony, Near Tukaram
Hospital Chowk, Akola, Tq. & Dist. Akola.

APPELLANT

.....VERSUS.....

1. Divisional Controller, M.S.R.T.C., Akola Division,
Divisional Office, Kaulkhed Road, Akola,
Tq. & Dist. Akola.
2. Member, Industrial Court, Akola,
Shrikant Market, A.P.M.C. Road, Akola.
3. Judge, Labour Court, Akola,
Shrikant Market, A.P.M.C. Road, Akola.

RESPONDENTS

Shri P.N. Verma, counsel for the appellant.
Shri S.C. Mehadia, counsel for the respondent no.1.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.

DATE : 13TH JULY, 2021.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

In this letters patent appeal, the order dated 18.03.2008 passed on C.A. No.4645 of 2007 in Writ Petition No.4319 of 2001 is under challenge. By the said order, the appellant was directed to deposit an amount of Rs.1,91,076/- with interest at the rate of 6% per annum from the date the amount was withdrawn from the Labour Court. The amount was to be deposited within a period of six weeks from the date of the order and such deposit was made subject to final outcome of the recovery application that was filed by the appellant in proceedings under Section 33C-2 of the Industrial Disputes Act, 1947.

2. The relevant facts are that the appellant was engaged as a Clerk with the respondent-Corporation and he came to be dismissed from service on 28.02.1990. The appellant preferred a complaint before the Labour Court challenging the order of dismissal. During pendency of the said complaint, the appellant attained the age of superannuation on 31.05.2000. The Labour Court on 05.12.2000 allowed the complaint and directed appellant's reinstatement and also granted him back wages. This order was challenged by the respondent-Corporation before the Industrial Court which by its order dated 11.10.2001 allowed the revision application and after setting aside the order passed by the Labour Court remanded the proceedings for fresh adjudication. This order of the Industrial Court was challenged by the appellant by filing Writ Petition No.4319 of 2001. In the said writ petition on 13.03.2002 this Court directed the respondent to deposit the entire amount of back wages that had been awarded by the Labour Court by its judgment dated 05.12.2000. This interim direction was challenged by the respondent by filing a letters patent appeal which came to be subsequently dismissed. Consequently, the respondent deposited a total amount of Rs.12,42,282/- in this Court in compliance with the order dated 13.03.2002.

3. During pendency of the aforesaid writ petition, the Labour Court on remand allowed the complaint preferred by the appellant and

directed reinstatement of the appellant till the age of superannuation and also directed payment of back wages. On 13.02.2007, Writ Petition No.4319 of 2001 was dismissed by the learned Single Judge as it was rendered infructuous with passage of time. A direction was issued to transfer the amount that had been deposited by the respondent in this Court to the Labour Court and the appellant was granted liberty to apply for its withdrawal. The order dated 13.02.2007 was however reviewed and the appellant was permitted to unconditionally withdraw the balance amount lying in deposit. In terms thereof, the appellant withdrew the amount of Rs.12,42,282/-.

In the meanwhile, the appellant initiated proceedings before the Controlling Authority under the Payment of Gratuity Act, 1972 seeking grant of amount of gratuity. On 14.09.2004, the Controlling Authority directed the respondent to pay an amount of Rs.1,97,444/- with interest at the rate of 10% per annum. This order of the Controlling Authority was modified in the statutory appeal preferred by the appellant. On 26.05.2005, the Appellate Authority held the appellant entitled to an amount of Rs.1,94,444/- with interest at the rate of 10% per annum from 01.06.2000 till realization. After dismissal of this appeal, the appellant was paid an amount of Rs.2,03,812/- which included an amount of Rs.6368/- that was deposited by the respondent on 11.01.2005 and Rs.1,97,444/- deposited on 06.04.2005.

4. Since according to the respondent the appellant had withdrawn an amount of Rs.12,42,282/- which included an amount of Rs.1,91,076/- as gratuity, the appellant was not entitled to be paid gratuity again. On 06.08.2005, the appellant had also received Rs.2,03,812/- towards gratuity. On that basis the respondent filed Civil Application No.4645 of 2007 in which it was prayed that the appellant be directed to re-deposit an amount of Rs.1,91,076/- with accrued interest being the excess amount of gratuity received by him. This application was opposed by the appellant by filing reply and by the order dated 18.03.2008 the learned Single Judge directed the appellant to re-deposit the amount of Rs.1,91,076/- with interest at the rate of 6% per annum. It is this order that is the subject matter of challenge in the present letters patent appeal.

5. We have heard the learned counsel for the parties and we have also perused the records of Writ Petition No.4319 of 2001. By the order dated 15.02.2021, the parties were directed to place on record their respective calculations with regard to the entitlement of the appellant to the amount of gratuity. Accordingly the appellant has filed pursis dated 23.02.2021 in which it has been stated that it is the appellant who is entitled to receive the amount of interest on 91,092/- from the respondent on the amount of gratuity. The respondent in its pursis dated

27.02.2021 has stated that it is entitled to receive amount of Rs.1,91,076/- with interest from the appellant. The order dated 18.03.2008 directs the appellant to deposit the aforesaid amount subject to final outcome of Recovery Application No.1 of 2004. It is undisputed that the said recovery application was finally decided on 26.09.2016 by the learned Judge of the Labour Court and the appellant had been held entitled to various amounts on account of Provident Fund, Medical Allowance and other emoluments. The respondent in its pursis has stated that the amounts directed to be paid in Recovery Application No.1 of 2004 have been fully paid to the appellant. This aspect is not disputed by the appellant.

6. In the order dated 18.03.2008 the learned Single Judge has referred to the averments made by the appellant in Civil Application No.130 of 2003 (wrongly referred to as Civil Application No.1303 of 2003 in the order). In paragraph 3 of that civil application, the appellant had stated that the amount of Rs.12,42,282/- included an amount of Rs.1,74,000/- towards gratuity. After noting the fact that the appellant had withdrawn Rs.2,03,812/- towards gratuity the direction impugned came to be issued. The break-up of the amount of Rs.12,42,282/- has been given by the respondent and it includes amount of Rs.1,91,076/- towards gratuity. It is thus clear that as regards the direction to repay the

amount of gratuity on the ground that the same was already received by the appellant the same does not call for any interference.

7. Coming to the calculation of the amount of interest to which the appellant has been held entitled by the Appellate Authority in its order dated 26.05.2005, it may be noted that the amount of Rs.1,94,444/- was directed to be paid with interest at the rate of 10% per annum from 01.06.2000 till realization. Interest at the rate of 10% per annum would be Rs.19,444/- for one year. For the period of five years from 01.06.2000 to 31.05.2005, the amount of interest would be Rs.19,444/- X 5 = Rs.97,220/-. Interest for the period from 01.06.2005 to 31.07.2005 would be Rs.3241/- and for 6 days of August-2005 would be Rs.320. The total amount of interest from 01.06.2000 to 06.08.2005 would be Rs.1,00,781/-. Adding this amount of interest to the amount of gratuity would give a total sum of Rs.2,95,225/-. The appellant withdrew the amount of Rs.2,03,812/- that was deposited by the employer with the Appellate Authority. The balance amount due and receivable by the appellant would be Rs.2,95,225/- (-) Rs.2,03,812/- which would be Rs.91,413/-. In Writ Petition No.4319 of 2001, the respondent had deposited a total amount of Rs.12,42,282/- out of which amount of Rs.1,91,076/- was towards gratuity. The entire amount of

Rs.12,42,282/- has already been withdrawn by the appellant. From the amount of Rs.1,91,076/- which was directed to be repaid back to the respondent as per the impugned order dated 18.03.2008 with interest at the rate of 6% per annum, the amount of Rs.91,413/- which the appellant is entitled to receive is liable to be deducted. After deducting the said amount from Rs.1,91,076/- the balance amount would come to Rs.99,663/-.

8. The impugned order directs repayment of the excess amount with interest at the rate of 6% per annum. The learned counsel for the appellant submitted that the appellant is a senior citizen and suffering from various ailments. The direction to repay the excess amount with interest at the rate of 6% per annum would be harsh and hence sought waiver of the direction to pay interest on the excess amount. This request was opposed by the learned counsel for the respondent.

We find from the record that the appellant is a senior citizen and there is no reason to doubt the statements made in the pursis filed on his behalf that he is suffering from various ailments. In the facts of the present case, we are inclined to direct repayment of the amount of Rs.99,663/- with interest at the rate of 4% per annum in the interest of justice.

9. Hence, for the aforesaid reasons, the following order is passed:-

- (a) The order dated 18.08.2008 passed on Civil Application No.4645 of 2007 is partly modified. The appellant shall refund the amount of Rs.99,663/- with interest at the rate of 4% per annum in the manner as stated in paragraph 11 of the order dated 18.08.2008.
- (b) This amount be paid to the respondent no.1 within a period of three months from today.
- (c) On failure to repay the said amount with interest within a period of three months, the entire amount due then would be payable with interest at the rate of 6% per annum.

10. The letters patent appeal is allowed in aforesaid terms leaving the parties to bear their own costs.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)