

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL APPLICATION (CAW) NO.1460/2021

IN

WRIT PETITION NO.2095/2018

Prakash Zamaji Jadhao

...Versus...

The Chairman, The Maharashtra State Board of Secondary and Higher
Secondary Education, Pune and others

Applicant: Prakash Zamaji Jadhao

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri S.M. Vaishnav, Advocate for petitioner/applicant
Shri Anand Parchure, Advocate for respondents

CORAM : AVINASH G. GHAROTE, J.

DATE : 26/10/2021

1. The termination of the petitioner from services by an order dated 11th/12th November, 2009, came up before the learned Reference Court, who by the order dated 5/11/2016 answered it in the negative, as a result of which, the present petition came to be admitted on 12/6/2019.

2. By the present application, the petitioner/applicant seeks a direction, to the respondents to submit the proposal for payment of gratuity and provident

fund to the concerned department to be decided in a time-bound manner. It is the contention of learned Counsel for the petitioner, that though the termination was on account of moral turpitude, that however does not preclude the petitioner, from being entitled to the gratuity and provident fund. He places reliance upon the judgment of this Court in ***Chairman/Chief Executive Officer, Sangli District Primary Teachers Co-op. Bank Ltd., Sangli Vs. Babasaheb Mahadev Patil, 2021 (2) Mh.L.J. 777.***

3. Shri Parchure, learned Counsel for the respondents submits that under Rule 45 of the Maharashtra Civil Services (Pension) Rules, 1982 [for short, the MCS (Pension) Rules, 1982, hereinafter], which are applicable to the respondents, the dismissal or removal from the services, results in forfeiture of his past service, due to which, the petitioner would not be entitled to gratuity and provident fund.

4. A perusal of Section 4 of the Payment of Gratuity Act, 1972 would indicate that in spite of the MCS (Pension) Rules, 1982 being applicable, that does not preclude the application of the Payment of Gratuity Act, 1972 to the petitioner. It is therefore necessary, that in case of the termination of an employee on a ground of moral turpitude, that the employer should pass an order regarding forfeiture

of the gratuity for the reason that under Section 4 (6) (b) of the Payment of Gratuity Act, the gratuity can be forfeited either wholly or partially, and therefore, it would be necessary for the employer to make a determination in this regard. The absence of any such determination by the employer, as spelt out from the order of termination, would indicate waiver of such right by the employer.

5. Admittedly, in the instant matter, the impugned order dated 11th/12th November, 2009, does not spell out that any such exercise, as contemplated by Section 4 (6) of the Payment of Gratuity Act, has been done by the employer, in view of which, the inaction on part of the employer would clearly amount to a waiver in this regard, as indicated above. In view of the fact that the Payment of Gratuity Act, 1972 would also be attracted even if the employment of the petitioner, was governed by the MCS (Pension) Rules, 1982, the provisions of Section 4 (6) would clearly be inapplicable, in absence of a specific order being passed in that regard, for the reason that Rule 45 of the MCS (Pension) Rules, 1982 shall have to be harmoniously read with Section 4 (6) of the Payment of Gratuity Act. The above position, has also been considered by this Court in ***Babasaheb Mahadev Patil*** (supra), wherein it has been held that the exercise of discretion to forfeit gratuity can never be unfettered and unguided but has to be exercised in fair and reasonable

manner and in accordance with the procedure established by law and while doing so, it is necessary that the principles of natural justice have to be followed.

6. In the above view of the matter, I do not see any impediment in granting the prayer, as made in the application regarding a direction to the respondents to submit the proposal for payment of gratuity as well as provident fund to the concerned department for decision in accordance in law.

7. The civil application is accordingly allowed in the above terms. No order as to costs.

(AVINASH G. GHAROTE, J.)

Sarkate