

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

**WRIT PETITION NO. 303/2018**

Vijay s/o Namdeorao Balapure,  
Aged-58, Occ. Ex-Employee of MSRTC,  
R/o Mata Vaishnav Devi Apartment,  
Mohite Plot, Chhoti Umri, Akola-444 005.

**PETITIONER**

**.....VERSUS.....**

Maharashtra State Road Transport Corporation,  
Division Office, Kaulkhed Road, Akola-444 004  
Thru' its – Divisional Controller.

**RESPONDENT**

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Shri S.A. Nerkar, counsel for the petitioner.  
Shri P.S. Gawai, counsel for the respondent.

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

**DATE : 13<sup>TH</sup> DECEMBER, 2021.**

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

**RULE.** Rule made returnable forthwith. Heard finally with consent of the learned counsel for the parties.

2. By this writ petition, the petitioner who was directed to be reinstated in service alongwith continuity and full back wages by the order passed in Writ Petition No.2856 of 2014 has approached this Court again with a grievance that he has not been paid the amount of leave encashment as well as difference in the amount of gratuity.

3. The petitioner who was employed as a Driver with the respondent-Corporation met with an accident and suffered 54% permanent disability. He had approached this Court with a prayer for grant of back wages from the date of his termination and to provide him an alternative job. In the said writ petition on 25.03.2015, this Court directed reinstatement of the petitioner on a suitable post having light work on the same pay-scale with all service benefits. He was held entitled to back wages from 08.11.2011. Pursuant thereto, the petitioner was reinstated in service on 25.09.2015. Since the aforesaid directions were not complied with in the entirety, the present writ petition has been filed.

4. Shri S.A. Nerkar, learned counsel for the petitioner at the outset submits that the grievance with regard to non-payment of gratuity now stands satisfied. The only grievance which now survives is with regard to payment of the amount of leave encashment. By filing an affidavit dated 05.09.2019 the petitioner has stated that he was directed to be reinstated on 08.11.2011 but was actually reinstated from 25.09.2015. For this period of 1417 days he is entitled to 155 days towards leave encashment since for every 365 days the entitlement is for 40 days of leave encashment.

5. The respondent has filed an affidavit and has raised an objection to the maintainability of the writ petition on the ground of availability of alternate remedy. Without prejudice, it is stated that the arrears of gratuity have been paid to the petitioner. It is however submitted that though amount of Rs.6,63,750/- was due and payable towards gratuity, an excess amount of Rs.12,842/- has been paid to the petitioner. In the said affidavit, no dispute has been raised to the calculation of 155 days for entitlement of the amount of leave encashment.

6. Having heard the learned counsel for the parties, we find that since there are no disputed questions involved and the petitioner merely seeks enforcement of earlier directions issued, there is no reason not to entertain the writ petition. As per the calculations given by the petitioner for the period of 1417 days he is entitled to leave encashment of 155 days. Since this aspect has not been disputed, we proceed to pass the following order:

- (a) The petitioner is held entitled to 155 days of leave encashment as calculated by him in the affidavit dated 05.09.2019.
- (b) The respondent-Corporation shall calculate the total amount that is liable to be paid to the petitioner pursuant to the aforesaid period of 155 days of leave encashment.

- (c) After making such calculations the said amount be paid to the petitioner within a period of three months from today. It is made clear that if within a period of three months from today the amount calculated towards leave encashment of 155 days is not paid to the petitioner, the same shall carry interest at the rate of 6% per annum till the date of disbursement.
- (d) If there is any excess payment made to the petitioner as submitted by the respondent, the respondent-Corporation is at liberty to first bring this fact to the notice of the petitioner and then take appropriate steps for its recovery from the amount of leave encashment.

7. Rule is made absolute in aforesaid terms. No costs.

(G.A. SANAP, J.)

(A.S. CHANDURKAR, J.)

APTE