

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2156 OF 2021

**BHUTA BHAGIRAT PARDESI
VERSUS
THE SUPERINTENDENT ENGINEER MAHARASHTRA STATE
ELECTRICITY DISTRIBUTION COMPANY LTD AND ANOTHER**

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Advocate for Petitioner : Mr. Ajinkya Reddy
Advocate for Respondent Nos. 1 & 2 : Mr. U. S. Malte

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 25th AUGUST, 2022

PER COURT :

1. By this petition, filed under Articles 226 and 227 of the Constitution of India, petitioner impugns the judgment and order dated 20/01/2020, passed by learned Member, Industrial Court, Dhule, below Exhibit O-4 in Appeal (PGA) No.01/2019.

2. Petitioner, on reaching the age of superannuation, retired from the services of respondent Company on 30/04/2008. By filing Form 'I' under Rule 7(1) of Payment of Gratuity Rules, 1972 (for short 'the said Rules, 1972'), petitioner claimed gratuity of Rs.1,51,769/-. The petitioner, thereafter, filed application to the Controlling Authority Under Payment of Gratuity Act and Labour Court, Dhule, bearing PGA No.06/2017, under Section 7(b) of Payment of Gratuity Act, 1972 (for short 'the said Act, 1972) and Rule 10 of the Payment of Gratuity (Maharashtra) Rules, 1972,

claiming the said gratuity for the period from June, 1971 to 30/04/2008 i.e. total 37 years period. The said application was resisted by the respondents. After recording evidence, Labour Court, Dhule, partly allowed the application filed by petitioner and directed respondents to pay amount of Rs.1,51,857/- towards gratuity to the petitioner along with interest at the rate of 10% per annum from 18/03/2016 till the realization and also granted cost of Rs.5,000/- towards application. Respondents, thereafter, challenged the said order by filing Appeal (PGA) No.01/2019 before the Member of Industrial Court, Dhule, under Section 7(7) of the said Act, 1972. The said appeal is allowed by the Industrial Court. Hence, the present petition.

3. Heard learned advocate for petitioner and the learned advocate for respondents.

4. Learned advocate for petitioner submits that, the Industrial Court has held that the application filed by the petitioner seeking gratuity was beyond the period of limitation and therefore, by setting aside the impugned order the petitioner may be permitted to file delay condonation application under Section 7(5) of the said Act, 1972, and the same may be directed to be decided on it's own merits.

5. Learned advocate for respondents, on the other hand, strenuously opposed the petition contending that 'delay' is the main ground on which Industrial Court has set aside the order of Labour Court. The order of Labour Court is also upset on merits by the Industrial Court, which according to him is rightly so. He submits that the petitioner has failed to prove that he has completed 240 days continuous service during the period from 1971 to 1975 and therefore, he was not eligible to get gratuity for the said period in terms of Section 4 of the said Act, 1972. By referring the definition of 'Continuous Service' given under Section 2A (2)(ii) of the said Act, 1972, he submits that since the petitioner has failed to prove that he was in continuous service, the Industrial Court was justified in allowing the appeal filed by respondents and setting aside the order passed by Labour Court, Dhule.

6. Perusal of the record indicates that the petitioner has placed on record copies of service card and service verification, which show that the petitioner was working on Nominal Muster Roll and as Daily Wager Employee with the erstwhile MSEB and now MSEDCL, from year 1971-72 for 22 days, in the year 1972-73 for 126 days, from 01/04/1972 to 31/12/1973 for 128 days, from January, 1974 to December, 1974 for 159 days and upto 31/03/1975 for 167 days. Since this record was produced by the

petitioner himself, the same was rightly relied upon by the Industrial Court. In view of this record, Industrial Court was right in coming to the conclusion that in none of the years from 1971 to 1975 the petitioner has worked for at least 240 days in any of these years.

7. Section 4 of the said Act, 1972, contemplates payment of gratuity to the employee who has completed 5 years continuous service. The definition of 'Continuous Service' under Section 2A (2) (ii) stipulates that 240 days continuous service in a year is necessary. Taking into consideration the record produced by the petitioner, admittedly, the petitioner has not completed 240 days in any of the year between 1971 to 1975. Therefore, the petitioner is not entitled to claim gratuity for the said period.

8. Apart from the above, the petitioner has retired in the year 2008 and he has applied for the gratuity belatedly i.e. after delay of more than 7 years 11 months and 13 days. No delay condonation application was filed by the petitioner. In that view of the matter, Industrial Court was right in coming to the conclusion that the petitioner failed to apply within time stipulated under Section 7 of the said Act, 1972 and Rule 10 of the said Rules, 1972. Since on merit also, the petitioner has failed to prove his entitlement to the gratuity, this Court is not inclined to accept the

submission of the petitioner that the matter be remanded back by giving opportunity to the petitioner to file delay condonation application under Section 7(5) of the said Act, 1972.

9. The Industrial Court has given cogent reasons while allowing the appeal. Findings recorded by the Industrial Court are supported by the record. This Court is, therefore, not inclined to interfere in the findings recorded by the Industrial Court. There is no merit in the writ petition. Writ petition is, therefore, dismissed. No costs.

10. There shall be liberty to withdraw amount of Rs.1,51,857/- deposited in the Industrial Court along with the accrued interest.

(NITIN B. SURYAWANSHI, J.)