

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

Writ Petition No. 1697 of 2020

[Maharashtra State Road Transport Corporation, Through its Divisional Controller, Division Office,
Nagpur **..vs..** Vasant Gajanan Bawankule]

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

Court's or Judge's orders

Mr. Ashish R. Fule, Advocate the petitioner

CORAM : ROHIT B. DEO, J.

DATED : 8-2-2022

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. The petitioner – Maharashtra State Road Transport Corporation (MSRTC) is challenging the determination of gratuity payable to the respondent – employee, and the order dated 25-9-2019 rendered by the appellate authority under the Payment of Gratuity Act, 1972 (Act) and the order dated 21-7-2018 rendered by the Controlling Authority in Application (PGA) 31 of 2016.

3. It is the contention of MSRTC that the gratuity payable to the respondent – employee ought to have been calculated and determined for the service tenure 8-4-1994 to 31-3-2016 and the authority committed a

serious error in calculating the gratuity for the service tenure from 26-9-1985.

4. The submission of MSRTC is on the premise that the respondent – employee, who was appointed as a Conductor on 26-9-1985, was dismissed on 11-12-1993 and it was in appeal that he was given fresh appointment, pursuant to which, the employee retired on 31-3-2016.

5. The learned counsel for MSRTC Mr. Ashish Fule invites my attention to the order in appeal dated 26-3-1994 (Annexure III) which purports to record that the punitive order is set aside and the employee is reappointed without any benefit of the past service.

6. Perusal of the order of the appellate authority reveals that the MSRTC did not place on record the fresh appointment order. Be that as it may, the appellate authority has rightly held that even a dismissed employee is entitled to gratuity, unless the gratuity is forfeited on permissible grounds, and by following the procedure statutorily mandated. In response to a specific Court query, the learned counsel for the petitioner fairly concedes that there was no notice issued for forfeiture of

gratuity nor was there any order to that effect. The learned counsel for the petitioner would submit that the order of reappointment deprives the employee of the benefits of past service, and it be, therefore, held that the employee is not entitled to gratuity. The submission of the learned counsel Mr. Ashish Fule is clearly fallacious. The employer, cannot contrary to statutory provision, purport to declare that the employee shall not be eligible for gratuity. The other factual scenario in which an employee can be deprived of gratuity is, if he convicted by the competent criminal court for offence involving moral turpitude. It is well settled that for this situation to come into play, it is not sufficient that there is a finding recorded in Departmental Enquiry. What is necessary is conviction by competent criminal court *{Union Bank of India and others Vs. C.G. Ajay Babu and another [(2018) 9 SCC 529]}*. I see no error in the determination of gratuity by the authority.

7. The petition is *sans* merit and is dismissed.

JUDGE

Digitally signed by AVINASH
YUVRAJ WASNIK
Signing Date: 08.02.2022 17:17