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

<u>WRIT PETITION NO. 1752 OF 2022</u>

Maharashtra State Cooperative Tribal Development Corporation Ltd. & Anr. -- Petitioners

Vs.

Lakhanlal Sutaji Uike -- Respondent

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

Mr. D.P. Bhongade, Advocate for Petitioners

<u>CORAM</u> : MANISH PITALE, J.

<u>DATE</u> : 26th SEPTEMBER, 2022

Heard learned counsel for the petitioner – Corporation.

2. By this petition, the petitioners have challenged concurrent orders passed by the Controlling Authority and the Appellate Authority under the provisions of the Payment of Gratuity Act, 1972.

3. The sole respondent, who is served, but, has chosen not to appear before this Court, had filed an application before the Controlling Authority, raising a grievance that the amount of gratuity payable to him under the aforesaid Act was not paid in its entirety and the amount that was paid, was also paid after some amount of delay. It was submitted that the petitioner – Corporation deducted a specific amount of Rs.1,13,937/-, from

the total amount of gratuity payable to the respondent and only an amount of Rs.8,25,663/-, was disbursed under the provisions of the said Act. Hence, the respondent sought relief of disbursal of the remaining amount along with interest and also for payment of interest on the delayed payment of the amount that was actually paid. The petitioner – Corporation opposed the application filed by the respondent by seeking to invoke Section 4(6)(a) of the aforesaid Act, claiming that due to negligence of the respondent, the petitioner – Corporation suffered loss and hence specific amount was deducted and the balance amount was disbursed towards gratuity payable under the said Act.

4. The Controlling Authority as well as the Appellate Authority concurrently found that no enquiry was conducted before ascertaining the aforesaid specific figure of the financial loss suffered by the petitioner – Corporation, due to the alleged negligence of the respondent. In the absence of enquiry and determination of the extent of loss suffered by the petitioner – Corporation, it was found that specific amount could not have been deducted from the gratuity payable to the respondent.

5. Accordingly, the application was allowed by the Controlling Authority in the following terms :

> "1. The application is allowed as follows.
>
> 2. The non-applicants are hereby directed to pay gratuity amount of Rs.1,12,206/- (Rs. One lakh twelve

> thousand two hundred and six only) to the applicant within 30 days, along with interest thereon @6% per annum from 30/09/2016 till its actual realization and also simple interest at the rate of 6% per annum for late paid gratuity of Rs.8,25,663/- (Rs. Eight lakh twenty five thousand six hundred and sixty three only) from 30/09/2016 to 22/05/2017 till it's realization.
>
> 3. The non-applicants are further directed to pay costs of Rs.1,000/- (Rs. One thousand only) to the applicant."

6. The Appellate Authority agreed with the findings of Controlling Authority and dismissed the appeal filed by the petitioner – Corporation.

7. This Court has perused the material on record and heard the learned counsel for the petitioner – Corporation in that backdrop. It is found that the respondent superannuated on 31/08/2016 and by order dated 06/03/2017, an amount of Rs.8,25,663/-, was disbursed towards payment of gratuity under the aforesaid Act to the respondent, but, an amount of Rs.1,13,937/-, was deducted from the total amount payable.

8. The petitioner – Corporation sought to invoke Section 4(6)(a) of the said Act, whereby the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to the employer, can be forfeited to the extent or damage of loss caused.

9. In the present case, admittedly, the respondent superannuated on 31/08/2016 and his service was not

terminated for any act, willful omission or negligence on his part. Therefore, the basic condition necessary for invoking Section 4(6)(a) of the said Act is found missing in the present case. In any case, if the petitioner - Corporation claimed that certain loss was indeed caused to it due to the actions of the respondent, unless there was an enquiry as per procedure known to law to determine the extent of damage or loss so caused to the petitioner – Corporation, there was no way in which the petitioner – Corporation could have deducted the aforesaid specific amount from the gratuity payable to the respondent under the said Act.

10. Therefore, it is found that the Controlling Authority, as well as the Appellate Authority, correctly appreciated the material on record, in order to render positive findings in favour of the respondent. Thus, it is found that there is no merit in the present writ petition and accordingly, it is dismissed.

JUDGE