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

Writ Petition No.50/2022

The Chairman and Managing Director Bank of Maharashtra, Pune and others V Appellate Authority Under the Payment of Gratuity Act, 1972 and others

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

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Mr. R.N. Sen, Advocate for Petitioners.

CORAM : AVINASH G. GHAROTE, J.
DATE : 05/08/2022

Heard Mr. Sen, learned Counsel for the petitioner.

2. This petition challenges the order dated 19-11-2019 passed by the respondent no.2 (Annexure-1, pg 22), whereby the respondent no.3 is held to be entitled to receive an amount of gratuity quantified at Rs. 4,28,978/- and since the part amount of Rs. 2,50,281.50/- has been debited to the account of respondent no.3, the balance amount is held tobe payable with interest at 10 % per annum from the period mentioned therein (Pg 33). This order was challenged in appeal, which appeal has been dismissed by the order dated 04-03-2021 (pg 34).

3. It is the contention of the learned Counsel for the petitioner that the respondent no.2 had conducted an enquiry which held respondent no.3 guilty by Enquiry Report dated 15-03-2011 (pg 62), however, the amount has not been quantified.

4. It is contended that the Disciplinary Authority in pursuance to the said Enquiry Report passed the final order on 12-08-2011 (pg 46), by giving findings that there was a loss of Rs.9,30,000/-. Further, Appeal against this order by the respondent no. 3 has been

dismissed by the order dated 06-01-2014 (pg 49). It is, therefore, contended by the learned Counsel for the petitioner that as certain amount has been recovered from the other persons, an amount of Rs.2,50,281.50/- was recoverable from the respondent no.3 since the authorities below have not directed recovery, the same is the question of challenge here.

5. It is contended by the learned Counsel for the petitioner that once the respondent no.3 was held guilty and the Disciplinary Authority has quantified the amount of loss, the amount claimed as against the respondent no. 3 due and payable falls within the scope of Section 4(6) of the Payment of Gratuity Act. The contrary findings of the Controlling and Appellate Authority are, therefore, incorrect. Hence, the same are required to be quashed and set aside.

6. What is material to note is that the Enquiry Report dated 15-03-2011 though holds the respondent no.3 guilty of gross negligence, however, a specific finding has been given that the loss as shown in the chargesheet of Rs. 9,30,000/- has not been proved, which finding is in respect of charge no.1. In respect of charge no.2, also the Enquiry Committee finds that the charge against the respondnet no.3 was partly proved, however, it holds that the loss incurred due to the punching of wrong transaction cannot be ascertained during the enquiry proceedings. This finding has been disagreed by the Disciplinary Authority as is indicated from the order dated 12-08-2011, wherein in para (6b) it has been held that since there were 14 transactions amounting to Rs. 9,30,000/- the loss could be quantified, which order has been maintained in a challenge by the respondent no.3 by the order dated 06-01-2014.

7. However, what is material to note is that none of the

orders either dated 12-08-2011 or 06-01-2014 quantify any loss, to the actions attributed to the respondent no.3 to the tune of Rs.2,50,281.50/-. There is no quantification of any loss to this extent, attributable to the respondent no.3 either in the order dated 12-08-2011 and 06-01-2014. It is not the case of the petitioner that the respondent no.3 was liable to pay the entire amount of Rs.9,30,000/-. The only loss which is sought to be attributable to the respondent no.3 is of Rs.2,50,281.50/-. However, as indicated above, there is no quantification of this loss to the negligence attributable to the respondent no.3 either in the order dated 12-08-2011 or 06-01-2014.

8. That being the position, in my considered opinion, since Section 4(6) of the Act requires a predetermination of the extent of damages caused and there is no determination or quantification of loss in the instant matter, I do not see any reason to interfere in the impugned orders. The petition is, therefore, without any merit and accordingly it is dismissed.

JUDGE

Deshmukh