

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

WRIT PETITION NO. 293/2021

(DADARAO BALIRAM WARTHE **VERSUS** ZILLA PARISHAD, AKOLA & OTHERS)

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

Court's or Judge's order

Shri J.Y. Ghurde with Shri Vipul Bhise, counsel for the petitioner.
 Shri A.M. Tirukh, counsel for the R-1 to 3.
 Shri A.R. Deshpande, counsel for the R-4 & 7.
 Shri Shamal J. Kadu, counsel for the R-5 & 6.

CORAM : A. S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : 24TH MARCH, 2022.

DATE ON WHICH ORDER IS PRONOUNCED : 07TH APRIL, 2022.

Heard.

The challenge raised in this writ petition is to the action of the respondent nos.1 to 3 in disbursing the gratuity amount of Rs.10,87,350/- payable to the petitioner for satisfaction of the dues of the respondent nos.4 to 7. A further prayer is made that the deduction of an amount of Rs.12,800/- per month from February-2020 be set aside and that amount be refunded to the petitioner.

It is the case of the petitioner that he was appointed as an Assistant Teacher with Zilla Parishad, Akola and was subsequently promoted to the post of Headmaster. After rendering satisfactory service the petitioner retired on attaining the age of superannuation on 31.07.2018. On his retirement the petitioner was informed on 19.08.2019 that he was entitled for monthly pension of Rs.32,950/-, amount of gratuity of Rs.10,87,350/- and the amount of family pension after his demise. According to the petitioner, during the course of service he had availed loan from the respondent nos.4 to 7 and after his retirement the dues towards unpaid loan amount and interest was sought to be recovered from the amount of gratuity and his monthly pension. This was despite the fact that the proceedings for recovery filed by the respondent no.4 under the provisions of the Maharashtra Co-operative Societies Act, 1960 had been dismissed. Despite representations being made as no relief was granted to the petitioner, he has filed the present writ petition.

Shri J.Y. Ghurde, learned counsel for the petitioner submits that the action of the respondent nos.1 to 3 of permitting disbursement of the petitioner's gratuity and pension amount to the respondent nos.4 to 7 was illegal and contrary to the provisions of the Payment of Gratuity Act, 1972 (for short, 'the Act of 1972'). According to him, forfeiture of the entire gratuity or part thereof could be effected only in accordance with the provisions of Section 4(6) of the Act of 1972. Without the conditions as stipulated therein being satisfied, the petitioner was deprived of the amount of gratuity and pensionary benefits. Such action was thus illegal and contrary to law. The learned counsel in that regard placed reliance on the decision in *Managing Director (M.D.), Maharashtra State Corporation Tribal Development Corporation Ltd. (MSCTDC Ltd.), Nashik (M.S.) & Others Versus Purushottam Asaram Raut & Others* [2015 II LLJ 130] and submitted that after setting aside the impugned action, the respondent nos.4 to 7 ought to be directed to refund the amounts so recovered.

The aforesaid contentions were opposed by Shri A.M. Tirukh, learned counsel for the respondent nos.1 to 3, Shri A.R. Deshpande, learned counsel for the respondent nos.4 and 7 and Shri S.J. Kadu, learned counsel for the respondent nos.5 and 6. It was submitted on behalf of the respondent nos.1 to 3 that on the petitioner's retirement it was certified that an amount of Rs.30,70,145/- was outstanding against his name. No Dues Certificate dated 25.04.2018 had been signed by the petitioner indicating acceptance of that position. It was further submitted that the deduction as permitted to be made was in view of the consent given by the petitioner himself for such deduction while availing the loan from the respondent nos.4 to 7. The learned counsel for the respondent nos.4 and 7 justified the deduction in question by relying upon various documents executed by the petitioner while availing the loan. The petitioner had consented for such deduction of any shortfall from the amount of his gratuity as well as pension. Having given such consent and on that basis having availed the loan, it was not permissible for the petitioner to turn around and contend otherwise. Similar stand was taken by other respondents by placing relevant documents on record indicating acceptance of the aforesaid conditions by the petitioner. It was thus submitted that no relief was liable to be granted to the petitioner.

Having heard the learned counsel for the parties and having perused the documents on record, we find that the petitioner would not be entitled to the relief sought in the writ petition. The petitioner has not disputed the fact that during his course of service he had availed loans from the respondent nos.4 to 7. This was after executing various documents including the grant of authority to those respondents to seek deduction of any amounts due from the gratuity and the pension amount to which the petitioner was entitled. It is not the case of the petitioner that such consent was given by him under coercion or duress. The petitioner stands by his act of executing various documents including the consent for such deduction. It is also clear from the certificate dated 25.04.2018 that find mention of various amounts due and payable to the respondent nos.4 to 7. Having consented to have the amount of gratuity and monthly pension being adjusted towards the dues of the respondent nos.4 to 7, it would not be open for the petitioner to now question such adjustment of the due amounts. In any event, it is found that such deduction is pursuant to the contractual obligations accepted by the petitioner.

As regards the contention raised by the petitioner that the amount of gratuity could be forfeited only in the manner prescribed by Section 4(6) of the Act of 1972 is concerned, it is seen that in the present case there is no forfeiture of the amount of gratuity under Section 4(6) of the Act of 1972. The petitioner has been found entitled to the amount of gratuity and pension which is clear from the communication dated 19.08.2019 issued by the Education Officer (Primary). The subsequent deduction/adjustment of the amount of gratuity and pension to satisfy the dues incurred by the petitioner himself cannot be termed to be forfeiture of the amount of gratuity as contemplated by Section 4(6) of the Act of 1972. To reiterate, the respondent nos.1 to 3 as employers have not forfeited any amount of gratuity payable to the petitioner. The petitioner has been held entitled to the amount of gratuity. It is only that the amount of gratuity has been permitted to be paid to the respondent nos.4 to 7 for satisfying the dues of the petitioner for which consent was given by the petitioner himself while availing the loan. In these facts therefore, the reliance placed by the learned counsel for the petitioner on the decision in *Purushottam Asaram Raut* (supra) is misplaced.

For aforesaid reasons, we do not find any case made out to interfere in writ jurisdiction. The writ petition is therefore dismissed with no order as to costs.

(SMT. M.S. JAWALKAR, J.)

(A. S. CHANDURKAR, J.)

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