

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

WRIT PETITION NO. 234 OF 2022

Maharashtra State Co. Operative
Tribal Development Corporation
Limited, through its Office of the
regional manager – Sopan Santosh
Sambare Age – Major, Occ –
Service, Office at Sainath Nagar,
Nagpur Road, Bhandara, Tehsil and
district Bhandara.

.... **PETITIONER**

// VERSUS //

1. Learned Industrial Court & Appellate
Authority Under Payment of Gratuity
Act. Bench Bhandara, Dist.
Bhandara.
2. Hiralal s/o Kishan Khursange, age
59 years, Occupation retired,
residence of behind Baburao
Madhavi Vidyalay, Chichgad road,
Deori, Dist. Gondia.

.... **RESPONDENTS**

Shri Dnyandeep P Bhongade, Advocate for the petitioner.
Shri Ukey, Addl. G.P. for respondent no.1.

CORAM : ROHIT B. DEO, J.
DATED : 22.02.2022

ORAL JUDGMENT :

Heard. **RULE.** With Consent, the petition is heard finally.

2. The petitioner – Corporation is assailing the order dated 22.10.2019 rendered by the Labour Court in PGA Application 3 of 2018 in the capacity of the Controlling authority under the Payment of Gratuity Act, 1972 (the Act) and the judgment of the Appellate authority – Industrial Court dated 09.09.2021 in Appeal PGA 1 of 2020, whereby the respondent 2–employee is held entitled to gratuity of Rs.10,15,280/- (Ten Lakh Fifteen Thousand Two Hundred and Eighty) along with interest at the rate of 10% per annum from 28.02.2018 till the actual payment.

3. According to the Corporation, the employee is not entitled to gratuity since the Corporation suffered huge financial loss due to the abnormal shortages of paddy in the Godown. According to the Corporation, the employee committed misappropriation of paddy to the tune of Rs.15,52,478/- which amount is recoverable from the applicant and it is in this view of the matter, that the gratuity is forfeited, the Corporation invoked Section 4(6)(a) of the Act. The other submission was that the application under Rule 7 of the Act was beyond limitation.

4. Dealing with the first submission that the gratuity is forfeited, the authority noted that there is absolutely no material tendered by the Corporation to demonstrate that the employee was put on notice of forfeiture, or, for that matter, a departmental enquiry was conducted. This finding of fact is confirmed in appeal by the Appellate authority – Industrial Court.

5. In view of the concurrent finding recorded, sub-section (a) of Section 4(6) clearly has no application. In this view of the matter, there is absolutely no merit in the contention of the petitioner that the gratuity could have been forfeited.

6. Insofar as the submission that the application seeking payment of gratuity was time barred, the consideration of the said submission by the Appellate Authority is thus :

*“9] **As to Point no.1 :-** No doubt it is claimed by Appellants that on his retirement on 28.12.2018 the respondent has not moved application to the authorised person in writing for payment of gratuity as contemplated under Section 7 Sub-section 1 of the Payment of Gratuity Act.*

Admittedly, respondent got retired on 28.12.2018 and moved application to Labour Court (Controlling Authority) on 24.12.2018 therefore, it cannot be said that application is time barred. Besides Section 7 Sub-section 2 contemplates as soon as gratuity becomes payable, the employer shall, whether an application referred to in Section 7(1) has been made or not determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority specifying the amount of gratuity so determined.

It shows the burden lies upon the Appellants also to determine the amount of gratuity, whether the application for that is made by the person entitled for gratuity or not. In this case, nothing is placed on record by the Appellants that they have determined the amount and informed accordingly to the respondent and the Controlling Authority. Hence I find no substance in the contention of the Appellants that applications is hopelessly barred by limitation and not maintainable. The learned Labour Court rightly appreciated the fact and recorded its finding accordingly.”

7. I find no error in the view taken that the claim for gratuity was not time barred. I see no reason to interfere in writ jurisdiction. The petition is dismissed.

(ROHIT B. DEO, J.)

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