

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

906 WRIT PETITION NO.12241 OF 2019

**BHAURAO MALHARI SALVE
VERSUS
THE STATE OF MAHRASHTRA AND OTHERS**

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Advocate for Petitioner : Mr. Salve R.B.
AGP for Respondents/State : Mr. V.M. Kagne
Advocate for R/4 : Mr. A.B. Dhongade

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**CORAM : RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.
DATE : 11th January, 2023**

PC. :-

1. The petitioner, after being terminated from service by MSRTC in 1984, started his practice in Court as an advocate. As of now, due to ill health he cannot go to the Court and practice.

2. The petitioner joined as a Senior Clerk with the MSRTC in the year 1967. He was promoted as a Depot Manager (A) at Majalgaon. While being a Depot Manager, he contested the Graduates Constituency Election to the Maharashtra Legislative Assembly from the Marathwada Region, without permission of the employer and hence he was terminated from the service. He approached this Court in Writ Petition No.323/1985 which was decided vide judgment on 21.04.1999. All his contentions were negated by this Court and

the resolution leading to the order of termination was sustained and the petition was dismissed. Even the challenge to the validity of the rules was also rejected by this Court.

3. This petition is filed on 18.09.2019 praying for gratuity and provident fund benefits and other service benefits which, according to the petitioner, were due and payable in 1984. It is after 35 years of his removal from service that this petition has been filed. In the entire petition, there is not a whisper as to this delay of 3 decades and what were the steps taken by the petitioner after his termination from service as regards the payment of legal dues. An argument made across the bar is that he was waiting for this Court to deliver the verdict in Writ Petition No.323/1985 wherein he had challenged his termination. The said petition was dismissed on 21.04.1999. Even thereafter, for 20 years the petitioner has not approached any Court or authority under the Payment of Gratuity Act, 1972 and under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

4. Gratuity becomes payable after 30 days of severing employee-employer relationship. Provident fund accumulations are to be claimed after being relieved from employment. We cannot entertain this petition after 35 years of delay. Issuance of notice on 22.06.2018 and 06.06.2019 cannot be a

ground to condone the delay of 35 years. In view of the above, this petition is dismissed.

5. Without creating a new cause of action for the petitioner, we permit the petitioner to approach the Assistant Provident Fund Commissioners' Office at Aurangabad and his employer, for unpaid dues. We permit him to take assistance of an advocate considering his ill health. In addition, we would request the Vice Chairman of the MSRTC to consider the case of the petitioner and if the record indicates that he was a permanent employee who had completed a minimum of five years of service, his gratuity may be calculated for the duration of his employment, in the event there is no other legal impediment and make the payment to the petitioner within a period of three months. If there is any difficulty with regard to such calculations and the assistance of the petitioner is required, the MSRTC would address the petitioner for producing documents, if required.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]