

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7888 OF 2022

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SUBHASH
KULKARNI

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SANTOSH SUBHASH
KULKARNI
Date: 2023.07.12
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Vasant Somnath Tambe

...Petitioner

Versus

Bombay Iron and Steel Labour Board and
anr.

...Respondents

Ms. Rebecca Gonsalves, for the Petitioner.
Mr. Sanjay Shinde, for the Respondents.

CORAM: N. J. JAMADAR, J.

DATED : 11th JULY, 2023

Oral Order:-

1. Heard the learned Counsel for the parties.
2. A limited challenge in this petition is to the computation of gratuity payable to the petitioner.
3. The petitioner was registered as a Mathadi Worker with Bombay Iron and Steel Labour Board – respondent No.1. The petitioner retired on 6th April, 2017. Respondent No.1 – Board computed and paid gratuity of Rs.1,44,688/- to the petitioner.
4. Asserting that the computation of the gratuity was incorrect, the petitioner preferred Application (PGA) No.59 of 2017 before the Controlling Authority under the Payment of Gratuity Act, 1972. By an order dated 21st June, 2019, the said

application came to be disposed opining, *inter alia*, that the application was not tenable under the Payment of Gratuity Act, 1972. However, the petitioner was at liberty to approach the Chairperson of respondent No.1 – Board under Rule 6(1) of the Bombay Iron and Steel Labour Board Workers and Employees’ Payment of Gratuity Rules.

5. Availing the said liberty the petitioner filed Gratuity Appeal No.1 of 2019 before the Chairperson of the Board. By the impugned order dated 5th December, 2019, the Chairperson of the Board was persuaded to reject the appeal for enhanced gratuity holding that the computation of the gratuity, paid to the petitioner, was in order.

6. Being aggrieved, the petitioner has invoked the writ jurisdiction.

7. Ms. Rebecca Gonsalves, the learned Counsel for the petitioner, would submit that before the Controlling Authority it was the specific case of respondent No.1 – Board that in the matter of entitlement of gratuity the petitioner was governed by the provisions of the Bombay Iron and Steel Labour Board Workers and Employees’ Payment of Gratuity Rules (“the Rules”). However, the amount of gratuity, paid to the petitioner, has not been computed in accordance with the said Rules.

Instead, respondent No.1 – Board has resorted to same method of computation of gratuity on the basis of Resolutions. Attention of the Court was invited to Rule 4(2) of the Rules which prescribe the method of computation of gratuity in the case of a worker earning daily wages. Relevant part of Rule 4(2) of the Rules reads as under:

“Rule 4(2) Daily wages shall be computed.

(a) in the case of monthly rated payee by dividing his wages for the last full month by 30 days; and

(b) In the case of piece rated workers:

(i) If he has worked on any day during the 12 calendar months immediately proceeding the termination of his registration, by dividing the total amount of wages drawn by him during those 12 months by the number of days on which he actually worked during those months.

(ii) If he has not worked at all during the 12 proceeding months by dividing the wages last drawn by him for any month by the number of days for which he worked in that month.”

8. If the gratuity is computed in accordance with the aforesaid Rule, the petitioner would be entitled to a sum of Rs.2,88,419/-. Instead the petitioner was paid a sum of Rs.1,43,731/- only, submitted Ms. Gonsalves.

9. In the affidavit-in-reply filed on behalf of respondent No.1, in justification of computation of gratuity which has been paid to the petitioner, respondent No.1 has sought to rely upon the Resolutions dated 27th May, 2013 and 5th May, 2016.

10. Mr. Shinde, the learned Counsel for respondent No.1, submitted that though respondent No.1 – Board has framed the Rules, yet awaiting approval, respondent No.1 has paid gratuity to all its workers adopting the same formula which is applied to compute the gratuity paid to the the petitioner.

11. I have perused the written statement filed on behalf of respondent No.1 before the Labour Court in Application (PGA) No.59 of 2017. In paragraph 5, 6 and 7 of the said written statement it was categorically asserted that the petitioner was entitled to receive gratuity in accordance with the provisions of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969, Scheme framed thereunder and Bombay Iron and Steel Board Workers and Employees' payment of Gratuity Rules. It was further contended that the petitioner was getting his wages on piece rated basis from the registered employer to whom his services were allotted. The gratuity has thus been computed in accordance with the said Rules.

12. In the face of the aforesaid stand and the Rules, which prescribe the method of computation of gratuity, it was not open for respondent No.1 to compute the gratuity by resorting the Resolutions referred to above. Under Rule 4(2)(b)(i), there is a

clear mandate that the total amount of wages drawn by the worker during the preceding 12 months be divided by the number of days on which the worker had actually worked. In the case at hand, it seems that respondent No.1 – Board has divided the total amount of wages by 312 instead of 166 days for which the petitioner had worked during the period June, 2016 to March, 2017. Resultantly, there has been incorrect determination of the amount of gratuity. In view of the stand of respondent No.1 that it has framed Rules for payment of gratuity and the gratuity has, in fact, been computed in accordance with the Rules, which is not borne out by the Gratuity Card (Exhibit-E), the petition deserves to be allowed.

13. Respondent No.1 – Board is therefore directed to recalculate the gratuity strictly in accordance with Rule 4(b)(i) of the Rules and pay the shortfall to the petitioner within a period of one month from today.

14. In the event of default, the amount of shortfall shall carry interest at the rate of 6% p.a. from 10th May, 2017.

15. Petition stands disposed.

16. In view of disposal of the petition, interim application(s), if any, stand(s) disposed.

[N. J. JAMADAR, J.]