IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2569 OF 2023

The Maharashtra State Co-Operative Adivashi]
Vikas Mahamandal Maryadit,]
Through its Authorized Signatory]
Sagar S/o Balasaheb Sonawane]
Age : 35 years, Occ. : Service as Manager]
Court case / departmental enquiry]
[HO Nashik] & authorized signatory,]
R/o : Adivashi Bhavan, Gadkari Chowk,]
Old Agra Road, Nashik – 422 002. … Petitioner

Versus

Shivaji S/o Rambhau Vanjari,]
Age : Major, Occ. : Retired,]
R/o. : 14, Shivpushapa, Behind Trimurti]
Complex, Vidi Kamgar Nagar,]
Amrutdham, Panchavati, Nashik,]
Tq. & Dist. Nashik – 422 003.] … Respondent

Mr. S. S. Kulkarni for Petitioner.
Ms. Gauri Jadhav for Respondent.

CORAM :- SANDEEP V. MARNE, J.
RESERVED ON :- 06 OCTOBER, 2023
PRONOUNCED ON :- 10 OCTOBER, 2023

JUDGMENT :-

1. ***Rule***. With the consent of the learned Counsel for the parties, Rule is made returnable forthwith and called out for hearing.

2. This Petition is filed by the Petitioner challenging the Judgment and Order dated 25/11/2019 passed by the Controlling Authority under Payment of Gratuity Act, 1972 ('**Gratuity Act**') directing payment of additional amount of Rs. 1,01,948/- towards gratuity along with 10% interest to the Respondent. The Controlling Authority has also directed payment of interest @ 10% p.a. on total amount of gratuity of Rs.7,30,940/-. In appeal preferred by the Petitioner, the Appellate Authority has slightly modified the order by directing payment of additional amount of gratuity of Rs.1,01,948/- along with interest @ 8% p.a. from July 2012 onwards. The Appellate Authority has also directed payment of interest @ 8% p.a. on the amount of Rs.6,10,342/- for the period from July 2012 to July 2013.

3. Briefly stated, facts of the case are that the Respondent was employed on the post of Manager in the Petitioner – Corporation with effect from 01/10/1978. Shabari Adivasi Vitta Va Vikas Mahamandal ('**Shabari Corporation**') was formed by registration of a company under the Companies Act, 1956. Since there was need of employees in Shabari Corporation, the options were invited from the employees of Petitioner – Corporation and accordingly the Respondent was transferred on the establishment of Shabari Corporation on 14/01/2004. Though he was transferred to Shabari Corporation, his lien was maintained with the Petitioner.

4. Recommendations of 6th Pay Commission were implemented in Petitioner with effect from 01/01/2006. However, no decision was taken for implementation of 6th Pay Commission recommendations for

Shabari Corporation. The Respondent was repatriated to Petitioner – Corporation on 29/06/2009. He retired on attaining the age of superannuation on 31/05/2012. It appears that as per the payslip, he drew last pay of Rs.17,950/-. However, Petitioner – Corporation subsequently reduced his pay after noticing that he was erroneously granted benefit of 6th Pay Commission with effect from 01/01/2006, when Shabari Corporation had not accepted or implemented the same on that date. It was felt by the Petitioner that Shabari Corporation implemented 6th Pay Commission recommendations only from 26/09/2012, i.e. after retirement of Respondent on 31/05/2012. The Petitioner therefore granted 6th Pay Commission fixation to the Respondent with effect from the date of his repatriation on 29/06/2009 and accordingly reduced his basic pay (last pay) to Rs.16,660/-.

5. By considering last basic pay of Rs.16,660 + Grade Pay Rs.4,200/- + Dearness Allowance Rs.13559/- = total pay of Rs.34,419/-, the Petitioner held Respondent to be eligible for 20 months' gratuity of Rs.6,88,380/- and deducted an amount recoverable from the Respondent of Rs.78,038/- and paid gratuity of Rs.6,10,342/-.

6. The Respondent being aggrieved by payment of less amount of gratuity, filed Application before the Controlling Authority being Application (PGA) No.45/2013. The Controlling Authority held that the last basic pay drawn by the Respondent was Rs.17,950/- and his total emoluments were Rs.36,547/- and accordingly held that he was entitled to total gratuity of Rs.7,30,940/-. It held that since the amount of Rs.18,650/- was already received in advance, the Respondent No.2 would

be entitled to balance amount of Rs.1,01,948/-. The Controlling Authority accordingly directed payment of balance amount of Rs.1,01,948/- along with interest @ 10% p.a. For delay in payment of overall gratuity, the Controlling Authority directed interest @ 10% p.a. on the amount of Rs.7,30,940/-.

7. The Petitioner filed Appeal (PGA) No.1/2021 before the Appellate Authority, which proceeded to reject the Appeal, but corrected the error committed by the Controlling Authority in reducing the rate of interest from 10% p.a. to 8% p.a. and by reducing the principal amount of Rs.7,30,940/- for payment of interest to Rs.6,10,342/- for the period from July 2012 to July 2013. The Petitioner is aggrieved by the orders passed by the Controlling and Appellate Authority has filed the present Petition.

8. Mr. Kulkarni, the learned Counsel appearing for the Petitioner would submit that the Respondent would not be granted benefits of 6th Pay Commission while in service of Shabari Corporation and the Controlling and Appellate Authority have committed an error in directing grant of benefits of 6th Pay Commission with effect from 01/01/2006. He would submit that 6th Pay Commission recommendations are applied to employees of Shabari Corporation with effect from 26/09/2012 and Writ Petition No.2842 of 2019 filed by the employees of Shabari Corporation for implementation of 6th Pay Commission recommendations from 01/01/2006 is pending at Nagpur Bench of this Court. That, Controlling Authority did not have jurisdiction to enter into the issue of date of implementation of recommendations of 6th Pay Commission by Shabari Corporation.

9. *Per Contra*, Ms. Jadhav the learned Counsel appearing for the Respondent, would oppose the Petition and support the order passed by the Controlling and Appellate Authority. She would submit that the terms and conditions of service in Petitioner – Corporation and Shabari Corporation were identical and that therefore no discrimination can be made *qua* the Respondent. She would submit that the Respondent was merely transferred to Shabari Corporation and his employment with Petitioner continued and that therefore after his return to Petitioner, he was entitled to be paid the same basic pay which he would have otherwise drawn if he was not transferred to Shabari Corporation. Lastly, Ms. Jadhav would submit that the Appellate Authority has erred in reducing the rate of interest from 10% p.a. to 8% p.a. She would submit that this Court may restore the rate of interest of 10% p.a. which was earlier granted by the Controlling Authority.

10. Rival contentions of the parties now fall for my consideration.

11. The short issue that was raised before the Controlling Authority was about the correctness of amount of gratuity payable to the Respondent employee. There was a dispute amongst the parties about the exact last pay drawn by the Respondent. The Respondent relied upon his payslip for the month of May 2012 (Exh.U-10) showing the last basic pay of Rs.17,950/- and total emoluments of Rs.36,547/-. On the contrary, the Petitioner Corporation relied upon revised pay fixation order dated 04/08/2012 (Exh.C-27) refixing his basic pay at Rs.16,660/- and total emoluments of Rs.34,421/-.

12. It appears that on account of Respondent's transfer to Shabari Corporation during 14/01/2004 to 26/06/2009, he could not earn the benefit of fixation of pay in 6th Pay Commission scale with effect from 01/01/2006, which benefit is otherwise payable to the employees of Petitioner – Corporation who were in its service as on 01/01/2006. Petitioner had earlier granted the benefit of pay fixation of 6th Pay Commission to the Respondent with effect from 01/01/2006 and this is how his last pay was fixed at Rs.17,950/-. After Respondent's retirement on 31/05/2012, Petitioner re-fixed his pay by withdrawing the benefit of 6th Pay Commission scales earlier granted with effect from 01/01/2006 and granted the same after his repatriation w.e.f. 26/06/2009. They recovered an amount of Rs.78,038/- towards excess payment made to him on account of such mistake and re-fixed his last basic pay at Rs.16,660/-.

13. The issue is whether the Controlling Authority had the jurisdiction under the Gratuity Act to go into the issue of correctness of order dated 04/08/2012 effecting re-fixation. In my view, the Controlling Authority, under the Gratuity Act, would not have jurisdiction to decide the issue of correctness of re-fixation order and / or reduction of basic pay from Rs.17,950/- to Rs.16,660/-. The Controlling Authority has erroneously proceeded to consider last basic pay of the Respondent as Rs.17,950/- by ignoring the re-fixation and reduction of last basic pay at Rs.16,660/- by order dated 04/08/2012. The issue as to the correctness of re-fixation order dated 04/08/2012 will have to be determined by the Court of competent jurisdiction. The Controlling Authority, while exercising powers under the Gratuity Act, cannot decide the issue of correctness of re-fixation. Therefore, the order passed by the Controlling

Authority determining the amount of gratuity on the basis of last pay of Rs.17,950/- is clearly erroneous. Therefore, the directions issued by the Controlling Authority for payment of difference of Rs. 1,01,948/- along with interest is required to be set aside.

14. So far as the other directions of the Controlling Authority for payment of interest for delay in payment of gratuity of about one year from July 2012 to July 2013 is concerned, the Appellate Authority has made slight modification by reducing the principal amount from 7,30,940/- to Rs.6,10,342/- and also by reducing rate of interest from 10% p.a. to 8% p.a. Though Ms. Jadhav made an attempt to suggest that direction to reduce the rate of interest from 10% p.a. to 8% p.a. be set aside, the Respondent has not filed any proceedings challenging the said direction of the Appellate Authority. Therefore, the direction for reduction of interest from 10% to 8% cannot be interfered with.

15. The present Petition accordingly succeeds. The orders passed by the Controlling Authority and the Appellate Authority to the extent of direction of payment of balance amount of gratuity of Rs. 1,01,948/- along with interest, are set aside. The direction of the Appellate Authority for payment of interest @ 8% p.a. on the amount of gratuity of Rs. 6,10,342/- for the period from July 2012 to July 2013 is upheld.

16. Writ Petition is accordingly partly allowed. Rule is made partly absolute.

(SANDEEP V. MARNE, J.)