



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 3166 of 2019

Samudrapur Taluka Kharadi Vikri Sangha, Samudrapur

Versus

Smt. Kalavati W/o Sopan Kumbhare and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M.R.Puranik & Shri R.B.Puranik, Advocates for
the petitioner.

Shri S.B.Dhande, Advocate for the respondents.

CORAM : ANIL S. KILOR, J.

DATED : 22nd AUGUST, 2023.

Mr. Puranik, learned counsel in this matter at the outset makes a statement, on instructions, that the entitlement of the respondents for gratuity under the Payment of Gratuity Act is not disputed. The only contention raised is that the establishment of the petitioner is a seasonal establishment and therefore, the respondents would be entitled to 7 days wages for every completed year of service as gratuity.

2. The controversy, went before the Controlling Authority, who by the judgment dated 31/01/2012 (page 42), rendered a finding that considering the petitioner establishment was a ginning

factory and therefore, was operational only during the season when the cotton was available held the establishment to be seasonal one. (para 4 page 45). This findings rendered by the Controlling Authority was affirmed by the Appellate Authority in the judgment dated 06/3/2014 (para 8 and 9 page 60-61). It was however found, that the payment of gratuity was wrongly computed by the Controlling Authority and the calculations ought to have been as per the proviso to Sub-section 2 of Section 4 of the Payment of Gratuity Act and therefore, on this count, the matters were remanded back to the Controlling Authority for computation of the amount of gratuity due and payable.

3. Though it is contended by the Dhande, learned counsel for the respondents that remand was a general remand of the entire matter afresh for which he relies upon clause (iii) of the order and judgment dated 06/3/2014 by the Appellate Authority (page 63), however, that clause cannot be read in isolation, but will have to be read in consonance with the observations in para 10 of the judgment dated 06/3/2014, which specifically holds that the Controlling Authority had not computed the amount of gratuity and therefore, interference was required. It is also material to note, that the findings rendered by the Controlling Authority as

well as the Appellate Authority in the aforesaid two orders and that the petitioner was a seasonal establishment judgments, was never assailed by the respondents and therefore, the finding that the petitioner establishment was a seasonal establishment had attained finality. In that light of the matter, the Controlling Authority, upon remand could not have revisited the finding.

4. It is however material to note, that after the remand, the Controlling Authority, though bound by the findings that the petitioner establishment was a seasonal establishment by the order and judgment dated 06/3/2014 (page 70), revisited the same to arrive at a different finding inspite of noting that the establishment of the petitioner, was never working for more than 10 months in a year, which has been upheld by the Appellate Authority by the impugned judgment dated 05/6/2018 (page 102).

5. In my considered opinion, once a finding is rendered in earlier round of litigation regarding the petitioner establishment being a seasonal establishment and the remand was only for the purpose of computing the gratuity in terms of the proviso of Section 4 (2) of the Payment of Gratuity Act, the reopening of the finding by the authorities below by revisiting the same

was clearly not permissible. In that light of the matter, the impugned order and judgment cannot be sustained and is hereby quashed and set aside. The petition is hereby allowed. No costs.

6. Since it is not disputed by Mr. Dhande, learned counsel for the respondents that the calculations placed on record at page Nos.46-A and 46-B are in terms of the proviso to Section 4(2) of the Payment of Gratuity Act, the quantum indicated therein becomes an undisputed one. In that light of the matter, since the entire amount was deposited by the petitioner @ 15 days wages for every completed year of service, which is over and above what is permissible under the first proviso to Section 4(2) of the Payment of Gratuity Act, which amount has already withdrawn by the respondents, Mr. Puranik, learned counsel for the petitioner, upon instructions, makes a statement that no recovery proceedings shall be initiated for the recovery of excess amount which stand received by the respondents, which statement is accepted as a statement to the Court that no recovery proceedings shall be initiated for excess amount which stand paid to the respondents.

[ANIL S. KILOR, J.]