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

WRIT PETITION NO. 5150 OF 2023

(The sub-area Manager, Ballarpur, Chandrapur....Vs... Appellate Authority under
Payment of Gratuity Act & Dy Chief Labour commissioner, Nagpur and others)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. P.V. Ghare, counsel for petitioner.

Mr. R. Joshi, counsel for respondent No. 3.

CORAM : AVINASH G. GHAROTE, J.

DATE : 14-12-2023

This petition questions the order of the controlling authority dated 29.7.2022 (page 61) under the Payment of Gratuity Act, 1972 whereby the claim of the respondent No. 3 for gratuity and interest has been allowed (page 66), the appeal against which has been dismissed by the order dated 9.3.2023 (page 78).

2. It is not in dispute, that originally the date of birth of the respondent No. 3 as recorded in his Service Book was 3.5.1953, 4.8.1955 and 4.8.1958, according to which, the respondent No. 3 was to retire on 31.5.2013. The respondent No. 3 claimed that the correct date of birth was 4.8.1958, according to which, he was supposed to retire on 31.8.2018.

3. The respondent No. 3 therefore, filed Regular Civil Suit No. 12/2013, claiming that 4.8.1958

was his correct date of birth, and sought a decree in that regard, which came to be so passed by the learned Civil Judge on 18.9.2015. An appeal there-against, being Regular Civil Appeal No. 135/2015 filed by the present petitioner came to be dismissed by the judgment and order dated 23.12.2016, against which Second Appeal no. 327/2018 is claimed to have been filed, which has been admitted on 17.10.2019, however, no stay has been granted therein.

4. Mr. Ghare, learned counsel for the petitioner, contends that in view of the admission of the Second Appeal, the claim of the respondent No. 3, is still in litigation, and therefore, he is not entitled to the gratuity and interest thereof till 31.8.2018. He has no objection if the gratuity and interest till 31.5.2013 is paid to the respondent No. 3. It is also his contention that in case, the entire gratuity and interest is paid then respondent No. 3 be directed to give a security.

5. Mr. Rohit Joshi, learned counsel for respondent No. 3 supports the impugned orders.

6. It cannot be disputed, that the Civil Court has rendered a finding that date of birth of respondent No. 3 is 4.8.1958 which finding has been confirmed by the First Appellate Court. Merely because the Second Appeal has been admitted, without any stay obtained

therein to the declaration regarding the date of birth of respondent No. 3, he cannot be deprived of the benefits which are available to him on account of the gratuity and interest payable to him taking his date of birth as 4.8.1958 as a declaration made in this regard, still holds the field. That apart, it is not disputed that the respondent No. 3 has indeed rendered his services till 31.8.2018, may be under the orders of this Court. In that view of the matter, I do not see any reason to interfere in the impugned orders. The petition is therefore, dismissed. No costs. The payment of gratuity to the respondent No. 3 would be subject to the result of the Second Appeal.

[AVINASH G. GHAROTE, J]

Belkhede