



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

938 WRIT PETITION NO. 1788 OF 2024

Ambadas Tolaji Suradkar

VERSUS

The State Of Maharashtra Through Its Secretary And Others

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Advocate for the Petitioner : Mr. R.P. Dhase

AGP for Respondents : Mr. R.S. Wani

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**CORAM : RAVINDRA V. GHUGE &
S. G. CHAPALGAONKAR, JJ.**

Dated : February 14, 2024

PER COURT :-

1. The petitioner is 73 years old and claims to have retired in December, 2010. In this backdrop, he seeks a Writ of Mandamus to the Respondent Bank to clear his representation dated 29.1.2020, which contains the following demands :-

- a] The Petitioner should be paid benefits of the 9th bipartite settlement for the period 2008 to 2010.
- b] Unpaid salary alongwith interest for the period 2008 to 2010 alongwith interest.
- c] Gratuity alongwith interest.
- d] Leave encashment.
- e] Thirty months difference of pay alongwith interest under the provisions of the 9th Bipartite settlement.
- f] Pensionary benefit under the the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

2. It is obvious that the Petitioner was placed under suspension pending disciplinary action for alleged acts of misappropriation. He was dismissed from service by conducting a Departmental Inquiry. The said order has been effected and money has been recovered from him. Said dismissal order has not been challenged. A Departmental appeal was filed. It is claimed that the order on the appeal has still not been communicated to the Petitioner. The Petitioner did not care to seek the order from the bank.

3. It is quite apparent that the Petitioner has two causes of action. One as regards seeking payment of gratuity by approaching the competent authority under the Payment of Gratuity Act, though, after dismissal, he may not be entitled to it. The other cause of action is to seek recovery of purported unpaid dues from the Employer by preferring an application under section 33 C (2) of the Industrial Disputes Act, 1947 or by raising an Industrial Dispute since this cause is 14 years old.

4. The Petitioner had put forth identical prayers for seeking benefits of provident fund, gratuity, pension and retiral benefits in Writ Petition no.11680 of 2015. Paragraph no.4 of the order of this Court dated 23.9.2016, reads as under :-

“4. It is submitted that the petitioner came to be dismissed from service on 4th December, 2010 in view of the enquiry held against him. But the fact remains that the petitioner is entitled to

receive pension, gratuity and provident fund from the Bank. The petitioner served with the respondents Bank for years together and at the fat end of his service, more particularly, when he was on the verge of retirement, services of the petitioner came to be terminated by way of dismissal. Therefore, considering these aspects of the matter, the Petitioner is entitled for all retiral benefits. The Respondents are not paying the amount of provident fund, gratuity, pension and other retiral benefits. Therefore, the Petitioner is seeking directions against respondent nos.2 to 4 to pay all retiral benefits within stipulated time.”

5. In view of the above, we do not find that a Writ of Mandamus can be issued in the face of such disputed issues. **This petition is, therefore, dismissed.**

(S. G. CHAPALGAONKAR, J.)

(RAVINDRA V. GHUGE, J.)

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aaa/-f