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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

924 WRIT PETITION NO. 2478 OF 2024

**VIJAYA RAGHUNATH LIMBALKAR AND OTHERS
VERSUS
THE MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO. LTD
THROUGH IT'S EXECUTIVE ENGINEER**

Mr.V.B.Dhage, Advocate for the Petitioners.

**(CORAM : RAVINDRA V. GHUGE AND
R.M. JOSHI, JJ.)**

DATE : MARCH 5, 2024

PER COURT :

1. The Petitioners are before this court for seeking a direction to release the amount of gratuity that was deposited by the employer of the deceased employee. The learned Court has passed an order on 18.01.2021, concluding that the applicants will have to file a succession certificate and that the amount deposited by the employer is towards gratuity and not towards the compensation amount under the Employees' Compensation Act.

2. We have perused the record placed before us by the learned Advocate for the Petitioners. By a communication dated

22.05.2018, the MSEDCL deposited death gratuity amount with regard to its late employee Raghunath Sonaji Nimbalkar, for an amount of Rs.5,05,999/- before the Labour Court at Nanded. The said communication was addressed to the learned Judge.

3. We are of the view that the Petitioners should have approached the Labour Court at Nanded, which is the Controlling Authority under the Payment of Gratuity Act, 1972, for payment/withdrawal of gratuity by a legal heir since Petitioner No.1 is the widow, Petitioner No.2 is a 14 year old daughter and Petitioner No.3 is the 11 year old son of the deceased and the widow.

4. We can see from the record that the Petitioners were guided to file an application before the District Employees Commissioner at Nanded and the proceedings were titled as Workman's Compensation Application DA No.02/2020, instead of filing an Application for gratuity by a legal heir in Form K under rule 7(3) of the Payment of Gratuity (Maharashtra) Rules, 1972. We are aware that such application has to be filed within one year. However, we are informed by the Petitioners that after they got information about the amount being deposited before the Labour Court by the MSEDCL, that

they had approached the Labour Court on 13.01.2020.

5. Considering the pending application, it is obvious that an order of the Labour court for disbursing the said amount on the application in the form in which it is filed as WCA (DA) No.02/2020, the Labour Court would not be empowered to exercise powers under the Employees Compensation Act. Ends of justice would be met by permitting the Petitioner to withdraw the said application and file an appropriate application before the Controlling Authority under the Payment of Gratuity Act in Form K. In the event of any delay, the Labour Court would consider the facts and circumstances of this case and the pending litigation which were filed under the wrong enactment and consider the grounds for condonation of delay. Since the Petitioners have an heirship certificate issued by the learned Joint Civil Judge, Jr.Division, Jintoor in Civil M.A.No.72/2018, the said certificate would be considered for permitting the widow to withdraw the amount as the children are minors.

6. With the above liberty, observations and directions, **this Petition is disposed off.**

(R.M.JOSHI, J.)

(RAVINDRA V. GHUGE, J.)