

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 11864 OF 2019**

M/s. Terna Polytechnic, }
Sector-1, Koparkhairane, }
Navi Mumbai. } ... Petitioner

Versus

Shri. Ravi Bhadrappa Randale, }
C-2/1:8, Siddheshwar Co-op. Hsg. }
Society, Sector 23, Juinagar, }
Navi Mumbai. } .. Respondent

WITH**WRIT PETITION NO. 7842 OF 2017****WITH****CIVIL APPLICATION NO. 1184 OF 2019****IN****WRIT PETITION NO. 7842 OF 2017**

M/s. Terna Engineering College, }
Sector-22, Phase-II, }
Nerul, Navi Mumbai - 400706 }
Through it's Authorised Representative }
Mr. Irfankazi } ... Petitioner

Versus

Shri. Ravi Bhadrappa Randale, }
C-2/1:8, Siddheshwar Co-op. Hsg. }
Society, Sector 23, Juinagar, }
Navi Mumbai. } .. Respondent

WITH
WRIT PETITION NO. 7844 OF 2017
WITH
CIVIL APPLICATION NO. 1185 OF 2019
IN
WRIT PETITION NO. 7844 OF 2017

M/s. Terna Polytechnic,	}	
Sector-1, Koparkhairane,	}	
Navi Mumbai. - 400706, through their representative		
Mr. Irfankazi	}	... Petitioner

Versus

Shri. Ravi Bhadrappa Randale,	}	
C-2/1:8, Siddheshwar Co-op. Hsg.	}	
Society, Sector 23, Juinagar,	}	
Navi Mumbai.	}	.. Respondent

WITH
WRIT PETITION (ST) NO. 20276 OF 2019

M/s. Terna Engineering College,	}	
Sector-22, Phase-II,	}	
Nerul, Navi Mumbai - 400706	}	
Through it's Authorised Representative	}	
Mr. Irfankazi	}	... Petitioner

Versus

Shri. Ravi Bhadrappa Randale,	}	
C-2/1:8, Siddheshwar Co-op. Hsg.	}	
Society, Sector 23, Juinagar,	}	
Navi Mumbai.	}	.. Respondent

...

Mr. Mahesh Shukla a/w Mr. Niraj Prajapati for the Petitioner.

Mr. Avinash Belge a/w Mr. Yuvraj Dhanraj Patil for Respondent.

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CORAM : SANDEEP V. MARNE J.

RESERVED ON : 08 JANUARY, 2024.

PRONOUNCED ON : 12 JANUARY, 2024.

JUDGMENT:-

1) ***Rule.*** Rule is made returnable forthwith. With the consent of learned counsel for the parties, Writ Petitions are taken up for final hearing and disposal.

2) These four Petitions raise the issue of entitlement of Respondent to gratuity for services rendered by him with the Petitioners. There is no dispute to the position that Respondent is entitled to gratuity for services rendered with Petitioners. The dispute is about the exact amount of gratuity payable to him. He has rendered two tranches of service, under Terna Polytechnic and Terna Engineering College. The Controlling and Appellate Authorities under The Payment of Gratuity Act, 1972 (**Gratuity Act**) have directed payment of two separate amounts of gratuity by Terna Polytechnic and Terna Engineering College. The grievance of the Petitioners is with regard to the quantification of gratuity of Respondent by taking into consideration the last pay drawn by him at the time of resignation on

21 July 2011 for determining his entitlement of gratuity in respect of services rendered by him in Terna Polytechnic during 17 September 1992 to 30 June 2004. It is the contention of Petitioners that the last pay drawn by Respondent in Terna Polytechnic as on 30 June 2004 is required to be taken into consideration for quantification of gratuity payable to him in respect of services with Terna Polytechnic. This is the broad challenge in the present Petitions.

3) For a better understanding of the exact dispute between parties, it would be necessary to give some factual background. Terna Public Charitable Trust owns and manages various Educational Institutions. It claims to have established two independent and distinct institutions namely Terna Polytechnic and Terna Engineering College at Navi Mumbai. According to the Petitioners the Educational Institutes are separate legal entities registered distinctly with the Education Department and having separate administration, financial control, manpower, and premises. That the two institutes impart education in different fields.

4) Respondent came to be engaged as lecturer in Terna Polytechnic on *ad hoc* basis with effect from 17 September 1992. He continued to work with Terna Polytechnic upto 30 June 2004. Immediately from 1 July 2004, he came to be appointed as Lecturer in Terna Engineering College on an *ad hoc* basis and continued to function till 21 July 2011. It appears that the services of the Respondent were approved by Mumbai University on 01 September 2009. Respondent tendered resignation from services of Terna

Engineering College for better prospectus and joined another Education Institution with effect from 22 July 2011.

5) As Respondent was not paid gratuity in respect of services rendered by him with Terna Polytechnic and Terna Engineering College, he filed Application (PGA) No. 28 of 2012 before the Controlling Authority under The Payment of Gratuity Act-cum-4th Labour Court, Thane. In his application, he impleaded both Terna Polytechnic and Terna Engineering College as Opponent Nos. 1 and 2 respectively. The application was resisted by both the Colleges. By Judgment and Order dated 16 October 2015, the Controlling Authority allowed the application partly and held that the Respondent is entitled to a gratuity of Rs.3,84,277/- in respect of the entire service rendered by him. It thereafter proceeded to bifurcate the amount of Rs.3,84,277/- and directed Terna Engineering College to pay a gratuity of Rs.1,41,613/- and Terna Polytechnic to pay a gratuity of Rs.2,42,764/-.

6) Both the Colleges as well as Respondent got aggrieved by the Order dated 16 October 2015 passed by the Controlling Authority so far as the quantum of the gratuity was concerned. It was the contention of Terna Polytechnic that the services of Respondent were not approved by the Directorate of Technical Education and therefore no gratuity is payable to him. Alternatively, it was submitted that the last drawn salary of Respondent in Terna Polytechnic was Rs.14,531/- and the gratuity must be calculated in respect of services from 17 September 1992 to 30 June 2004 by considering the last drawn salary at Rs.14,531/-. The grievance of Terna Engineering College was that

since the service of Respondent after the grant of approval on 01 September 2009 was only one year and ten months, Respondent cannot be paid gratuity in respect of services prior to the grant of approval. On the other hand, the grievance of Respondent in his own Appeal was that he has last drawn wages in the VI Pay commission scale was Rs.47,260/- whereas the Controlling Authority erroneously treated the last drawn wages at Rs.35,066/-. He, therefore, demanded gratuity by taking into consideration the last drawn wages of Rs.47,260/-.

7) When all three Appeals filed by Terna Polytechnic and Terna Engineering College and Respondent came up before the Appellate Authority, common Judgment and Order dated 13 January 2017 was passed dismissing both the Appeals filed by Terna Polytechnic and Terna Engineering College. The Appeal filed by Respondent was allowed directing that he was entitled to the benefit of gratuity as per calculation of VI Pay Commission and the application was remanded to the Controlling Authority for determination of last drawn wages of the Respondent on the basis of VI Pay Commission Scale.

8) Terna Polytechnic and Terna Engineering College are aggrieved by an Order dated 13 January 2017 passed by the Appellate Authority rejecting their Appeals and have filed Writ Petition Nos. 7842 of 2017 and 7844 of 2017 challenging the Order dated 13 January 2017. During the pendency of said two Petitions, the Controlling Authority proceeded in the remanded application and passed an Order dated 30 July 2018 computing the gratuity payable to Respondent on the basis of last drawn wages of Rs.47,160/-. It held that Respondent is

entitled to the amount of gratuity of Rs. 5,16,946/-. The Controlling Authority once again bifurcated the said amount of Rs. 5,16,946/- by directing Terna Engineering College to pay Rs.1,90,453/- and Terna Polytechnic to pay Rs.3,26,493/- along with simple interest at the rate of 18% per annum with effect from 21 July 2011 till payment of the entire amount.

9) Once again, all three parties i.e. the Respondent as well as Terna Polytechnic and Terna Engineering College got aggrieved by the Controlling Authority's Order dated 30 July 2018 and filed their respective Appeals before the Appellate Authority, being aggrieved by quantification of the amount of gratuity. By three separate Orders dated 30 March 2019 passed by the Appellate Authority the Appeals of Respondent, Terna Engineering College, and Terna Polytechnic are decided. So far as the Appeal No. 8 of 2018 filed by the Appellant is concerned the same is partly allowed by holding that the last drawn wages of the Respondent were Rs.52,865 and that he was entitled to total amount of gratuity Rs.5,79,481/-. This amount of Rs.5,79,481/- is bifurcated into the amount of Rs.3,65,988/- payable by Terna Polytechnic and Rs.2,13,493/- payable by Terna Engineering College. The Appellate Authority however reduced the rate of interest from 18% per annum to 10% per annum. In the Appeals preferred by Terna Polytechnic and Terna Engineering College, the Appellate Authority has provided same solace to them by reducing the rate of interest from 18% to 10% per annum.

10) Terna Polytechnic and Terna Engineering College have filed Writ Petition Nos. 11864 of 2019 and Writ Petition (St) No. 20276 of 2019 challenging the three Orders passed by the Appellate Authority on 30 March 2019.

11) This is how Writ Petition Nos. 7842 of 2017 and 7844 of 2017 challenging dismissal of Appeal Nos. 6 of 2015 and 7 of 2015 (and holding that Respondent is entitled to gratuity from both colleges) are listed before me. Writ Petition Nos. 11864 of 2019 and Writ Petition (St) No. 20276 of 2019 challenge the quantification made by the Appellate Authority by its Orders dated 30 March 2019. All four Petitions have been heard together and are being decided by this common Judgment.

12) Mr. Shukla, the learned counsel appearing for the Petitioners would submit that the Controlling and the Appellate Authority have committed grave error in clubbing Respondent's services with Terna Polytechnic and Terna Engineering College. When the two institutes are distinct legal entities, with no commonality between them, and that services of the Respondent in the two Educational Institutions were separate, without any connection with each other. That therefore, services rendered or wages drawn in Terna Engineering College cannot form basis for quantifying gratuity payable in respect of services rendered in Terna Polytechnic.

13) Mr. Shukla would submit that even if it is assumed for the sake of arguments that Respondent is entitled to separate gratuity in respect of services rendered by him in the two Educational Institutions,

the wages drawn by him in Terna Engineering College cannot determine his gratuity payable by Terna Polytechnic. He would submit that there was a cessation of services with Terna Polytechnic on 30 June 2004. That therefore the last wages drawn by Respondent in Terna Polytechnic as on 30 June 2004 would determine his entitlement for gratuity from Terna Polytechnic. That his last wages drawn in Terna Polytechnic was Rs.14,531/- and his gratuity payable by Terna Polytechnic must be determined on the basis of last wages of Rs.14,531/-. According to Mr. Shukla, what is taken into consideration by the Appellate Authority by Order dated 30 March 2019 is the figure of Rs.52,865/- drawn by Respondent in Terna Engineering College 7 years later on 21 July 2011. That there was a substantial rise in wages of Respondent in Terna Engineering College on account of implementation of VI Pay Commission recommendations with effect from 1 January 2006. That admittedly VI CPC Scales were not available as on 30 June 2004 in Terna Polytechnic when Respondent left its services. Mr. Shukla would therefore submit that even if this Court arrives at a conclusion that Respondent is entitled to pay two separate gratuities from Terna Polytechnic and Terna Engineering College, the gratuity payable by Terna Polytechnic must be determined by taking into consideration the last wages drawn of Rs.14,531/-.

14) *Per contra*, Mr. Belge the learned counsel appearing for Respondent would oppose the Petitions and support the Orders passed by the Appellate Authority. He would submit that both Education Institutions are managed and operated by the same Trust. That services of Respondent were transferred from Terna Polytechnic to Terna

Engineering College. That there was no break or gap into two spells of service as Respondent joined Terna Engineering College on 1 July 2004 upon his relief from Terna Polytechnic on 30 June 2004. That thus there is continuity in the two spells of service. That the Appellate Authority has rightly taken into consideration the last wages drawn of Rs.52,865/- while leaving the service of Terna Engineering College on 21 July 2011. He would submit that Respondent has already suffered a lot on account of non-payment of gratuity for a considerable period of time. He would pray for the dismissal of all the Petitions.

15) Rival contentions of the parties now fall for my consideration.

16) There are two issues which arise for consideration in these four Petitions. The first issue is about connectivity between the two services of Respondent with Terna Polytechnic and Terna Engineering College. The other issue is about the quantification of the amount of gratuity payable to the Respondent. As observed above, Writ Petition Nos. 7842 of 2017 and 7844 of 2017 challenge the earlier Orders of Appellate Authority dated 13 January 2017 by which Petitioners' objection about the entitlement of Respondent to receive gratuities was repelled. In my view, the said challenge is now rendered academic in that Mr. Shukla has fairly not stretched the challenge to such an extent that Petitioners deny liability to pay any gratuity to Respondent. Mr. Shukla is fair in admitting that the Respondent can be paid gratuity by both institutions. Though it was earlier the case of both Petitioners that services rendered after approval would alone count for gratuity, Mr.

Shukla does not, and in my view rightly so, press that submission. That submission, in any case, deserved outright rejection.

17) The issue that remains is about the quantification of gratuity payable to Respondent by both institutions. This issue in my view, hinges squarely on the aspect of continuity of services between the two Educational Institutions. If it is held that there is no continuity in two services, Respondent would become entitled for gratuity from Terna Polytechnic on 30 June 2004 and the gratuity will have to be determined by taking into consideration the last wages drawn by him on 30 June 2004 from Terna Polytechnic. If on the other hand, connectivity is established between the two services, the actual cessation of services would be from Terna Engineering College on 21 July 2011. In that event, the last wages drawn as on 21 July 2011 would form the basis for determining gratuity in respect of the entire service from 17 September 1992 to 21 July 2011.

18) I accordingly proceed to examine whether there is connectivity in the two spells of services in Terna Polytechnic and Terna Engineering College. Section 2-A of the Gratuity Act defines the expression “continuous service” as under:

“2-A. Continuous Service.—For the purposes of this Act,—

(1) An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;

(2) where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer—

(a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days, in the case of any employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii) two hundred and forty days, in any other case;

(b) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than—

(i) ninety-five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii) one hundred and twenty days, in any other case; [Explanation.—For the purposes of clause (2), the number of days on which an employee has actually worked under an employer shall include the days on which—

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

(3) where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five per cent. of the number of days on which the establishment was in operation during such period.

19) In the present case, Petitioner has shifted from the services of Terna Polytechnic to Terna Engineering College on 1 July 2004. Till 30 June 2004, he was in service in Terna Polytechnic. There is no break in service between the two spells. Though Petitioners are at pains to demonstrate before this Court that the two Educational Institutions are distinct legal entities, it is the case of Respondent that he was

‘transferred’ from Terna Polytechnic to Terna Engineering College by the management. There is no dispute to the position that the same management operates both institutions. The Appellate Authority, while deciding previous rounds of Appeals by Order dated 13 January 2017, has gone into the issue of continuity between two services. It has placed reliance on the relieving letter referring to the Order of Terna Public Charitable Trust dated 5 June 2004. On the basis of said relieving letter, the Appellate Authority had drawn an inference that there was the ‘transfer’ of services of Respondent from Terna Polytechnic to Terna Engineering College. No serious challenge made to the said observations of the Appellate Authority. To prove that the services rendered in the two colleges are distinct, it was incumbent for Petitioners to prove that Respondent made an application to Terna Engineering College for appointment, either in pursuance of an advertisement or otherwise. That he was subjected to selection process or atleast interviewed and then offered an appointment. The appointment order, if any, issued by Terna Engineering College is not placed on record. It is therefore difficult to hold that Respondent was freshly ‘recruited’ in Terna Engineering College. From the contents of the relieving letter as well as absence of any gap between the two spells of services, in my view, no serious error can be found in the Appellate Authority's conclusion that services of the Respondent were actually ‘transferred’ from Terna Polytechnic to Terna Engineering College. I am therefore of the view that there is continuity of service between the two spells.

20) Once it is held that the two spells of services in Terna Polytechnic and Terna Engineering College are interconnected, cessation of service for the purpose of payment of gratuity under Section 4 of the Gratuity Act would occur on 21 July 2011 when Respondent resigned from the services of Terna Engineering College. Relevant provision of Section 4 of the Gratuity Act reads thus:

“4. Payment of Gratuity - (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,
(a) on his superannuation, or
(b) on his retirement or resignation, or
(c) on his death or disablement due to accident or disease:

21) There is nothing on record placed to prove that there was termination/cessation of services with Terna Polytechnic on account of resignation from services. Thus Respondent is entitled to gratuity on the basis of last wages drawn as on 21 July 2011 from Terna Engineering College in respect of his entire service from 17 September 1992 to 21 July 2011. To this extent, no error can be traced in the Orders passed by the Appellate Authority on 30 March 2019.

22) In my view, the only possible error that the Controlling and the Appellate Authorities have repeatedly committed is about bifurcating the amount of gratuity payable and directing both Terna Polytechnic and Terna Engineering College to pay their share of gratuity to Respondent. Once it is held that there is continuity in the two services for the purpose of computation of gratuity on the basis of last wages drawn in Terna Engineering College, it is not at all necessary to direct Terna Polytechnic to pay any gratuity to Respondent. There is

continued service of Respondent with the same management from 17 September 1992 to 21 July 2011. Resignation from services has occurred on 21 July 2011 from Terna Engineering College. Therefore Terna Engineering College alone could have been directed to pay the entire amount of gratuity. However, here again, there is not much of a debate as both the Educational Institutions are managed by the same Trust and there are no competing claims by one against the other. Therefore, for this inconsequential error, the Orders passed by the Appellate Authority on 30 March 2019 need not be disturbed.

23) After considering the entire conspectus of the case, I am of the view that the Orders passed by the Appellate Authority on 30 March 2019 are unexceptionable. Even the earlier orders remanding the proceedings to Controlling Authority do not suffer from any error. The Petitions must accordingly fail.

24) It must be observed here that in pursuance of various Orders passed by this Court, Petitioners have deposited various amounts both with the Controlling Authority as well as in this Court. It appears that while filing Appeal Nos. 6 of 2018 and 7 of 2018 before the Appellate Authority. Petitioners have deposited Rs.1,90,453/- and Rs.3,26,493/- with the Appellate Authority. While admitting Writ Petition Nos. 11864 of 2019 and 7842 of 2017 and 7844 of 2017 this Court directed Petitioners to deposit further amounts of Rs.40,000/- (Terna Polytechnic) and Rs. 25,000/- (Terna Engineering College) in this Court with a further direction for investment of the said amounts in Fixed Deposits. Respondent has already withdrawn the amount of

Rs.2,50,000/- on 19 October 2019. He was permitted to withdraw the further amount of Rs.2,00,000/- from the deposits so made. It appears that the Petitioner Institutes could not deposit the amount of Rs.40,000/- and Rs.25,000/- as directed in the Order dated 18 December 2019. The said deposits were made belatedly on 8 September 2023. By Order dated 18 December 2023 this Court directed deposit of further amount as per statutory interest at the rate of 10% per annum on the said amounts of Rs.40,000/- and Rs.25,000/- in respect of delayed period. Even the amount of said interest is deposited by Petitioners in this Court in pursuance of the Order passed on 8 January 2023.

25) I have already arrived at a conclusion that the total amount of gratuity payable to the Respondent is i.e. Rs.5,79,481/- which is divided by the Appellate Authority into Rs.3,65,988/- for Terna Polytechnic and Rs.2,13,493/- for Terna Engineering College. The Appellate Authority reduced interest at the rate of 10% per annum from 1 August 2011 till the payment of the entire amount. As observed above, amounts of Rs.3,26,493/- and Rs.1,93,453/- are already deposited by Petitioners with the Appellate Authority. Therefore, the interest at the rate of 10% per annum would apply on the amounts of Rs.3,26,493/- and Rs.1,93,453/- from 1 August 2011 till the date of deposit of the said amounts with Appellate Authority. The difference of approximate amounts of Rs.40,000/- and Rs.25,000/- was directed to be deposited by Order dated 19 December 2019 which is belatedly deposited in the Court on 8 September 2023. Interest thereon at the rate of 10% per annum is also deposited in this Court. Thus the entire

amount together with interest is already been deposited either with the Appellate Authority or in this Court. The Respondent can be permitted to withdraw the entire amount from the Appellate Authority and from this Court.

26) I accordingly, proceed to pass the following Order in the four Writ Petitions.

ORDER:

1. The Writ Petitions filed by Petitioners are dismissed.
2. Respondent shall be at liberty to withdraw the entire amounts deposited with the Appellate Authority and this Court together with accrued interest thereon towards fulfillment of his claim for gratuity payable by Petitioners.
3. Rule in all the Petitions is discharged. There shall be no Orders as to costs.
4. In view of disposal of Writ Petitions, Civil Application No.1184 of 2019 and Civil Application No.1185 of 2019 do not survive and the same are also disposed of.

[SANDEEP V. MARNE J.]