

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7455 OF 2024

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The Shipping Corporation of India Ltd. ... Petitioner

V/s.

Peres Pinhas Pezarkar ... Respondent

Mr. Aayu Saxena i/by FF & Associates for the petitioner.

Mr. Shailesh Pathak for the respondent.

CORAM : AMIT BORKAR, J.

DATED : JULY 1, 2024

P.C.:

1. The challenge in this writ petition is to the orders passed by the Appellate Authority and by the Authorities under the provisions of the Payment of Gratuity Act, 1972.

2. The learned advocate for the petitioner submits that neither the First Authority nor the Appellate Authority have adjudicated on the aspect of last drawn wages drawn by the respondent. According to him, no calculations were done by the authorities below to arrive at conclusion that the respondent is entitled to an amount of Rs.1,90,000/- per month towards last drawn salary. According to him, the respondent was suspended in 2009 and in 2017 he was terminated. The respondent has challenged his termination by way of writ petition. The said writ petition is

pending before the Division Bench of this Court. Hence, according to him, the last drawn salary ought to have been calculated based on salary drawn by the employee a day prior to his suspension.

3. Per contra, learned advocate for the respondent submitted that as per the rules applicable to the petitioner, the maximum period of suspension was 180 days. Therefore, according to him, the last drawn salary ought to be one day prior to the date of termination of the employee. According to him, considering the date which is one day prior to the date of termination, the respondent was entitled to last drawn salary of Rs.1,90,000/- per month. According to him, he has furnished material before the authorities below in support of his claim of last drawn salary being Rs.1,90,000/- per month.

4. On perusal of the orders passed by the Appellate Court and the First Authority, it appears that both the authorities have failed to adjudicate the point of last drawn salary and the date which needs to be considered for adjudicating last drawn salary. In absence of such adjudication, the authorities below could not have directed the petitioner to pay Rs.20 Lakh along with interest at the rate of 10%.

5. However, prima facie it appears that the respondent was suspended for period of more than seven years. Prima facie, therefore, to balance the equities, it would be in the interest of justice to allow the respondent to withdraw the amount deposited by the petitioner subject to filing of undertaking before this Court within four weeks' from today stating therein that in case the final

adjudicated amount by the Appellate Authority under the provisions of the Payment of Gratuity Act, 1972, is less than the amount withdrawn by the respondent, he will reimburse the petitioner the differential amount along with interest at the prevalent rate of interest during relevant time.

6. The impugned order passed by the Appellate Authority is quashed and set aside.

7. The Appellate Authority is directed to adjudicate on the points stated above and shall decide the point of last drawn salary in accordance with law.

8. The contention raised by the parties before this Court are kept expressly open to be agitated before the Appellate Authority.

9. Considering the facts of the case, the Appellate Authority shall decide the appeal within period of three months from the date of appearance of the parties.

10. The parties shall appear before the Appellate Authority on 12 July 2024 at 11:00 a.m.

11. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)