IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 9354 OF 2024

Chembur Gymkhana,
16th Road, Chembur,
MUMBAI-400 071 } **...Petitioner**

Versus

Shri. N.R. Natrajan
102, Srenity, 11th Road,
Chembur, MUMBAI-400 071. } **...Respondent**

Mr. Shailesh S. Pathak, for the Petitioner.
Mr. Haresh Shivdasani, for the Respondent.

CORAM : SANDEEP V. MARNE, J.
DATED : 11 JULY 2024.

JUDGMENT

1) The Petitioner-employer has filed this Petition challenging the judgment and order dated 10 November 2023 passed by the Appellate Authority dismissing Appeal (PGA) No. 213 of 2023 and confirming the judgment and order dated 6 May 2023 passed by the Controlling Authority, by which, the Controlling authority has determined the gratuity payable to the Respondent at Rs.68,983/-. It has further directed that since the gratuity is already paid, no amount is due to the Respondent on account of gratuity. Petitioner is however directed to pay simple interest @ 8% on the principal amount of gratuity of Rs.68,983/- for the period from 30 April 2010 to 3 May 2022.

2) Petitioner runs a Gymkhana Club in Chembur, Mumbai. Respondent was employed with Petitioner as Chief Cashier since 2 April 1999. He resigned from service by letter dated 17 April 2010. The resignation was accepted and it is Petitioner's case that gratuity of Rs.80,880/- was determined as due and payable to Respondent. After deducting amount of Rs. 29,000/- availed by Respondent towards advance, amount of Rs.51,880/- was paid to the Respondent on 8 May 2010. Eleven years later, Respondent demanded payment of gratuity on 15 October 2021 stating that he was not paid gratuity for the service put by him. Petitioner informed him on 22 October 2021 that no records were available on account of passage of 11 years. Respondent thereafter produced copy of the bank passbook for the relevant period and once again requested for payment of gratuity by letter dated 17 November 2021. Respondent once again submitted bank statements from 1 January 2007 to 31 November 2010 by letter dated 1 February 2022. Respondent filed Form No.-I (Application for Gratuity) on 7 March 2022 and thereafter approached the Controlling Authority under the Payment of Gratuity Act-cum-Judge, 7th Labour Court, Mumbai by filing Application (PGA) No. 270/2022.

3) It is Petitioner's case that on humanitarian grounds and on account of non-availability of records, Petitioner paid amount of Rs.68,983/- to Respondent on 29 April 2022 which was accepted by Respondent. The application was opposed by the Petitioner by filing written statement.

4) The Controlling Authority passed judgment and order dated 6 May 2023 holding that the gratuity amount payable to Respondent is Rs.68,983/- and held that since the said amount is already paid to the

Respondent, nothing is due and payable towards gratuity to him. However, the Controlling Authority has held Petitioner guilty of delay in paying the gratuity and has accordingly directed payment of interest at the rate of 8% on the principal amount of gratuity of Rs.68,983/- for the period from 30 April 2010 to 3 May 2022.

5) Petitioner filed Appeal (PGA) No. 213 of 2023 before the Appellate Authority-cum-Industrial Court challenging the decision of the Controlling Authority. The Appeal is however rejected by order dated 10 November 2023, which is the subject matter of challenge in the present petition.

6) I have heard Mr. Pathak, the learned counsel appearing for Petitioner who would submit that the Controlling Authority has erroneously directed payment of 8% interest when the due amount of gratuity was already paid to the Respondent on 8 May 2010. That in fact Respondent has received more than double amount of gratuity on account of mistake committed by Petitioner. That despite receiving the gratuity amount twice, the Respondent is further rewarded with interest on account of order of the Controlling Authority. He would submit that receipt of amount of Rs.51,880/- vide cheque No.622758 is conclusively proved on account of bank entries in the passbook of Respondent. That the same was further proved by Petitioner's bank letter dated 19 May 2023. That the Appellate Authority has erroneously ignored the said bank's letter dated 19 May 2023 on a technical ground that the same was not produced before the Controlling Authority. He would submit that the Petitioner is unnecessarily penalised despite paying gratuity amount to the Respondent twice. He would submit that the Respondent filed application for gratuity 11 years after he left the service of the Petitioner and clearly took advantage of non-availability of records with Petitioner.

7) *Per-contra*, Mr. Shivdasani, the learned counsel appearing for Respondent would oppose the petition submitting that there is no evidence of payment of amount of Rs.51,880/- by Petitioner to Respondent. That the passbook does not reflect that the said amount is paid by Petitioner or that the same was paid towards gratuity. That gratuity payable to Respondent is Rs.68,893/- and not Rs.51,880/-. That therefore even if receipt of the said amount in the bank account of Petitioner is assumed, it cannot be held that the said amount was received towards gratuity. Mr. Shivdasani would submit that after production of bank passbook by Respondent, Petitioner deliberately created false record in the form of debit voucher after noticing credit entry of Rs.51,880/- in the bank passbook. That non-payment of gratuity to Respondent in the year 2010 is required to be inferred on the basis of conduct of Petitioner in paying the gratuity of Rs.68,983/- on 3 May 2022. That fabrication of record by manufacture of false debit voucher dated 8 May 2010 was thus conclusively proved before the Controlling Authority. So far as delay in filing the application by Respondent is concerned, Mr. Shivdasani would submit that it is the duty of the employer to credit the amount of gratuity in the account of the employee and mere delay in approaching the Controlling Authority cannot be a reason for absolving the errant employer, who fails to pay gratuity to the employee. That the Controlling Authority has correctly awarded interest on delayed payment of gratuity. Lastly, Mr. Shivdasani would submit that the financial implication for the Petitioner arising out of 8% simple interest on gratuity amount of Rs.68,983/- is minuscule and that this Court therefore would be loathe in entertaining the present petition. He would pray for dismissal of the petition.

8) Having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the Respondent joined the services of the Petitioner-Gymkhana on 2 April 1999 and resigned from service on 30 April 2010. It is Petitioner's case that after receipt of resignation letter dated 17 April 2010 (which is produced at Exhibit-A to the petition) and after acceptance of resignation, Petitioner determined the amount of gratuity payable to the Respondent at Rs.80,880/- by considering his last drawn wages of Rs.12,650/- and taking into consideration the service of 11 years and 1 month. However, Respondent had availed salary advance of Rs.29,000/- which was deducted from the amount of Rs.80,880/- and the Respondent was paid Rs.51,880/- by way of Cheque No.622758 dated 8 May 2010. Respondent disputes receipt of the said amount. Petitioner has produced on record copy of letter and debit voucher dated 8 May 2010. The debit voucher bears the signature of the Respondent. Respondent did not raise any grievance about alleged non-payment of gratuity for 11 long years and demanded the same only on 15 October 2021.

9) When Petitioner initially expressed inability to entertain application for payment of gratuity on account of passage of 11 years, Respondent produced photocopy of passbook reflecting entries from 31 October 2009 to 16 May 2010. The said passbook contains an entry of 13 May 2010 showing credit of amount of Rs.51,880/- through cheque No. 00622758. The debit voucher dated 8 May 2010 also reflects same cheque no.622758. Petitioner, thus, *prima-facie*, proved before the Controlling Authority that Rs.51,880/- was paid by it to the Respondent through debit voucher dated 8 May 2010, as well as credit entry in the bank passbook of 13 May 2010. Respondent adopted a defence that he did not sign the debit voucher nor was the amount of Rs.51,880/- paid by Petitioner to him. Mr. Shivdasani has infact gone to the extent of accusing Petitioner of manufacturing false document in the form of debit voucher after noticing a credit entry in the bank account of the Petitioner of Rs.51,880/- of 13 May 2010. I am not convinced with the said defence taken by Respondent. In fact, I find this defence of Respondent to be wholly dishonest. If there was any doubt about payment of Rs.51,880/- by Petitioner to the Respondent, the said doubt is put to rest by the letter of Petitioner's bank dated 19 May 2023 confirming that cheque No.622758 of Rs.51,880/- was issued by Petitioner in the name of the Respondent and the said amount is credited in Respondent's Account on 13 May 2010. True it is that the said letter of the Bank dated 19 May 2023 was produced not before the Controlling Authority but before the Appellate Authority. In my view, it was not even necessary for Petitioner to produce the said letter from its bank. Once the passbook produced by Respondent himself reflected payment of Rs.51,880/- together with Cheque No. 622758 and once Petitioner produced debit voucher reflecting the same cheque number, as well as the amount, the burden clearly shifted on Respondent to prove that Rs.51,880/- was paid to him to some other person/entity. No evidence is produced by Respondent on record to show that Rs. 51,880/- was paid by some other person/entity to him on 13 May 2010. In my view, therefore the Controlling Authority erred in putting the burden on Petitioner to prove that Cheque No.622758 was issued by it. Even that burden is later discharged by Petitioner by producing its bank's letter dated 19 May 2023. It is thus conclusively proved that Petitioner paid Rs. 51,880 to Respondent on 13 May 2010.

10) When the Controlling Authority committed a blatant error in not accepting direct documentary evidence of payment of Rs.51,880/- to Respondent on 13 May 2010, the Appellate Authority added premium on Controlling Authority's error by refusing to take cognizance of letter dated 19 May 2023 issued by Petitioner's Bank by adopting a hyper technical approach that the said letter was not produced before the Controlling Authority. The Appellate Authority/Industrial Court is vested with jurisdiction to correct glaring error committed by the Controlling Authority/Labour Court and in the present case there is failure on the part of Appellate Authority to exercise such jurisdiction.

11) In my view, both the Controlling, as well as the Appellate Authority turned blind eye to the dishonest defence taken by the Respondent of non-receipt of amount of Rs.51,880/- from the Petitioner though the bank entry clearly proved receipt of the said amount by him.

12) Coming to the conduct of the Petitioner in paying the amount of Rs.68,983/- to the Respondent on 3 May 2022, it appears that such payment created a doubt in the mind of the Controlling and the Appellate Authorities about non-payment of gratuity to Respondent in the year 2010. In my view, merely because Petitioner committed a mistake in paying the amount of gratuity once again in the year 2022, did not mean that the same was not paid to Respondent in the year 2010. In fact, though the amount of gratuity payable to the Respondent was only Rs.68,983/-, Petitioner had paid higher amount of Rs.80,880/- to the Respondent on 13 May 2010 (after deducting Rs.29,000/- availed by Respondent as salary advance). So far as difference in the amounts of gratuity (Rs.80,880/- paid in 2010 and Rs.68,983/- paid in 2022) is concerned, it appears that the earlier amount of Rs.80,880/- was determined by taking into consideration gross emoluments of Rs.12,650/- together with service of the Respondent of 11 years and one month. The amount of Rs.68,983/- is paid to Respondent is by taking into consideration basic pay plus Dearness Allowance of Rs.10,870/- and 11 years of service.

13) Thus, it is conclusively proved that Respondent was already paid Rs.80,880/- towards gratuity on 13 May 2010 (which is higher than his entitlement) and on account of his belated demands raised after 11 years of resignation, Petitioner erroneously paid another set of gratuity of Rs. 68,983/-

to him on 3 May 2022. Respondent has thus drawn the gratuity amount twice from Petitioner. Fortunately for Respondent, Petitioner has not demanded the excess amount paid him.

14) Since the gratuity was already paid to the Respondent on 13 May 2010, there is no question of award of any interest to Respondent. The order passed by the Controlling and the Appellate Authority are thus indefensible. Both the orders suffer from jurisdictional error where both the authorities have failed to exercise jurisdiction vested in them. The Appellate Authority ought to have corrected the gross error committed by Controlling Authority in awarding interest to Respondent despite receiving the gratuity twice from Petitioner.

15) In the entire episode, I also find the entire conduct of the Respondent to be grossly irresponsible. Despite there being direct evidence of payment of Rs.51,880/- by the Petitioner-Gymkhana to him on 13 May 2010, he has shown audacity to take false defence by accusing Petitioner of manufacturing debit voucher of 8 May 2010 after noticing the credit entry in his bank account. The said defence is continued even after Petitioner produced letter dated 19 May 2023 from its bank to once again prove payment of Rs.51,880/-. For such dishonesty displayed by the Respondent who has already received gratuity twice from Petitioner on account of his misrepresentation, this Court would be justified in imposing exemplary costs on Respondent. However, only because Respondent is a septuagenarian, the costs in the petition are made easy.

16) Writ Petition accordingly succeeds. Judgment and order dated 6 May 2023 passed by the Controlling Authority in Application (PGA) No. 270 of 2022 and judgment and order dated 10 November 2023 passed by the Appellate Authority in Appeal (PGA) No. 213 of 2023 are set aside. The Writ

Petition is **allowed** in above terms. Rule is made absolute. There shall be no order as to costs.

NEETA SHAILESH SAWANT

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SANDEEP V. MARNE, J.