

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

WRIT PETITION NO.18152 OF 2024

Mahadeo Mate

....Petitioner

V/S

Opal HVAC Engineers Private Limited

....Respondent

Ms. Deepali Deherkar *for the Petitioner.*

CORAM: SANDEEP V. MARNE, J.

DATE : 27 MARCH 2025.

P.C.:

1. The Petition challenges judgment and order dated 21 February 2024 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 and Member, Industrial Court, Mumbai, partly allowing Appeal (PGA) No.927 of 2022 filed by the Respondent-Employer and modifying the judgment and order dated 3 September 2022 passed by the Controlling Authority.

2. By order dated 3 September 2022 the Controlling Authority had done the calculations of gratuity payable to the Petitioner by assuming his wages at Rs.34,200/- and had held that the total amount of gratuity payable to him for 15 years of service (first spell) was to Rs.2,95,961.53. Since gratuity of Rs.2,20,016/- was already paid, the Controlling Authority

directed payment of balance amount of gratuity of Rs.75,945.53. For the second spell of service of six years, the Controlling Authority computed gratuity at Rs.1,18,384.61. This is how both the amounts of Rs.75,945.53 and Rs.1,18,384.61 were awarded as gratuity together with interest at the rate of 10%. The interest was directed to be paid on amount of Rs.1,18,385/- from 1 September 2003 whereas the interest on the amount of Rs.75,946/- was directed to be paid from 5 May 2018. The Appellate Authority has considered the amount of wages drawn by the Petitioner at Rs.22,400/-. It has clubbed both the spells of services of 15 years + 6 years = 21 years and has held that the total amount of gratuity payable to the Petitioner is Rs.2,71,384.61. Since gratuity of Rs.2,20,016/- were already paid, the Appellate Authority has directed payment of only differential amount of Rs.51,368.61 to the Petitioner alongwith interest at the rate of 10% per annum from 18 May 2019.

3. I have heard Ms. Deherker, the learned counsel appearing for Petitioner and have considered the submissions canvassed by her. I have also carefully gone through the findings recorded by the Controlling and the Appellate Authorities in their respective orders.

4. The main contention of Ms. Deherkar is that the Appellate Authority has erred in considering the amount of last drawn wages of the Petitioner at Rs.22,400/-. According to her, the

Respondent-employer was illegally showing amount of Rs.11,800/- towards 'city allowance'. That no separate dearness allowance was paid to the Petitioner, which would essentially mean that the amount of Rs.11,800/- which was branded as 'city allowance' was in fact dearness allowance. She would therefore submit that the city allowance of Rs.11,800/- is required to be included and was correctly included by the Controlling Authority in the amount of total wages by considering the same as Rs.35,320/-.

5. However no material is produced on record by Ms. Deherkar under which Court or Tribunal can convert the classification of allowance from city allowance to that of dearness allowance. Petitioner apparently never raised any objection to classification of the said allowance or its branding as city allowances during the period of his employment. The Controlling Authority did not even notice the fact that Rs.11,800/- was not paid as dearness allowance or that it was being paid as city allowance. It had blindly considered the last drawn wages of the Petitioner at Rs.34,200/-. The Appellate Authority has rightly ignored city allowance of Rs.11,800/- by considering the last drawn wages of the Petitioner at Rs.22,400/-. No patent error therefore can be traced in the order of the Appellate Authority, which has clubbed both the spells of services of 15 years and 6 years and has computed entitlement of the Petitioner towards gratuity at Rs.2,71,384.61. In absence of an element of perversity

or a patent error, I am not inclined to exercise jurisdiction under Article 227 of Constitution of India in the impugned order passed by the Appellate Authority. Writ Petition is devoid of merits, it is accordingly **dismissed** without any order as to costs.

(SANDEEP V. MARNE, J.)

SUDARSHAN
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KATKAM

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