IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2658 OF 2019

Tafjul Abdul Hasan Sheikh (Since expired) Thr. L.Rs. Rasheeda Tafjul Sheikh and ors.
-vs-
The Maharashtra State Warehousing Corporation, Goltekdi, Pune and anr.

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and the Registrar's orders.	Court's or Judge's Orders.

Shri A. C. Dharmadhikari, Advocate for petitioner.
Shri N. R. Saboo, Advocate for respondents.

CORAM : NITIN W. SAMBRE AND MRS VRUSHALI V. JOSHI, JJ.
DATE : January 15, 2025

P. C.

Heard.

1. In view of judgment dated 25/01/2021 delivered in Writ Petition No.10858/2018 *(Shri Kadirkhan Ahmedkhan Pathan vs. The Maharashtra State Warehousing Corporation and ors.)* delivered at Aurangabad Bench, the order impugned dated 07/02/2018 cannot sustain.

2. It is not in dispute that the petitioner is already superannuated and has expired. The claim in the petition is persuaded by his legal heirs.

3. The issue pertains to the release of terminal benefits which are withheld by the respondents in terms of the order dated 07/02/2018.

4. The judgment in case of *Kadirkhan Ahmedkhan Pathan* (supra) in categorical terms holds that the respondents cannot withheld the gratuity, the employer’s share of provident fund and the amount of leave encashment and insurance for effecting recovery.

5. In this backdrop we are required to be sensitive to the observations made in paragraphs 8 and 9 of the said judgment which read thus :

> *8. We have been provided facts and figures in respect of the quantum of benefits that were payable to the petitioner upon his retirement. It is revealed therefrom that the petitioner has been paid Rs.1,15,445/-, being his share of provident fund. Rs.3,50,000/- and Rs.1,40,493/- are the amounts payable to him as gratuity and the employer's share of provident fund, respectively. The petitioner is also entitled to Rs.30,020/- on account of leave encashment and Rs.19,035/- on account of insurance. While in service the petitioner had obtained loans to the tune of Rs.82,000/-, which has remained unpaid. The gratuity, the employer's share of provident fund, the leave encashment and insurance amounts have been withheld to compensate for the loss caused by the petitioner owing to his acts of omission/commission resulting in financial loss to the Corporation.*
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> *9. We are, therefore, of the view that apart from Rs.3,50,000/- payable to the petitioner on account of gratuity, the employer's share of provident fund and the amounts for leave encashment and insurance could not have been touched for the purpose of effecting recovery in terms of the final order passed by the disciplinary authority. However, at the same time, we cannot overlook that the petitioner had obtained loans totaling to Rs.82,000/- which he did not repay."*

6. That being so, the order impugned dated 07/02/2018 is hereby quashed and set aside.

7. We permit the legal heirs of the deceased petitioner/employee to appear before the respondent No.1 on 03/02/2025.

8. The respondent No.1 shall decide the claim of the petitioners

qua the terminal benefits to which their father is entitled to while in service within a period of four weeks from the date of appearance having regard to the Division Bench judgment dated 25/01/2021 in Writ Petition no.10858/2018.

9. Needless to clarify as a consequence of quashing of the impugned order, the relief in relation to the issue of No-due certificate can be looked into by the respondents afresh.

10. The petition stands partly allowed in above terms.

(Mrs Vrushali V. Joshi, J.) **(Nitin W. Sambre, J.)**

Asmita