



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2577 OF 2020

SHAIKH SHABBIR SHAIKH AYUB

VERSUS

THE DIVISIONAL CONTROLLER, M. S. R. T. C. AURANGABAD

...

Mr. Sartaj Pathan, Advocate h/f Mr. Vinod Y. Bhide, Advocate for the
Petitioner

Mr. A. D. Wange, Advocate for Respondent

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CORAM : MANJUSHA DESHPANDE, J.

DATE : 31st JANUARY, 2025

PER COURT :

1. The writ petition is filed by petitioner challenging the order dated 12/12/2019, passed by the Member, Industrial Court, Aurangabad, in Appeal (PGA) No.09/2018.

2. It is the contention of petitioner that he was working as a driver in the Maharashtra State Road Transport Corporation from 01/03/1979 till his superannuation on 31/05/2010. On the date of his superannuation, he had completed 31 years of service. Being aggrieved by the non-payment of appropriate gratuity amount petitioner approached the Controlling Authority (P.G.A.) Labour Court, Aurangabad, by filing application P.G.A. Case No.129/2014, wherein he sought direction for payment of difference of gratuity amount of Rs.1,57,660/- along with interest thereon. The application was contested by the respondent. The defence of respondent Corporation before the Labour Court was that the petitioner had

obtained loan from some financial institutions which was outstanding, hence for making payment of the outstanding loan, the amount of gratuity has been deducted. It is the contention of petitioner that after hearing the respective parties, the Labour Court was pleased to allow the application of the petitioner and directed to pay difference of gratuity amount of Rs.1,57,659/- to petitioner, vide judgment and order dated 19/12/2017.

3. Respondent Corporation challenged the order passed by Labour Court, before the Industrial Court, Aurangabad, by filing Appeal (PGA) No.09/2018. The Industrial Court allowed the Appeal and quashed and set aside the order dated 19/12/2017 passed by Labour Court, on the ground that the petitioner has given his consent on 05/05/2010, thereby authorising respondent to deduct the amount of Rs.74,312/- towards loan of Credit Co-operative Society.

4. It is the contention of petitioner that, at the time of retirement he was getting total salary of Rs.14,807/- including Rs.11,659/- basic salary and D.A. of Rs.3,148/-. Therefore, as per the provisions of Payment of Gratuity Act, 1972, he was entitled to receive Rs.2,64,818/- towards gratuity. However, amount of Rs.1,49,116/- has been deducted from his gratuity. In his affidavit before the Labour Court, he has categorically stated that, he had filed application addressed to the employer contending that he has

received less amount of gratuity than his entitlement. This averment in the affidavit has gone unchallenged and therefore, it was accepted by the Labour Court.

5. The respondent Corporation, has examined witness No.2 Kishor Ramchandra Battise at Exhibit-C-12, who has given break-up of the amount which was deducted from his gratuity which is as under:

- a) Credit Co-operative Society Ltd. - Rs.74,312/-
- b) State Road Transport Co-op. Bank - Rs.23,219/-
- c) 76 days excess leave availed by applicant - Rs.48,085/-
- d) Festival Advance - Rs.500/-
- e) Damages & loss caused to the corporation - Rs.3,000/-

6. In the cross-examination of the witness of employer, he has admitted that in case if the amount is required to be deducted from gratuity, in that situation written information is required to be given to employee and he is not sure whether such intimation was given to the applicant.

7. It is also observed that during the entire examination-in-chief he has never stated that written information in respect of the deduction from the gratuity amount, was given to the applicant before deduction of was made.

8. Witness Sanjay Panditrao Aadhav had deposed at Exhibit-C-16 that petitioner had obtained loan from the Credit Co-

operative Society and for that recovery a claim was filed before Deputy Registrar of Co-operative Society, and as per his direction loan amount was deducted from the gratuity payable to applicant.

9. Upon categorical admission given by witnesses, it was observed by the Labour Court, that petitioner was not given any intimation about total deduction to be made from the gratuity amount. Since he did not receive intimation he has obtained the information under Right to Information Act and only after that he has filed the claim. Therefore, in view of the observation that petitioner was entitled to receive gratuity of Rs.2,64,818/-, the Labour Court, Aurangabad, vide order dated 19/12/2017, directed the respondent Corporation to pay the difference of gratuity of Rs.1,57,659/- to petitioner. The said order is challenged before the Industrial Court, Aurangabad, by the employer of petitioner, in P.G.A. Appeal No.09/2018, which was decided vide impugned order dated 12/12/2019.

10. The Industrial Court in it's order observed that by consent letter dated 05/05/2010 petitioner has authorized respondent to deduct amount of Rs.74,312/- towards loan of Credit Co-operative Society, Ltd., which is admitted by the petitioner in his cross-examination. Hence, the amount deducted is very much legal. So far as rest of the deductions towards 76 days excess leave, festival advance and damages and loss is concerned, the applicant

has not pointed out any illegality in its deduction. Thus, it has been held that, deductions have been rightly made by the employer and the appeal is allowed thereby quashing and setting aside order dated 19/12/2017 passed by the Labour Court.

11. I have gone through the order passed by Labour Court as well as Industrial Court and after hearing learned advocates for the respective parties, it transpires that total amount which has to be received by petitioner towards gratuity is Rs.2,64,818/- and the deductions have been made to the tune of Rs.1,49,116/-.

12. In the present case, it is an admitted position that no intimation has been given to the employer regarding deduction to be made from the amount of gratuity. Though petitioner has admitted that he has authorised to deduct Rs.74,312/- towards the loan of Credit Cooperative Society, however, the break up given by employer shows that amount of Rs.23,219/- has been deducted towards State Road Transport Cooperative Bank, Rs.48,085/- has been deducted towards excess leaves availed by petitioner, Rs.500 towards festival advance and Rs.3,000/- towards damage and loss caused to corporation. So far as the deductions as stated above, there is no intimation or notice given to the petitioner that these amounts will be deducted from his gratuity. Neither Labour court, nor Industrial court, Aurangabad, has taken into consideration the provisions of the Payment Of Gratuity (Maharashtra) Rules, 1972 .

13. Since the subject matter of grievance of the petitioner is regarding payment of gratuity, the rules made in that behalf are relevant for deciding deductions to be made from the amount of gratuity payable to petitioner. Rule 7 of the Payment of Gratuity (Maharashtra) Rules, 1972, provides that employee who is eligible for payment of gratuity under the Act has to make application to the employer in Form-I, providing details about his legal heirs, name and other details as has been provided in Form-I. Rule 8 also provides that on receiving application as provided under Rule 7 for payment of gratuity, if claim of gratuity is not found admissible, notice in Form-M is required to be issued to the employee, nominee or legal heir, as the case maybe, specifying the reasons why claim for gratuity is not considered admissible. Sub-clause (4) of Rule 8 further provides that, if claim of gratuity of employee is found inadmissible, the notice in Form-M shall be served on the applicant either by personal service after taking receipt or by registered post with acknowledgment due.

14. Considering the admissions given by witnesses of employer, it is evident that the rules in this regard have not been followed by the employer. It is on the basis of admissions given by witnesses, the deficit amount of gratuity was directed to be released in favour of petitioner. The Industrial Court based on the consent letter of petitioner authorising respondent to deduct

amount of Rs.74,312/-, has allowed the appeal of respondent. Both the Courts have not gone into admissibility of amounts of the employee and its bifurcation. Even the procedure prescribed for making payment of gratuity has been totally ignored by both the Courts below. While deciding the claim of employee under the Payment of Gratuity Act, the procedure is prescribed in the Rules itself. Therefore, without ascertaining whether procedure prescribed has been followed, both the Courts proceeded and passed orders on the admissions given in oral evidence and written evidence in the form of consent letter and passed the orders, which is not sustainable since the appropriate provisions of law have not been followed or even discussed.

15. Hence, in my opinion, amount of admissibility of gratuity to the petitioner can be decided only after the due procedure of law has been followed by giving intimation to the petitioner about deductions that are to be made and after receiving his explanation to the same. Only after receiving the explanation on each of the deductions which the authority propose to make while making final payment, the claim of petitioner for payment of gratuity can be decided.

16. In that view of the matter, impugned order 12/12/2019, passed by the Industrial Court, Aurangabad, as well as the order dated 19/12/2017, passed by the Labour Court, Aurangabad, is

quashed and set aside and the matter is remanded back to the Labour Court, Aurangabad. It is directed that the procedure envisaged under Rules 7 and 8 of the Payment Of Gratuity (Maharashtra) Rules, 1972, should be followed and thereafter amount of gratuity payable to petitioner by employer shall be decided. This exercise should be completed preferable within a period of three months from the receipt of this order. Writ petition is accordingly disposed of.

(MANJUSHA DESHPANDE, J.)