Received on : 04/01/2018.
Registered on : 20/12/2018.
Decided on : 09/08/2018.
Duration : Y. M. D.
00 06 29

Exh.

BEFORE THE CONTROLLING AUTHORITY, UNDER PAYMENTS OF GRATUITY ACT, LABOUR COURT, AT AKOLA.
(Presided over by Sangram S. Shinde)

Application PGA. No. 01/2018.
CNR-MHLC30-000006-2018.

Suresh Motiram Sangale,
Age:- 58 years, **Occ.** Reitred,
R/o. A/P. Agar,
Tq. and Dist: Akola. ------ **APPLICANT.**

Versus

Divisional Controller,
Maharashtra State Road
Transport Corporation,
Division Akola, Akola. ------ **NON - APPLICANT.**

CORAM :- **Shri. S. S. Shinde, Judge.**

APPEARANCES :- **Shri. N. M. Mankar, Rep. For Applicant.**
Shri. H. M. Ninale, Adv., for Non-applicant.

: J U D G E M E N T :
(Delivered on 09/08/2018)

Application for claiming the gratuity amount under provisions of the Payments of Gratuity Act, 1972.

01] This is an application for payment of gratuity amount against non-applicant under Payments of Gratuity Act, 1972 (In short P. G. Act) for gratuity.

In briefs of facts of case:

02] It is the contention of the applicant that he was working with non-applicant as a Conductor initially since 07/07/1980 and subsequently as a Traffic Controller further, he is retired on 30/06/2017 vide order bearing No. 196/2017, dated 27/04/2017. It is his further contention that his last drawn basic was Rs. 15,317/- and D. A. Rs. 19,146/- total amounting to Rs. 34,613/- and at the time of retirement non-applicant has paid him an amount of Rs. 6,58,978/- towards gratuity. It is his further contention that he has worked for 36 years, 11 months and 23 days, therefore, he is entitled for gratuity for 37, however, non-applicant has paid less gratuity for 4 years amounting to Rs. 79,876/- (Rs. 34,613 / 26 x 15 x 4 = 79,876). It is his further contention that he had sent notice dated 20/12/2017 to non-applicant and demanded remaining gratuity, however, non-applicant failed to pay said amount. It is his further contention that non-applicant has not paid said amount within stipulated period and therefore, he is entitled for interest at the rate of 10% per annum. Hence, application may be allowed.

03] Non-applicant has appeared and filed their reply vide Exh. C/3 and denied all adverse allegations. It is their contention that application is not tenable and applicant has suppressed the facts. It is their further contention that as per Service Book record the applicant has joined the service w.e.f. 07/07/1980 as a Conductor and thereafter, he was appointed as a Traffic Conductor in Akola Depot. It is their further contention that date of birth of applicant is 01/07/1959 and he has completed 58 years of age on 01/07/2017, therefore, he is retired w.e.f. 30/06/2017. It is their contention that it is not denied that they have paid gratuity of Rs. 6,58,978/-. It is denied that they have paid less gratuity for 4 years amounting to Rs. 79,876/- along with interest as prayed. It is their contention that applicant was retired on 30/06/2017 and has completed 33 years of service. It is their further contention applicant has not worked for 240 days in the years 01/07/1998 to 30/06/1999, 01/07/1999 to 30/06/2000, 01/07/2000 to 30/06/2001 and 01/07/2002 to 30/06/2003. It is their further contention that applicant has not worked for 240 days in those years. It is their further contention that therefore, applicant is not entitled for remaining gratuity as prayed. Hence, application may be rejected.

04] In view of the above said facts and pleadings of the applicant and non-applicant, following Issues are framed vide Exh. O/2, which arises for my consideration and I have given my findings to each of them with reasons as stated below.

Sr. No.	**Issues**	**Findings**
1	Does applicant prove that non-applicant has paid less gratuity as contended?	**In affirmative.**
2	Does applicant is entitled for relief as claimed?	**In affirmative.**
3	What order. ?	**As per final order.**

REASON

05] Applicant in order to support his contention he has filed his evidence on affidavit at Exh. U/6. He relied on retirement order dated 29/04/2017 at Exh. U/7, Gratuity calculation sheet at Exh. U/8 and notice dated 20/12/2017 at Exh. U/9. He closed his evidence vide pursis Exh. U/10. Non-applicant in their defence has filed evidence on affidavit of Kisan Dagduji Palladwar at Exh. C/5. They closed their evidence vide pursis Exh. C/6.

As to the Issues Nos. 1 to 3 :-

06] It is argued on behalf of the applicant that he was appointed on 07/07/1980 and retired on 30/06/2017 and to support his contention, he has filed copy of retirement order and gratuity calculation sheet at Exh. U/7 and U/8 respectively. It is further argued that his last drawn salary was Rs. 34,613/- per month. It is further argued that he has continuously worked for 36 years, however, non-applicant has deducted 4 years service from same as applicant has not completed 240 days in said four years. It is further argued that during cross-examination Kisan, witness of the non-applicant has stated that he has not filed copy of order of said four years. It is further argued that he has received Rs. 6,58,978/- towards gratuity. It is further argued that he is entitled for remaining gratuity of Rs. 79,876/- for said four years. It is further argued that he had given application dated 27/12/2017 at Exh. U/9 to non-applicant, however, they have failed to pay remaining gratuity. He relied on ratio laid down in **General Manager, U.P. State Cement Corporation Limited, Dalla -vs- Smt. Singharidevi and others**, reported in **1998(80)-FLR-845**, wherein Hon'ble Allahabad High Court observed that, *"If a person is paid on monthly basis, it is not possible to afford that he was employed on daily wage basis. If person is employed on monthly basis then the normal presumption is that he is also entitled to get leave as that of regular employee. Therefore, the period of leave should have been included as has been provided in the Payment of Gratuity Act."*

It is further argued that therefore, he is entitled for remaining gratuity along with interest at the rate of 10% per annum on gratuity amount till it's realization. Hence, application may be allowed as prayed.

07] On the other hand, it is argued on behalf of the non-applicant that applicant has failed to prove that he was working with non-applicant since 07/07/1980 continuously. It is further argued that though applicant has worked for 30 years, he has not completed 240 days from 01/07/1998 to 30/06/1999, 01/07/1999 to 30/06/2000, 01/07/2000 to 30/06/2001 and 01/07/2002 to 30/06/2003. It is further argued that therefore, applicant is not entitled for gratuity for said period. It is further argued that they have paid to applicant Rs. 6,58,978/- towards gratuity and same is received by him. It is further argued that applicant has failed to prove that he is entitled for remaining gratuity as claimed along with interest. Hence, application may be rejected.

08] Perused application, written statement, oral and documentary evidence on record. Heard both the parties. In view of pleadings, it appears that admitted facts are that applicant was serving from 07/07/1980 and retired on 30/06/2017 vide retirement order at Exh. U/7 and last drawn salary was

Rs. 34,613/-. It is also not disputed that applicant has received an amount of Rs. 6,58,978/- towards gratuity. It is also not disputed that four years gratuity has not been paid to the applicant. It is also evident from Gratuity calculation sheet at Exh. U/8. It appears that only dispute is four years less gratuity is paid to the applicant. It is pertinent to note that applicant has pleaded and also stated in his evidence that he has worked for 36 years, 11 months and 23 days continuously. On perusing written statement of non-applicant at Exh. C/3, it appears that in para 4, it is pleaded that applicant has worked for 33 years and even, on perusing calculation sheet of gratuity at Exh. U/8, it appears that applicant has worked for 36 years, 11 months and 23 days. However, it is the defence of the non-applicant that applicant has not completed 240 days in the years 01/07/1998 to 30/06/1999, 01/07/1999 to 30/06/2000, 01/07/2000 to 30/06/2001 and 01/07/2002 to 30/06/2003. It is pertinent to note that applicant has specifically denied the said fact during his cross-examination. Therefore, it was the duty of the non-applicant to prove that applicant was absent in the said years and he has not completed 240 days.

09] It appears that non-applicant has filed evidence of Kisan Palladwar at Exh. C/5, who has stated in his evidence that applicant had not worked and not completed 240 days from 01/07/1998 to 30/06/1999, 01/07/1999 to 30/06/2000, 01/07/2000 to 30/06/2001 and 01/07/2002 to 30/06/2003, however, during cross-examination, he has stated that he has not filed copy of order for the said period. Further, non-applicant has not substantiated their version by producing cogent evidence on record. On perusing Gratuity calculation Bill at Exh. U/8, it appears that leave of said period has been treated as Leave Without Pay. As per Section 2-A (1) of the

P. G. Act, *'An employee shall be said to be in continuous service for the period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lockout or cessation of work, not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this act.'*

10] I would like to rely on ratio laid down in **Bangalore Metropolitan Transport Corporation, Bangalore -vs- Deputy Labour Commissioner and the Appellate Authority, Under the Payment of Gratuity Act, Bangalore, Region-1 and others**, reported in **2009-II-CLR-788**, whereon Hon'ble Karnataka High Court has observed that,

> *"Every period of break in continuous service, which does not qualify for payment of gratuity has to be evidence by express order to that effect, passed in accordance with the standing orders or rules governing employees, as provided in Section 2-A of the Act. Requirement deemed mandatory exclusion of periods of absence as brakes in service, on the basis of attendance register and leave account extract in absence of express order passed by authority, to treat period as break in service, is to be held illegal."*

11] Admittedly, there is no nothing on record to show that leave in the period from 01/07/1998 to 30/06/1999, 01/07/1999 to 30/06/2000, 01/07/2000 to 30/06/2001 and 01/07/2002 to 30/06/2003, has been treated as break in service. On perusing calculation sheet of gratuity at Exh. U/8, it appears that date of appointment of applicant is mentioned that 07/07/1987 and he is retired on 30/06/2017, thus his total service period comes to 36 years 11 months and 23 days. *As per section 4 (2) for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of last drawn by the employee concerned.* Therefore, considering the fact that applicant has worked more than six months in his last year, therefore, he is entitled for gratuity for 37 years. Therefore, I am of the view that applicant has proved that he has continuously worked for 37 years. As discussed above, last drawn salary of the applicant was Rs. 34,613/- per month and it is not disputed. Even, on perusing calculation sheet of gratuity at Exh. U/8, it appears that even, non-applicant has calculated gratuity amount on the same last drawn wages of the applicant. Therefore, applicant is entitled for total gratuity of Rs. 7,38,854/- (34,613 / 26 x 15 x 37 = 7,38,854.42). As per the contention of applicant, he has received an amount of Rs. 6,58,978- towards gratuity, therefore, he is entitled for remaining amount of gratuity Rs. 79,876/- (738854 – 6,58,978 = 79,876).

12] It appears from evidence of the applicant that he has made an application dated 27/12/2017 at Exh. U/9 to the non-applicant to pay remaining gratuity amount. On perusing said application, it appears that it is received by the non-applicant. It is pertinent to note that despite of the receipt of the said application non-applicant has neither paid remaining amount of gratuity to the applicant nor deposited with Controlling Authority. As per the provisions of P. G. Act employer has to pay amount of gratuity within 30 days from the date of retirement to the employee. In the present case, applicant is retired on 30/06/2017 therefore, it was duty of the non-applicant to pay whole gratuity amount to the applicant on or before 31/07/2017. It appears from record that non-applicant has paid part amount of gratuity. As per Section 7(3-A) of P. G. Act, if employer withholds amount of gratuity without any default on the part of the employee then he is liable to pay simple interest on the delayed payment. As per Government Notification 10 % interest is applicable to the gratuity. Therefore, applicant is entitled for interest @ 10 % on the remaining amount of gratuity from 01/08/2017 till its realization. Further, on perusing material on evidence on record, it appears that applicant has proved his contention therefore, in view of ratio laid down in case laws cited supra, he is entitled for remaining gratuity. Hence, I answer issue Nos. 1 and 2 in affirmative and in answer to the issue No. 3, I proceed to pass the following order.

: ORDER :

01] Application is hereby allowed.

02] Non-applicant is directed to pay amount of Rs. 79,876/- towards remaining gratuity along with interest @ 10 % from 01/08/2017 till its actual realization to the applicant within 30 days from the date of order.

03] Notice as per 'Form R' be issued to non-applicant in view of provisions of Payment of Gratuity (Maharashtra) Rules, 1972.

04] No order as to costs.

(S. S. Shinde)
Controlling Authority Under P.G. Act &
Judge, Labour Court, Akola.

Date :- 09/08/2018.

Argued on : 09/08/2018.
Judgment dictated on : 09/08/2018.
Judgment transcribed on : 09/08/2018.
Judgment checked & signed on : 09/08/2018.

checked