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

WRIT PETITION NO.10678 OF 2018

Municipal Corporation of
Greater Mumbai, ... Petitioner
V/s.
Kasim Ismail Choughule ... Respondent.

Ms. Dhruti Kapadia with Mr. Vinod Mahadik, for the
Petitioner.
Ms. Vidula S. Patil, for respondent

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th NOVEMBER, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner and respondent.
- 2] Admit.
- 3] With the consent of learned counsel for both the parties,
petition is taken up for final hearing at the stage of admission.
- 4] The only question raised for consideration, in this Writ
Petition is, whether the payment of gratuity payable to the retired
employee can be withheld, pending Criminal Case against him in the
Court.
- 5] Both the Labour Court and Industrial Court have
answered this point in negative and in my considered opinion rightly
so. The provisions of Section 4(6) of the Payment of Gratuity Act,

reads as follows :-

“4(6) Notwithstanding anything contained in sub section (I):

(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee [may be wholly or partially forfeited].

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part; or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment”.

6] It is nowhere stated therein that if any Criminal Case is pending against the employee, the payment of gratuity should be withheld till that Criminal Case is decided.

7] In the present case, even accepting that respondent was compulsorily retired from the service, mere pendency of Criminal Case against him for the charges levelled in that respect will not be a ground to deny the payment of gratuity to him as the provisions of

the Payment of Gratuity Act, are having far more supremacy over the other provisions or Employment Rules and Regulations.

8] In view thereof, Writ Petition holds no merit. Hence, stands dismissed.

9] As regards the exact amount of gratuity, both parties can decide the same properly.

10] Needless to state that this order will not act as a precedent.

[DR.SHALINI PHANSALKAR-JOSHI, J.]