IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9565 OF 2017

1. The Municipal Commissioner)
The Municipal Commissioner of)
Greater Mumbai, Mahapalika Buldg.)
Mahapalika Marg, Mumbai-400001)

2. The Education Officer)
The Education Department,)
Education Office Bldg.,)
The Municipal Corporation of)
Greater Mumbai, Opp. I.E.S. King)
George School, Matunga, Mumbai) **...Petitioners**

Vs.

Miss. Anita Digambar Jadhav)
Age: 34 years)
R/at Bldg. No. 6/874, Government)
Colony, Bandra (East),)
Mumbai – 400 051.) **...Respondent**

AND
WRIT PETITION NO. 5212 OF 2019

Municipal Corporation of Gr. Mumbai)
Office of the Education Department)
Municipal School Building,)
Hindu Colony, Dadar (E.))
Mumbai – 400 014.) **...Petitioner**

Vs.

Mrs. Anita Digambar Jadhav)
R/at Bldg. No. 6/874, Government)
Colony, Bandra (East),)
Mumbai – 400 051.) **...Respondent**

Mr. A. S. Peerzada with Mr. R. Y. Sirsikar for Petitioner/MCGM.
Shahin Kadar Sayed i/b. Mr. Suryakant Pise for Respondent.

CORAM : G.S. KULKARNI, J.
DATE : FEBRUARY 07, 2023

Oral Judgment :-

1. Rule on both the writ petitions. Respondent waives service. By consent of the parties, heard finally.

2. These are two writ petitions filed by the Municipal Corporation of Greater Mumbai (for short, **"MCGM"**). Writ Petition No. 9565 of 2017 pertains to a claim of the respondent for payment of the amount of the Provident Fund dues of Rs.3,66,240/-. Writ Petition No.5212 of 2019 pertains to the respondent's claim for an amount of Rs.1,06,841/- towards gratuity amount. The authorities below have allowed the said claims as payable to the respondent who is the niece of the deceased employee of the MCGM Smt. Ratnamala Sadashiv Salve.

Writ Petition No. 9565 of 2017

3. This writ petition assails an order dated 24 July, 2017 passed by the learned Presiding Officer, Sixth Labour Court, Mumbai on an application (IDA) No. 19 of 2015 filed by the respondent-Mrs. Anita Digambar Jadhav under Section 33-C(2) of the Industrial Disputes Act thereby claiming Provident Fund dues, which were payable to Ratnamala Sadashiv Salve (for short, "deceased employee"). The respondent claimed such amount in the capacity as the only surviving legal heir, being the niece of the deceased employee. In her application before the Labour Court, the respondent contended that her aunt (the deceased employee) was in the employment of the MCGM as a peon, who had retired from the service of the petitioner on 01 November, 2003. She expired on 22 January, 2013. The respondent contended that although about 10 years had lapsed after retirement of the deceased employee, the MCGM had not paid the Provident Fund dues which were amounting to Rs.3,66,240/-. It was the respondent's case that the deceased employee had submitted an affidavit to the MCGM inter-alia stating that she had no surviving member in her family and that the respondent being her niece was her only legal heir who was looking after her, hence all claims, amounts, insurance amount, pension amount as per rules of the MCGM be given to the respondent after her death. The contents of the affidavit as submitted to the MCGM are required to be noted which read thus:-

> "2. I am residing at the above mentioned address along with my niece namely Kum. Anita Digambar Jadhav. I have no issue, consequently said Kum. Anita Digambar Jadhav, is my alone one heir and she is looking after me.
>
> 3. Therefore all claims, amount, insurance amount, pension amount arrived as per Rules of the Mahanagar Palika may be given to my niece namely Kum. Anita Digambar Jadhav, after my death."

4. Additionally there was also a letter dated 10 October, 2012 addressed by the deceased employee to the Administrative Officer (Schools), F/South Ward, Mumbai, inter-alia stating that she had retired on 01 November, 2003. In this letter, she stated that her father expired on 17 December, 1975. She had hence made nomination in favour of her mother, who had also expired on 22 October, 2008. She further stated that after the death of her mother, she was staying with the respondent who was looking after her. She further stated that she was a divorcee and did not have any issue and therefore, after her death, all the amounts entitled to her, namely, the insurance, pension amounts be paid to the respondent. The contents of the said letter are required to be noted which read thus:-

> " I, the undersigned Applicant, Smt. Ratnamala Sadashiv Salve, submit you the following statement that I was working on the Post of Peon in the Education Department of the Greater Mumbai Municipal Corporation. I have retired on 1.11.2003 due to age criteria. My employee code number is 2896822. Similarly, I myself was looking after my mother. But, after retirement, my mother has also died on 22.10.2008. Before the same, nomination was made in the name of my mother. After the death of my mother, I am staying with my niece Anita Digambar Jadhav and it is she who is looking after my entire maintenance. Similarly, I am a divorcee and I do not have any children.
>
> Therefore, after my death, all the claims amounts, insurance amount, pension amount being given as per rules of the Municipal Corporation may be given to my niece namely Anita Digambar Jadhav and I do not have any objection in this regard and I am willingly giving this application in writing."

5. Thus, on the backdrop that the deceased employee had no other legal heir to claim the Provident Fund amount other than the respondent and/or she being the only lawful claimant for the said amounts payable to the deceased employee, she approached the Labour Court invoking the provisions of Section 33-C(2) of the Industrial Dispute Act. In adjudicating the claim of the respondent, the learned Labour Judge framed the following three issues with the respective findings thereon:-

	ISSUES	FINDINGS
1.	Whether the application is maintainable ?	In the affirmative
2.	If yes, does the Applicant prove that she has got an existing right and entitlement to receive the amount as claimed ?	In the affirmative
3.	Whether the Applicant is entitled to get the interest @ 18% p.a. ?	In the negative
4.	What amount is due ?	Rs. 3,66,240/-
5.	What final order ?	Application is partly allowed.

6. Insofar as issue no.2 is concerned, considering the oral as also the documentary evidence on record, the learned Labour Judge observed that the respondent was the only legal heir of the deceased employee. The Labour Judge referred to the adjudication of the Court in an application (PGA) No. 17 of 2015 which pertained to the claim of the respondent for payment of the gratuity amount, and observed that in the adjudication of the said proceedings, it was held that the respondent was the only nominee and legal heir of the deceased employee-Ratnamala Salve. The observations in that regard are required to be noted which read thus:-

> "15. In Appl (PGA) No. 17/2015, between the same parties it has been observed that the Applicant was the nominee and a legal heir of the deceased Ratnamala Salve. It has not been shown by the Opponents that a separate nomination was required for getting the amount of P.F. Hence, I am of the opinion that the Applicant can be said to have an existing right and is therefore entitled to receive the amount of P.F. payable to the deceased employee Ratnamala Salve being a nominee and legal heir. The insistence of the Opponents on succession certificate is not proper as gratuity or provident fund are not included in 'estate' or 'property'. Therefore, the nominee/legal heir cannot be said to be barred from claiming any such benefit. Moreover, there is no such inter-se dispute between the legal heirs of the deceased Ratnamala Salve. Otherwise also, the court cannot decide the said dispute between the legal heirs. It cannot be forgotten that the nominee has merely a right to receive the amount on behalf of the deceased employee and if there are other legal heirs / class – 1 heirs of the deceased employee, their rights will not be extinguished. Hence, I answer issue Nos.1 & 2 in the affirmative."

7. Accordingly, the Labour Judge passed the following order in favour of the respondent :-

> " **ORDER**
>
> 1. The Application is partly allowed.
>
> 2. It is hereby declared that the Application is entitled to recover an amount of Rs.3,66,240/- from the Opponents towards P.F. payable to the deceased Ratnamala Salve.
>
> 3. The Respondents are directed to pay an amount of Rs.3,66,240/- within 30 days from the date of the order.
>
> 4. If the Opponents fail to pay the said amount within 30 days, the Appropriate Government shall recover the same as per the provisions of law.
>
> 5. The parties shall bear their own costs."

8. It is the above order which is subject matter of challenge by the MCGM in the present proceedings.

Writ Petition No. 5212 of 2019

9. In so far as this writ petition is concerned, it assails an order dated 24 July, 2017 passed by the learned Labour Judge whereby the claim as made by the respondent for the amount of gratuity under the Payment of Gratuity Act, 1972, has been allowed directing the petitioner-MCGM to pay an amount of Rs. 1,06,841/- to the respondent towards gratuity. The operative part of the order required to be noted which reads thus:-

> " **ORDER**
>
> 1. Application is partly allowed.
>
> 2. The respondents are directed to pay an amount of Rs.1,06,841/- within 60 days from the date of the order.
>
> 3. If the opponents fail to pay or deposit the said amount with the office of the Controlling Authority, they will have to pay interest @ 10% p.a. from the date of the order till the realization.
>
> 4. The parties shall bear their own costs."

10. The above order passed by the labour Judge was challenged in an appeal filed by the petitioners before the Industrial Court as permissible under Section 7(7) of the Payment of Gratuity Act, 1972, inter alia contending that the respondent was not entitled to claim the amount of gratuity as there was no valid nomination. The Industrial Court by the impugned order dated 20 December, 2018, has dismissed the appeal filed by the petitioners confirming the order dated 24 July, 2017 passed by the Labour Judge on Application (PGA) No. 17 of 2015.

11. On 03 May, 2019, a Coordinate Bench of this Court had passed an order on the present proceedings thereby observing that the respondent was already permitted to withdraw the amount of Rs.1,06,841/- subject to the undertaking to repay the amount, in the event the writ petition is allowed. The respondent was permitted to withdraw the said amount as deposited with the Industrial Court is concerned.

12. Mr. Peerzada, learned counsel for the petitioners in assailing the orders subject matter of both the petitions, has limited submissions. His principal contention is that in so far as the payment of gratuity is concerned, considering the definition of 'Family' under Section 2(h) of the Payment of Gratuity Act, 1972, the respondent would not become entitled to make a claim for payment of gratuity. It is submitted that even if the deceased employee submitted certain documents which showed that the respondent was accepted to be the only legal heir by the deceased employee, the same were of no consequence. Mr. Peerzada has pointed out the observations of the Labour Court as also the Industrial Court to contend that the case as put up by the respondent ought not to be accepted considering the position in law. Mr. Peerzada has however fairly submitted that in all these years after the death of the deceased employee, no claim has been made by any person, claiming the said amounts.

13. On the other hand, Ms. Sayed, learned counsel for the respondent has supported the impugned orders. She submits that there was sufficient material on the record of the Labour Court as also the oral and documentary evidence to support the contention of the respondent that she is entitled in law to avail the amount of Gratuity as also the Provident Fund.

14. Having heard learned counsel for the parties, having perused both the impugned orders and the record, in my opinion, the contentions as urged on behalf of the petitioners cannot be accepted. In so far as the Provident Fund amount is concerned, it clearly appears from the record and as noted above, that the deceased employee not only in respect of the Provident Fund but also in respect of the Gratuity had submitted affidavits as also a letter to the MCGM which appears to be not in dispute. The respondent appears to be the only legal heir of the deceased employee as the mother and father of the deceased employee had passed away. The deceased employee was a divorcee, hence there was no possibility of a claim from her husband's side. The respondent was looking after the deceased employee and was maintaining her. There is no contrary material on record to indicate that the respondent was not the legal heir of the deceased employee and/or there was any other surviving legal heir of the deceased employee.

15. As Mr. Peerzada's contention is of the respondent not falling within the definition of "Family" as defined in Section 2(h) of the Payment of Gratuity Act, it would be relevant to note the said provision, which reads thus:-

> "2(h) "family" in relation to an employee, shall be deemed to consist of—
>
> (i) in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents [and the dependent parents of his wife and the widow] and children of his predeceased son, if any,
>
> (ii) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any; [***] Explanation.—Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him shall be deemed to be included in his family, and where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption, lawful, such child shall be deemed to be excluded from the family of the employee."

16. Although the definition of 'family' as defined under Section 2(h) of the Payment of Gratuity Act does not include niece of the deceased, however, in the facts and circumstances of the present case, only applicability of the said definition would not be the correct reading of the Payment of Gratuity Act. Section 6 of the Payment of Gratuity Act makes a provision for an employee to make a nomination including in a situation when an employee has no "family". Section 6 of the Payment of Gratuity

Act reads as under:-

> "**6. Nomination** -
>
> (1) Each employee, who has completed one year of service, shall make, within such time, in such form and in such manner, as may be prescribed, nomination for the purpose of the second proviso to sub-section (1) of section 4.
>
> (2) An employee may, in his nomination, distribute the amount of gratuity payable to him under this Act amongst more than one nominee.
>
> (3) If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family shall be void.
>
> (4) **If at the time of making a nomination the employee has no family, the nomination may be made in favour of any person or person** but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make within such time as may be prescribed, a fresh nomination in favour of one or more members of his family.
>
> (5) A nomination may, subject to the provisions of sub-sections (3) and (4), be modified by an employee at any time, after giving to his employer a written notice in such form and in such manner as may be prescribed, of his intention to do so.
>
> (6) If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a fresh nomination, in the prescribed form, in respect of such interest.
>
> (7) Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody."
>
> (emphasis supplied)

17. Further the Payment of Gratuity (Maharashtra) Rules, 1972 clearly makes a provision for nomination under Rule 6 to the effect that the nomination shall be in Form 'F' and is required to be submitted by an employee. Sub-rule (3) postulates a situation of an employee who has "no family" at the time of making a nomination to make a valid nomination in favour of any person if there is no family within the definition of Section 2(h) of the Act. This is in consonance with what has been provided for in Section 6 of the Payment of Gratuity Act.

18. As observed above, Form 'F' as prescribed by the Payment of Gratuity (Maharashtra) Rules, 1972 also recognizes that a valid nomination can be made in favour of any person, when in paragraph 3 it clearly provides for a declaration that the employee has no family within the meaning of clause (h) of Section 2 of the Payment of Gratuity Act, 1972. It would be appropriate to note the contents of Form 'F' which reads thus:-

" **FORM "F"**
(See sub rule (1) of Rule 6)
Nomination

To,
(Give here name or description of the
establishment with full address_
I, Shri/ Shrimati ……………………… (Name in full here)

whose particulars are given in the statement below, hereby nominate the person(s) mentioned below to receive the gratuity payable after my death as also the gratuity standing to my credit in the event of my death before that amount has become payable, or having become payable has not been paid and direct that the said amount of gratuity shall be paid in proportion indicated against the name(s) of the nominee(s).

2. I hereby certify that the person(s) nominated is/are member(s) of my family within the meaning of clause(h) of section 2 of the Payment of Gratuity Act, 1972.

3. **I hereby declare that I have no family within the meaning of clause (h) of Section 2 of the said Act.**

> 4. (a) My Father/ mother/ Parents is/are not dependent on me.
> (b) My husband's father/ mother Parents is/are not dependent on my husband.
>
> 5. I have excluded my husband from my family by a notice dated the ---------- to the controlling authority in terms of the proviso to clause (h) of Section 2 of the said Act.
>
> 6. Nomination made herein invalidates my previous nomination.
>
> (emphasis supplied)

19. Thus, considering the provisions of Section 6 of the Payment of Gratuity Act, 1972 read with Rule 6 of the Payment of Gratuity (Maharashtra) Rules, 1972 and Form 'F', the submission of Mr. Peerzada that only those persons who fall within the definition of 'Family' under Section 2(h) of the Payment of Gratuity Act would be entitled to the gratuity amount, cannot be accepted. It is clearly seen that although the Payment of Gratuity Act provides for the definition of "Family", however, there are independent and separate provisions made under the said Act providing for nomination to be made in favour of any person in the event there is no surviving member of the family as defined in Section 2(h). Also as noted above, the statutory Rules as noted above recognize this position. It was thus rightly observed by the Labour Court that Section 14 of the Payment of Gratuity Act also becomes relevant in the present context as it provides for an overriding effect, notwithstanding anything inconsistent therewith contained in any enactment other than the said Act or in any instrument or contract etc. For such reasons, the respondent in law was entitled to receive the gratuity amount being duly nominated by the deceased employee and by virtue of documents which appear to be not disputed. Mr. Peerzada's contention in regard to the defect in the nomination as made by the deceased employee also cannot be accepted for the reason that such submission would be contrary to the findings of facts recorded by the Labour Court. This Court would not re-appreciate evidence in exercise of its writ jurisdiction.

20. Insofar as the impugned orders on payment of the provident fund amounts are concerned, the respondent had sufficiently proved her case in her application filed under Section 33C(2) of the Industrial Disputes Act being entitled to the amounts of the provident fund, as the only legal heir of the deceased employee. The findings as recorded by the Courts below also cannot be said to be in any manner perverse or contrary to law. In fact, it is clearly seen that the gratuity claim as also the Provident Fund was adjudicated by the Labour Court by two independent orders passed on 24 July, 2017. There are concurrent findings of fact against the MCGM firstly of the Labour Court as confirmed by the Industrial Court, holding that the respondent is entitled to the amount of provident fund. Moreover, the contention as urged on behalf of MCGM that a Succession Certificate ought to have been produced, has been rightly rejected by the Courts below. There is neither any perversity or any illegality in the findings as recorded by the Court below.

21. In the light of the above discussion, both the petitions are devoid of merits. The petitions are accordingly rejected. No costs.

22. The Municipal Corporation is directed to release the provident fund amount in favour of the respondent within a period of four weeks from today, if already not released.

[G.S. KULKARNI, J.]