

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3045 of 2024**

Anwar Hussain Shaikh S/o. Hussain Shaikh ... Petitioner

versus

Sanjeev Sitaram Jadhav Respondent

Mrs. Chhaya S. Rokade, Advocate for the Petitioner.

Ms. Sayli Samir Wani, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.

DATE : 7th AUGUST, 2024.

P.C. :

1. This petition takes exception to the order passed by the authority under the Payment of Gratuity Act in Application (PGA) No. 149 of 2020 as well as Appeal (PGA) No.11 of 2022.

2. Undisputedly, the petitioner is workman and on his resignation from service, he is entitled for payment of gratuity. He, therefore, preferred an application before the authority under the Act for seeking gratuity. His application came to be partly allowed. He being aggrieved with the quantum of the gratuity, preferred appeal before the appellate authority unsuccessfully. Hence, this petition.

3. Learned counsel for the petitioner had sought to argue that payslip of the petitioner indicates that other than basic salary, city compensatory allowance (C.C.A.) is shown and same is equivalent to the dearness allowance (D.A.) and, as such, the authorities below ought to

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have considered the said amount as dearness allowance for computation of gratuity. It is thus prayed that the proceeding be relegated back to the authority for enhancement of gratuity.

4. Learned counsel for the respondent opposed the said contention essentially relying upon the fact that the petitioner had been given opportunity of hearing and the orders impugned are passed after considering his contentions and that no case is sought to be made out there about C.C.A. to be considered as D.A.. She opposed the remand of the application to the competent authority on the ground of want of prayer in the petition. Reliance is placed on the judgment of the Hon'ble Supreme Court in Hameed (D) by Lrs. and ors. Versus Kummottummal Kunhi P.P.Amma (D) by Lrs. and ors. reported in 2006 SCC Online SC 730 and judgments of Madras High Court in Arockiaprakash vs. Rangasamy 2007 (5) MLJ 46 and Kerala High Court in Krishnan A. versus the Federal Bank Ltd. and ors. In 2014 SCC Online Ker 9752 to oppose any order of remand. It is her submission that if the order of remand is passed, prejudice and irreparable loss will be caused to the respondent, as the liability which has been denied would be fasten.

5. There cannot be any dispute made with regard to the proposition sought to be canvassed on behalf of the respondent that ordinarily an order of remand cannot be passed where a party is given sufficient opportunity of hearing before the court below. It is however

pertinent to note that the petitioner herein is seeking his right to claim gratuity. There is prima facie evidence on record to indicate that the city compensatory allowance was paid to the petitioner. It seems that owing to the mistake of the advocate appearing on his behalf, this issue was not raised and contested before the authority that the dearness allowance and city compensatory allowance are equivalent and hence said allowances can be considered for computation of gratuity.

6. The Payment of Gratuity Act, 1972 aims at helping workman financially by payment of gratuity amount after his retirement or resignation from service. Section 4(3) of the Act provides that the amount of gratuity cannot be less than entitlement of the workman. Sub-section (5) further provides that nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer. All these provisions abundantly show that it is a beneficial legislation and that the gratuity payable to the employee cannot be denied on technicalities. Having regard to the intention of Payment of Gratuity Act and it being welfare legislation, the technicalities shall not prevail over the justice. This Court finds that if an opportunity is given to the petitioner to substantiate his contention before the competent authority under the Act, no prejudice will cause to the respondent as it would always be open to the respondent to oppose the said contention.

7. Since above issue is raised in this petition for the first time, this Court does not find it appropriate to go into the facts and record finding thereon. However, for want of challenge by respondent to grant of claim of gratuity by passing impugned orders, the said orders are mentioned. The Application (PGA) No.149 of 2020 is relegated back to the Authority under the Act for determination of the issue now sought to be raised. The Authority the decide the case expeditiously. It would be open for the parties to raise all contentions before the said authority.

8. Needless to say that the order of payment of gratuity already passed would not be affected adversely by the said exercise.

9. In view of above observations, the writ petition stands disposed of.

(R. M. JOSHI, J.)