

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

WRIT PETITION NO.3927 OF 2024

The Commissioner/Administrator
Kolhapur Municipal Corporation
V/S

....Petitioner

Bapusaheb Shivaji Gavali

....Respondent

Mr. Sagar A. Mane *for the Petitioner.*

Ms. Pavitra Manesh *for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATE : 09 DECEMBER 2024.

P.C.:

1. The Petition challenges the judgment and order dated 6 January 2023 passed by the Controlling Authority under the Payment of Gratuity Act & Judge, allowing the Application (PGA) No.37 of 2021 and directing the Petitioner-Municipal Corporation to pay to the Respondent difference in amount of gratuity of Rs.2,11,460/- alongwith interest at the rate of 10% per annum.

2. Apart from the very issue of maintainability of the present Petition on account of non-exhaustion of statutory remedy of Appeal before the Appellate Authority, the issue in the present Petition appears to be squarely covered by order dated 22 October 2024 passed by this Court in Writ Petition No.13695 of

2022 (The Commissioner, Kolhapur Municipal Corporation vs. Shahaji Rajaram Sawant). The order dated 22 October 2024 passed by this Court reads thus:

“1) These Petitions are filed by Kolhapur Municipal Corporation assailing the orders passed by the Controlling Authority under the Payment of Gratuity Act, 1972 and Judge Labour Court, Kolhapur allowing the Applications filed by Respondent-Employees and directing payment of balance amount of gratuity to them together with interest @10% p.a.

2) Orders passed by the Controlling Authority are appellable under Section 7(7) of the Payment of Gratuity Act before the Appellate Authority-cum-Industrial Court. However, the Petitioner-Municipal Corporation has failed to prefer appeals against the orders passed by the Controlling Authority and have directly filed the present Petitions before this Court. In the light of availability of alternate and equally efficacious remedy of filing a statutory appeal, this Court would be in loathe in entertaining petitions directly filed before this Court.

3) Mr. Mane would express the difficulty in preferring appeals against the orders passed by the Controlling Authority submitting that the maximum permissible period for filing of Appeal is 60+60-120 days which has already expired. I am afraid this cannot be a reason for directly entertaining Petitions by this Court challenging the orders passed by the Controlling Authority.

4) It also appears that the Petitioner-Municipal Corporation was negligent in defending the applications before Controlling Authority as it did not file written statement opposing the applications.

5) If merits of the case are to be considered ignoring the objection of maintainability, it is an admitted position that the Petitioner-Municipal Corporation has not secured exemption from provisions of Payment of Gratuity Act.

6) Mr. Mane would highlight the position that the Municipal Corporation has made provisions of Maharashtra Civil Services (Pension) Rules applicable to its employees and that the Corporation has already paid pension as well as gratuity to its employees. He would submit that employees cannot seek double payment of gratuity. However, it is settled position of law that if

exemption from the provisions of Payment of Gratuity Act is not secured, the employer would be under obligation to pay gratuity to the employees as per provisions of the Act. What is done by the Controlling Authority is not directing double payment of Gratuity. It has taken into consideration, the amount of gratuity already received by the employees at the time of their retirement under the provisions of MCS Pension Rules. The Controlling Authority has merely directed payment of difference in the amount of gratuity by deducting the amount of gratuity already received. Considering this position, the Petitions otherwise appear to be devoid of merits.

7) Mr. Mane would submit that the Controlling Authority has erred in awarding interest @10% p.a. though the employees concerned woke out of their deep slumber and filed applications for payment of difference in amount of gratuity after several years of their retirement. In this connection case of Mr. Gajanan Dadoba Powar (Writ Petition No.13702 of 2024) is highlighted wherein he retired from service on 30 June 2004 and received gratuity of Rs.1,42,725/-. He approached the Controlling Authority by filing application for difference in the amount of gratuity on 16 January 2020 i.e. after a period of 16 long years. Mr. Mane would submit that in the light of such situation, the Controlling Authority could not have penalized the Petitioner-Municipal Corporation by directing payment of interest in respect of the period where the employee was found to be sleeping over his rights. However, if the provisions of Section 7(2) of the Payment of Gratuity Act are taken into consideration, it is the obligatory on the part of the employer to determine the amount of gratuity and give notice in writing to the employee and to the Controlling Authority specifying the amount of gratuity so payable. Therefore, filing of an application/notice by the employee is not a *sine qua non* for fastening the liability towards payment of gratuity on the employer. In the light of non-availability of exemption to the Petitioner-Municipal Corporation from the provisions of Payment of Gratuity Act, it was its duty to compute the difference in the amount of gratuity and pay the same to the employee concerned at the time of his retirement.

8) In that view of the matter, the Controlling Authority cannot really be faulted in awarding interest from the date of retirement till the date of actual payment of difference of gratuity.

9) Mr. Mane would further highlight the position that in the recovery proceedings, the employees have claimed compound rate of interest. In my view, considering the peculiar facts and circumstances of the present case, some solace is required to be provided to the Petitioner-Municipal Corporation so far as payment of compound rate of interest is concerned. It appears that the Petitioner-Municipal Corporation could not take decision either to pay or determine the amount awarded by the Controlling Authority on account of the fact that the concerned employees have already drawn some amount of gratuity.

10) In that view of the matter, the Petitioner-Municipal Corporation cannot be saddled with the liability to pay compound interest to the employees. However, at the same time, the Petitioner-Municipal Corporation cannot take its own sweet time in making payments to the employees concerned. Therefore, in the event the Petitioner-Municipal Corporation makes payment as directed by the Controlling Authority to the concerned employees within a period of 4 months from today, the Petitioner-Municipal Corporation would be relieved from liability to pay compound interest.

11) Writ Petitions are accordingly dismissed.

12) It is however clarified that in the event of Petitioner-Municipal Corporation paying to the employees the amounts determined by the Controlling Authority within a period of 4 months from today they would not be liable to pay compound interest. However, if payments are not made within a period of 4 months as directed, the employees would be at liberty to get the orders executed through recovery certificates in accordance with law.”

3. In my view, the issue involved in the present Petition is squarely covered by the judgment in *Shahaji Rajaram Sawant* (supra). I therefore do not see any reason why this Court would take a different view than the one already taken in *Shahaji Rajaram Sawant* (supra). Writ Petition is accordingly **rejected**.