

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

WRIT PETITION NO. 17591 OF 2024

J.J. Magdum Trust Throu. Its
Chairman Vijay Jaypal Magdum **... Petitioner**
Versus
Shankar Chanbasappa Chilalshetti And Anr **... Respondents**

AND

WRIT PETITION NO. 17592 OF 2024

J.J. Magdum Trust Throu. Its
Chairman Vijay Jaypal Magdum **... Petitioner**
Versus
Shiviyogi Chanbasappa Karvekar And Anr **... Respondents**

AND

WRIT PETITION NO. 17593 OF 2024

J.J. Magdum Trust Throu. Its
Chairman Vijay Jaypal Magdum **... Petitioner**
Versus
Sunil Bhimgonda Patil And Anr **... Respondents**

AND

WRIT PETITION NO. 17594 OF 2024

J.J. Magdum Trust Throu. Its
Chairman Vijay Jaypal Magdum **... Petitioner**
Versus
Kumar Aanna Danoli And Anr **... Respondents**

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AND
WRIT PETITION NO. 17595 OF 2024

J.J. Magdum Trust Throu. Its
Chairman Vijay Jaypal Magdum **... Petitioner**
Versus
Gundhar Dhanpal Kumbhar And Anr **... Respondents**

AND
WRIT PETITION NO. 17596 OF 2024

J.J. Magdum Trust Throu. Its
Chairman Vijay Jaypal Magdum **... Petitioner**
Versus
Atul Bapusaheb Chougule And Anr **... Respondents**

AND
WRIT PETITION NO. 17600 OF 2024

J.J. Magdum Trust Throu. Its
Chairman Vijay Jaypal Magdum **... Petitioner**
Versus
Sharadkumar Bapu Magdum And Anr **... Respondents**

Mr. Uday P. Warunjikar *a/w Mr. Sumit Kate for the Petitioner.*
Mr. Vijay Killedar *for Respondents.*

CORAM : SANDEEP V. MARNE, J.
DATE : 6 DECEMBER 2024.

P.C. :

- 1) Leave granted to amend the Petitions in following terms:
 - i) Petitioner is permitted to delete Respondent No.2 from array of parties in each Petition.
 - ii) Petitioner is permitted to include challenge to orders dated 25 November 2024 by amending prayer Clause (a) of the Petitions.

Amendment to be carried out forthwith.

- 2) **Rule.** Rule made returnable forthwith. With the consent of the learned counsel appearing for the parties, the Petition is taken up for hearing and disposal.

- 3) By the present Petitions, Petitioner challenges Orders dated 25 November 2024 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (**PG Act**) rejecting its application at Exhibit C-18, by which Petitioner had prayed of the stay the proceedings before the Controlling Authority till decision of Writ Petitions pending before Division Bench of this Court.

- 4) I have heard Dr. Warunjikar, the learned counsel appearing for Petitioner-Management and Mr. Killedar, the learned counsel for the Respondent-Employees.

- 5) Respondent-Employees have filed applications under provisions of Section 7 of the PG Act for ascertainment and payment of

gratuity under Section 4 and for payment thereof together with interest. To illustrate, Respondent-Shankar Chanbasappa Chilalshetti has claimed gratuity of Rs. 16,09,919/- on an assertion that the last pay drawn by him as on the date of cessation of service on 8 July 2019 was Rs. 93,006/- (basic pay + DA)

6) According to Dr. Warunjikar Respondent-Employees have filed various Writ Petitions concerning the issue of their pay fixation, in which one of the prayers is also for payment of gratuity. Mr. Killedar is quick enough to invite my attention to order dated 17 December 2021 passed by Division Bench in those Petitions by which the Petitioners therein were granted liberty to delete the prayer for payment of gratuity. Thus, it cannot be stated that the Respondent-Employees are pursuing to multiple proceedings for payment of gratuity.

7) Dr. Warunjikar would also submit that the eligibility of Respondent-Employees for grant of pay scales is itself questionable and accordingly the Petitioner-Management has filed Civil Applications in the Writ Petitions filed by the Employees seeking an interim order for decision of issue of eligibility/approval to the appointment of the employees. Dr. Warunjikar would invite my attention to paragraph 24 of the affidavit-in-reply filed in Writ Petition No. 8481 of 2015 in which the Petitioner-Management has pleaded that the employees have erroneously availed the benefit of senior pay scale and selection grade though there are not eligible to avail the same. He would submit that far from paying them any further arrears of salary, in fact the Petitioner-Management is entitled to make recoveries of excess payments made to them. He would also invite my attention to the

application at Exhibit C-18 filed before the Controlling Authority in which reference is made to letter dated 22 July 2017 issued to Shankar Chanbasappa Chilalshetti computing the amount of excess payment at Rs.33,28,477/-. He would further submit that as per the reply filed to the application before the Controlling Authority, it is the assertion of the Petitioner that the correct basic pay + DA payable and/or drawn by Shankar Chanbasappa Chilalshetti is Rs.19,351/- and not Rs.93,006/- as claimed by him. Dr. Warunjikar would accordingly submit that the issue involved before the Controlling Authority is directly linked to the prayers made by the employees in their Writ Petitions, which are pending before the Division Bench and accordingly the Controlling Authority cannot be permitted to proceed ahead with applications for payment of gratuity till issue of salary and pay scales of the employees is decided by the Division Bench.

8) In my view, the limited remit of enquiry before the Controlling Authority under the Payment of Gratuity Act in terms of Sections 4 and 7 thereof is to merely ascertain the amount of gratuity on the basis of last pay drawn (basic pay + DA) and the number of years of service put in by the employees. The Controlling Authority cannot go into complicated issues of entitlement of the employees for a particular pay scale. Therefore, in order to succeed before the Controlling Authority for claimed amount of gratuity, the burden would be on the employees to prove that they indeed drew the basic pay + DA as claimed by them in their applications. On the other hand, it is also open to the Petitioner-Management to prove before the Controlling Authority that what is actually drawn by the employees on the dates of cessation of their services is not the pay as reflected in the applications. The Controlling Authority would accordingly conduct a factual enquiry into

the exact wages drawn by the employees at the time of cessation of their services. The issue of pay scales and alleged recoveries cannot be mixed up with the jurisdiction of the Controlling Authority for ascertainment of amount of gratuity under provision of Sections 4 and 7 of the Act. Therefore, in my view, it is not necessary to await decision of Writ Petitions filed by the employees before Division Bench and the Controlling Authority can be permitted to proceed ahead with the proceedings filed before it. Mere pendency of dispute in Petitions before the Division Bench about alleged entitlement of employees to claim additional salary and allowances as per the recommendations of the pay commission cannot be a reason for not paying them gratuity on the basis of pay already drawn by them. Similarly, claim of the Petitioner-Management towards recovery of excess payment drawn by the employees, which is sought to be vaguely raised in Civil Application, without filing any independent proceedings, that too after retirement/cessation of services, also cannot be a reason for suspending the proceedings before the Controlling Authority relating to payment of gratuity. Gratuity after all is a retirement benefit which an employee is statutorily entitled to based on services rendered by him. Mere existence of dispute relating to grant of pay scales cannot be a reason for indefinitely delaying the issue of payment of gratuity. As of now, gratuity would be determined by the Controlling Authority on the basis of actual pay drawn by the employees at the time of cessation of their services.

9) In my view, therefore, it is not necessary to stay the proceedings before the Controlling Authority till decision of Writ Petitions by Division Bench. Therefore, no serious error can be traced

in the Orders dated 25 November 2024 passed by the Controlling Authority. Leaving open contentions of the parties on merits of the applications pending before the Controlling Authority, Petitions are accordingly **disposed of**.

[SANDEEP V. MARNE, J.]