

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10507 OF 2025

Shankar Chanbassappa Chillalshetti,
Age: 63 Years, Occu.: Nil,
Above A1 tailor, 11th Lane,
Jaysingpur – 416101, Taluka – Shirol,
District – Kolhapur.Petitioner

Vs.

Dr. J. J. Magdum Trust, Jaysingpur,
A Trust registered under BPT Act,
Having address at Jaysingpur-416 101,
Taluka - Shirol, District – Kolhapur,
Through its Secretary,
Adv. Dr. Mrs. Sonale Vijay Magdum.Respondent

WITH

WRIT PETITION NO.11052 OF 2025

Sharadkumar Bapu Magdum,
Age: 58 Years, Occu.: Nil,
Yashwant Housing Society, Plot No.06,
Behind Modi Hospital,
Jaysingpur – 416101, Taluka – Shirol,
District – Kolhapur.Petitioner

Vs.

Dr. J. J. Magdum Trust, Jaysingpur,
A Trust registered under BPT Act,
Having address at Jaysingpur-416 101,
Taluka - Shirol, District – Kolhapur,
Through its Secretary,
Adv. Dr. Mrs. Sonale Vijay Magdum.Respondent

WITH

WRIT PETITION NO.11428 OF 2025

Gundhar Dhanpal Kumbhar,
Age: 58 Years, Occu.: Nil,
At Post – Ankali, Taluka – Miraj,
District – Sangli.Petitioner

Vs.

Dr. J. J. Magdum Trust, Jaysingpur,
A Trust registered under BPT Act,
Having address at Jaysingpur-416 101,
Taluka - Shirol, District – Kolhapur,
Through its Secretary,
Adv. Dr. Mrs. Sonale Vijay Magdum.Respondent

WITH

WRIT PETITION NO.11423 OF 2025

Atul Bapusaheb Chougule,
Age: 57 Years, Occu.: Business,
At Post – Plot No.10,
Shivaji Co-operative Housing Society,
Jaysingpur, Taluka – Shirol,
District – Kolhapur.Petitioner

Vs.

Dr. J. J. Magdum Trust, Jaysingpur,
A Trust registered under BPT Act,
Having address at Jaysingpur-416 101,
Taluka - Shirol, District – Kolhapur,
Through its Secretary,
Adv. Dr. Mrs. Sonale Vijay Magdum.Respondent

Mr. Vijay Killedar with Ms. Rohinee Yadav, for the Petitioner.
Dr. Uday P. Warunjikar with Mr. Swaroop Gaikwad, Ms. Adity
Kharkar, Mr. N. G. Kamble, Ms. Neha Deshpande, for the Respondent.

CORAM : S. G. CHAPALGAONKAR, J.
RESERVED ON: 3rd OCTOBER 2025
PRONOUNCED ON : 16th OCTOBER 2025

JUDGMENT :-

1. The present Writ Petitions impugn orders dated 25th June 2025 passed by Member, Industrial Court, Kolhapur and Appellate Authority under Payment of Gratuity Act, 1972 (For short, '**the Act**') thereby condoning delay of 140 days in filing appeal.

2. Petitioners were employees of Respondent Management/Trust. Their services were terminated with effect from 8th July 2019 after putting several years of service. They approached Controlling Authority under provisions of Section 4 of the Act seeking payment of unpaid amount of gratuity, to be computed on the basis of last drawn salary and also tenure of service. Respondent contested proceeding and refuted Petitioner's entitlement of claim of gratuity. The Controlling Authority and Judge, Labour Court, Kolhapur accepted Petitioners' entitlement to receive gratuity amount alongwith interest @ 10% p.a. from the date, gratuity was due till its realization. Respondent assailed order dated 18th December 2024 passed by Controlling Authority under Section 7(7) of the Act. Since appeal was delayed beyond period of limitation, separate application

was made to condone delay. Petitioners opposed said application. However, Appellate Authority condoned the delay, subject to payment of costs and directed registration of appeal under Section 7(7) of the Act.

3. Mr. Vijay Killedar, learned Advocate appearing for Petitioners submits that Sub-Section (7) of Section 7 of the Act provides remedy of filing appeal against order of Authority passed under Sub-Section (4) of Section 7. Appeal has to be filed within stipulated period of 60 days from the date of receipt of order before the Appellate Authority. Appellate Authority is empowered to condone delay up to 60 days only. Therefore, appeal needs to be filed within a period of 60 days from date of receipt of order and Appellate Authority, being satisfied with reasons for delay, can condone the same by a further period of 60 days. Therefore, any appeal filed beyond 120 days would not be maintainable and Appellate Authority has no jurisdiction to entertain such an appeal. He would point out that in present case, appeal is filed beyond the period of 120 days from date of order by Respondent. Appellate Authority condoned delay assuming that appeal is preferred with delay of only 58 days, as such

committed serious error of facts and law, while passing the impugned order. In support of his contention, Mr. Killedar, relies upon judgment of Division Bench of this Court in case of *J. L. Morrison India Ltd. Mumbai v. Deputy Commissioner of Labour, Mumbai & Ors.*,¹ Judgments of Supreme Court in case of *V. Nagarajan v. SKS Ispat & Power Ltd. & Ors.*,² *A. Rajendra v. Gonugunta Madhusudhan Rao & Ors.*³ and *Ganesan represented by its Power Agent G. Rukmani Ganesan v. Commissioner, Tamil Nadu Hindu Religious & Charitable Endowments Board & Ors.*⁴

4. Per contra, Dr. Uday Warunjikar, learned Advocate appearing for Respondent submits that Section 7(7) of the Act provides remedy of appeal. The limitation of 60 days would start running from date of receipt of order and further 60 days can be extended by Appellate Authority, if sufficient cause is made out for delay. The second proviso to Sub-Section (7) of Section 7 of the Act requires production of certificate of deposit of amount equal to amount of gratuity required to be deposited under Sub-Section (4) of Section 7 of the Act. Dr. Warunjikar would further invite attention of this Court to

1 2007 (6) Mh.L.J. 393.

2 (2022) 2 SCC 244.

3 (2025) 6 SCC 618.

4 (2019) 7 SCC 108.

Rule 18(3) of Payment of Gratuity (Maharashtra) Rules, 1972 (For short, '**Maharashtra Rules**'), which prescribes that appeal shall be appended with certified copy of findings of Controlling Authority and direction for payment of gratuity. According to Dr. Warunjikar, Sub-Clause (4)(a) of Rule 11 of Maharashtra Rules requires that Controlling Authority is bound to give copy of findings to each of the party. Therefore, if provisions contained under Sub-Section (7) of Section 7 of the Act read with Maharashtra Rules, the period of limitation will have to be computed from date of receipt of certified copy and it is obligation of Controlling Authority to furnish certified copy to each of the party, without formal application being made for certified copy. He would urge that decision of Division Bench of this Court in case of *J. L. Morrison India Ltd. (supra)* is rendered without considering the effect of relevant provisions under Maharashtra Rules. Therefore, the exposition of law in that case would not govern present proceeding. In support of his contention, he relies upon observations of Single Judge of this Court in case of *Changunabai Sambhaji Gaware v. Kapus Visheshadnya, Kapus Sanshodhan Kendra & Anr.*⁵, observations of learned Single Judge of

5 (2016) 2 Mh.L.J. 596.

Madras High Court in case of *L. Palaniswamy v. The Appellate Authority under the Payment of Gratuity Act (The Deputy Commissioner of Labour), Coimbatore & Anr.*,⁶ and observations of High Court of Chhattisgarh, Bilaspur in case of *Kirtan Ram Thakur s/o. Dayal Ram Thakur v. State of Chattisgarh & Ors.*⁷ with companion matters.

5. Having considered submissions advanced by learned Advocates appearing respective parties, it would be necessary to summarize basic facts for appreciating the controversy in these Writ Petitions. Dr. Warunjikar, learned Advocate appearing for Petitioners has graciously provided necessary particulars in tabular form, which reads thus:

Petitioner Name	PGA No.	PGA Order Date	Date of Application of certified copy	Receipt of certified copy	60 days ends date	120 days ends date	Delay Application in appeal (Industrial Court, Kolhapur)	Date of filing appeal/ Delay Application	Delay of days
Atul Bapusaheb Chougule	113/2022	19-12-2024	26-12-2024	23-01-2025	24-03-2025	23-05-2025	Delay Application No.5/2025	21-05-2025	58
Sharadkumar Bapu Magdum	53/2019	18-12-2024	26-12-2024	23-01-2025	24-03-2025	23-05-2025	Delay Application No.2/2025	21-05-2025	58
Shankar Chanbassappa Chillalshetti	55/2019	18-12-2024	26-12-2024	23-01-2025	24-03-2025	23-05-2025	Delay Application No.3/2025	21-05-2025	58
Gundhar Dhanpal Kumbhar	114/2022	19-12-2024	26-12-2024	23-01-2025	24-03-2025	23-05-2025	Delay Application No.4/2025	21-05-2025	58

⁶ 1999 (II) CTC 568.

⁷ Writ Appeal No.349 of 2016 dated 22nd August 2016.

6. A bare perusal of aforesaid chart would show that delay of 58 days was caused in filing appeal beyond 60 days period of limitation prescribed under Sub-Section (7) of Section 7 of the Act. However, Mr. Killedar, learned Advocate appearing for Petitioners would submit that period of limitation will have to be computed from date of order. Even assuming that Respondent was entitled for exclusion of period consumed for obtaining certified copy, i.e., the period from presentation of application till receipt of certified copy, the Petitioners have not promptly applied for certified copy. The Competent Authority passed the order on 18th/19th October 2024. However, the application for certified copy was made on 26th December 2024. This period from date of order till date of filing application for certified copy cannot be excluded in addition to period consumed in obtaining certified copy. The Appellate Authority has limited jurisdiction to condone the delay of 60 days in addition to period consumed for obtaining certified copy. Therefore, even by granting exclusion of days consumed for obtaining certified copies and maximum period of 120 days available for filing appeal, the appeals filed by Respondent were barred by limitation.

7. The Petitioners are computing limitation from date of receipt of certified copy, but excluding the period from date of order till filing of application for certified copy, which is not permissible. According to Mr. Killedar, the act of filing application for certified copy is not just a technical requirement for computation of limitation, but also an indication of diligence of aggrieved party in pursuing litigation in timely fashion. If no application for certified copy has been made promptly, no exclusion can ensue.

8. Looking to the submissions advanced, controversy that requires consideration in these Writ Petitions can be narrowed down to the questions as to:

- 1) whether Appellate Authority under the Act has jurisdiction to exclude the period from date of passing of order till filing of application for certified copy, while computing period of limitation ?
- 2) whether Competent Authority is under obligation to furnish certified copy of findings to parties, without there being formal application and if so, whether the party can seek exclusion of period of limitation till the date, the copy is actually supplied to him?

9. Before proceeding further, it is apposite to refer to relevant provisions. Sub-Section (7) of Section 7 of the Act provides for appeal and period of limitation, which reads thus:

“**Section 7(7):** Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf: Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days. Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under subsection (4), or deposits with the appellate authority such amount.”

10. The Division Bench of this Court in case of J. L. Morrison India India Ltd. (supra), while interpreting the aforesaid provision observed in paragraph Nos.20 and 21, which reads thus:

“ 20. The point relating to exclusion of the applicability of section 5 of the Limitation Act to such proceedings by necessary implication will have to be ascertained on

comparison of the said provision with the provision regarding limitation under the said Act. Such comparison would reveal that both the said section 5 and the said proviso to sub-section (7) of section 7 of the said Act-deul with the subject of "extension of period of limitation" for filing appeal. Under both the provisions of law, extension is permissible on satisfaction of the Appellate Authority about the inability of the appellant to file appeal within the prescribed period of limitation. However, one additional factor which is prescribed under the said proviso to section 7(7), and which is conspicuously absent in the said section 5 of the Limitation Act, is the restriction regarding extension of such period of limitation or the period for condonation of delay. This obviously discloses that though both the provisions deal with the same subject. i.e.. the extension of limitation and the power of the Appellate Authority to condone the delay, in case of the said proviso under the said Act, it is restricted to a specific period, whereas there is no such restriction under section 5 of the Limitation Act. This apparently discloses clear intention of the Legislature to restrict the power of the Appellate Authority under the said Act regarding extension of the period of limitation for filing appeal. Such an inference is inevitable in the face of the scheme of the said Act which clearly discloses that the said Act to be a complete Code in itself and though it is not said in so many words like in the case of the Arbitration and Conciliation Act, 1996 that the period cannot be extended beyond the specified period for

extension, yet conclusion in that regard has to be drawn in favour of exclusion of applicability of section 5 of the Limitation Act to the proceedings under the said Act by necessary implication.

21. Considering the phraseology of section 29(2) of the Limitation Act. undoubtedly, there is presumption about its applicability to special Acts in case of such special Act being silent about its exclusion. But the presumption would stand rebutted once the provision relating to limitation and restriction on power of extension thereof being specifically provided under a special statute. Merely because a special statute is silent on the subject, that by itself would not lead to presumption about exclusion of section 29(2) or for that matter section 5 of the Limitation Act. Nevertheless, when the phraseology of the relevant provision in the special statute inevitably indicates the intention of the Legislature to exclude by necessary implication the applicability of the provisions of law contained under section 5 of the Limitation Act, it would amount to making violence to the statutory provision to construe it to the contrary. To read the concept of unlimited extension of period of limitation by filing appeal under the said Act in the said proviso to section 7(7) of the said Act would virtually amount to supplement the said proviso by section 5 of the Limitation Act which is clearly impermissible.”

11. In view of aforesaid exposition of law, now it is well settled that

Appellate Authority under Act has restricted powers to extend the period beyond 60 days after expiry of initial period of limitation of 60 days prescribed for filing appeal under the Act. Similarly, provisions of Section 5 of Limitation Act has been excluded from application by necessary implication, thus Appellate Authority under the Act cannot entertain appeal beyond 120 days from date of receipt of order.

12. Now Let's consider effect of provisions contained in Rules relating to filing of Appeal against order of Authority. Rule 11 of Payment of Gratuity (Central) Rules, 1972 (For short, '**Central Rules**') prescribes the procedure for dealing with application for directions filed under Rule 10 to Controlling Authority. Sub-Rule (4) of Rule 11 of Central Rules reads thus:

“Rule 11(4) After completion of hearing on the date fixed under sub-rule (1), or after such further evidence, examination of documents, witnesses, hearing and enquiry, as may be deemed necessary, the controlling authority shall record his finding as to whether any amount is payable to the applicant under the Act. A copy of the finding shall be given to each of the parties.

(Emphasis supplied)”

13. The careful reading of aforesaid Rule would show that Controlling Authority is under obligation to provide a copy of findings to each of the party. Rule 18 of the Central Rules prescribes for procedure of filing appeal under Sub-Section (7) of Section 7 of the Act. Sub-Rule (3) of Rule 18 of Central Rules states as under:

“Rule 18(3) There shall be appended to the Memorandum of appeal a certified copy of the finding of the Controlling Authority and direction for payment of gratuity.”

14. Taking the clue from aforesaid provisions, Dr. Warunjikar, learned Advocate appearing for Respondent endeavours to impress upon this Court that there is an obligation on Controlling Authority to provide copy of finding recorded by Authority after completion of hearing. Therefore, the person desirous to file appeal under Sub-Section (7) of Section 7 of the Act need not apply for certified copy. Therefore, the limitation will start running only after receipt of certified copy. The period from date of order till supplying certified copy will have to be excluded, in light of harmonious reading of provisions of Act and Rules. He would also rely upon Section 12(2) of Limitation Act in support of his contention.

15. On close scrutiny of provisions of Act and Rules, this Court finds no substance in contention of Respondent. The Rule 11 of Maharashtra Rules prescribes for elaborate procedure for dealing with application for direction. The Sub-Rule (4) (a) of Rule 11 of Maharashtra Rules prescribes that after completion of hearing, Controlling Authority shall record his finding and provide a copy of finding to each of the party. The Sub-Rule (4) (b) requires that Controlling Authority shall pronounce his finding or decision openly on the date fixed for the said purpose. It is, therefore, clear that finding or decision is to be pronounced in open Court and party is entitled to receive copy of the same. The Rule nowhere stipulates to provide certified copy or free copy to party.

16. Rule 18 of the Maharashtra Rules also provides for presentation of appeal and its procedure. Sub-Rule (3) of Rule 18 of Maharashtra Rules mandates a certified copy of finding of Controlling Authority and direction for payment of gratuity shall be appended to Memorandum of appeal. It is, therefore, evident that for the purpose of filing of appeal, certified copy of finding of Controlling Authority is necessary, whereas Sub-Clause (4)(a) of Rule 11 of Maharashtra Rules contemplates for

providing copy (not the certified copy) of finding to party, thus party, who intends to file appeal is required to apply for certified copy of finding/order.

17. Rule 18A of Maharashtra Rules prescribes the procedure for obtaining certified copy and states as under:

“18A. Procedure for obtaining certified copies (1) Any person desiring to obtain certified copies of any records including certified copies of an order or decision of a controlling authority or the appellate authority may make an application in writing to the controlling authority or the appellate authority.

(2) On receipt of such application and on payment of fees for copying a document at the rate of fifty paise per hundred words or fraction thereof a copy of the documents shall be supplied by the controlling authority or appellate authority.

(3) Certified copies of the document may be supplied on urgent basis on payment of one and half times the fees payable under sub-rule (2).”

18. The plain reading of provisions contained under Rule 18A of Maharashtra Rules clearly shows that certified copy of order or decision of Controlling Authority shall be obtained by making

application for certified copy on payment of fees for copying a document. The copy can be obtained on urgent basis on payment of one and half times the fees payable. The similar procedure can be found in Rule 21 of Maharashtra Rules, which deals with supply of certified copy. The scheme discernible from Rules cannot be interpreted to hold that party is entitled to free certified copy of findings of Authority and limitation would start to run from supply of copy, rather party who wish to file appeal is required to apply for certified copy of order.

19. At this stage, reference can be made to observations of Supreme Court in case of A. Rajendra v. Gonugunta Madhusudhan Rao & Ors. (supra), wherein Supreme Court in reference to provisions of Insolvency and Bankruptcy Code alongwith National Company Law Appellate Tribunal Rules observed in paragraph Nos.25 to 27 as follows:

“25. Therefore, the incident which triggers limitation to commence is the date of pronouncement of the Order and in case of non- pronouncement of the Order when the hearing concludes, the date on which the Order is pronounced or uploaded on the website.

26. However, where the judgment was pronounced in

open Court, the period of limitation starts running from that very day. The appellant is however entitled to seek relief under Section 12(2) of the Limitation Act for excluding the period during which the certified copy was under preparation on an application preferred by that party.

27. In light of the above legally settled position, when the facts of the present case are seen, the first thing which is apparent is that in the absence of any certified copy having been applied by the appellant of the impugned orders dated 20th July 2023 passed by the NCLT on which it was admittedly pronounced, with Rule 22 of the NCLAT Rules mandating filing of the appeal along with the certified copy. The appeals as preferred by the appellant need to be dismissed as they were filed beyond 30 days and no steps have been taken by the appellant to seek certified copy of the order.”

20. Similarly, in case of ***V. Nagarajan v. SKS Ispat & Power Ltd. & Ors. (supra)***, the Supreme Court observed in paragraph No.31, which reads thus:

“31. The import of Section 12 of the Limitation Act and its explanation is to assign the responsibility of applying for a certified copy of the order on a party. A person wishing to file an appeal is expected to file an application

for a certified copy before the expiry of the limitation period, upon which the “time requisite” for obtaining a copy is to be excluded. However, the time taken by the court to prepare the decree or order before an application for a copy is made cannot be excluded. If no application for a certified copy has been made, no exclusion can ensue. In fact, the explanation to the provision is a clear indicator of the legal position that the time which is taken by the court to prepare the decree or order cannot be excluded before the application to obtain a copy is made. It cannot be said that the right to receive a free copy under Section 420(3) of the Companies Act obviated the obligation on the appellant to seek a certified copy through an application.”

21. If aforesaid exposition of law is applied to facts of this case, it is evident that when Respondent was aware that certified copy of order was mandatory for filing of appeal against order of Competent Authority, it was his obligation to make an application promptly. It is not the case of Respondent that he was not aware about order passed by Competent Authority or the order was not declared in open Court as contemplated under Sub-Clause (4)(b) of Rule 11 of Maharashtra Rules. Respondent being aware of fact that a copy contemplated under Clause (a) of Sub-Clause (4) of Rule 11 of Maharashtra Rules is not the certified copy and same would not be sufficient to file

appeal, he ought to have promptly filed application for certified copy with requisite charges.

22. In this background, if Respondent has committed default in promptly applying certified copy and lost the period of 7 to 8 days in filing application for certified copy after passing of order by Controlling Authority, it is not open for him to seek exclusion of said period, while computing limitation to file appeal. It is trite that Section 12(2) of Limitation Act provides for exclusion of time required for obtaining the copy. It would be only from the date of making application for certified copy till the date of receipt of the same. It would not take in its sweep the period lost by party before making copy application after pronouncement of order.

23. In light of aforesaid observations, even assuming that Section 12 of Limitation Act has application to proceedings under the Act, Respondent would not be entitled for exclusion of period, except period actually consumed in obtaining certified copy.

24. The perusal of impugned order depicts that Appellate Authority has blindly accepted contention of Respondent that there is delay of

58 days only, however, considering the fact that order under challenge is passed on 18th/19th December 2024 and the appeal is actually presented on 21st May 2025, time consumed was more than 156 days. The Appellate Authority is empowered to condone delay up to 60 days in addition to initial limitation period of 60 days. Therefore, the limitation period was actually expired on 120th day, i.e., on 17th April 2025. Even by excluding 28 days consumed for obtaining certified copy in terms of Section 12 of Limitation Act, the appeal is time barred by 8 days. As such, the Appellate Court clearly erred in exercising jurisdiction and condoning the delay.

25. In result, Writ Petitions are allowed.

26. The impugned orders dated 25th June 2025 passed by Member, Industrial Court, Kolhapur and Appellate Authority under Payment of Gratuity Act, 1972 are quashed and set aside.

(S. G. CHAPALGAONKAR, J.)

27. At this stage, Dr. Warunjikar, learned Advocate appearing for Respondent requests this Court that amount deposited by

Respondent-Management with the Authority shall not be disbursed for a period of six weeks from today.

28. Considering the conspectus of matter and legal issues raised, request is allowed. The amount deposited with Authority shall not be disbursed for a period of six weeks from today.

(S. G. CHAPALGAONKAR, J.)

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signed by
RAJU
DATTATRAYA
GAIKWAD
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