

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

WRIT PETITION NO.11027 OF 2024

Dr. Chetna Rajput

Age : 60 years, Occupation : Retired

A-6/3, Kumar Padmalaya,

New D.P. Road, Near Medi Point Hospital,

Aundh, Pune – 411068

... Petitioners

Versus

1. Modern Education Society,
Through Secretary, 19,
Late Principal V. K. Joag Path, Wadia College Campus,
Pune - 411001

2. Nowrosjee Wadia College
Through Principal,
19, Late Principal V. K. Joag Path,
Wadia College Campus,
Pune – 411001

3. The Education Officer (Higher Secondary)
Pune Zilla Parishad
Somwar Peth,
Pune- 411011

4. Dy. Director of Education
Pune Division
Pune- 411001

5. The Accountant General
State of Maharashtra

6. State of Maharashtra
Through Principal Secretary,
Ministry of School Education

... Respondents.

Mr. Vaibhav Kulkarni a/w Mr. Prathamesh Deshpande a/w Ms.
Disha Rathod a/w Mr. Yash Agarwal for the Petitioner.

Mr. S. R. Ronghe for the Respondent Nos. 1 and 2.

Mr. S. P. Kamble, AGP for the State.

**CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.**

RESERVED ON : 6th MARCH, 2025

PRONOUNCED ON : 28th MARCH, 2025

JUDGMENT (PER ASHWIN D. BHOBE, J.)

1. **Rule.** Rule made returnable forthwith and heard finally
by the consent of the parties.

2. By the present petition filed under Article 226 of the
Constitution of India, Petitioner, a teacher having retired after
rendering 25 years service with the Respondent Nos.1 and 2
Institution, is before this Court making a grievance of the
inaction/delay on the part of the Respondents in releasing the
gratuity amount and the pensionary benefits payable to her.

3. **Factual Matrix:-**

- a) Petitioner holds qualification of master's degree in Hindi language and B.Ed. degree.
- b) On 14.07.1998, Respondent Nos.2 published advertisement in the daily "Loksatta" inviting applications from eligible candidates for the post of part-time teacher for the subject Hindi, a post which was 100% aided and sanctioned post.
- c) Petitioner was appointed as a part-time teacher vide appointment order dated 20.07.1998, for a term up to 15.04.1999. Said appointment was approved by the Regional Deputy Director of Education, Pune.
- d) Subsequently w.e.f. 25.07.2000 till the year 2018, in view of the limited tenure of the approval, the Management issued fresh appointment orders to Petitioner as a part-time teacher on year to year basis i.e. from 1999-2000 to 2018-2019. Said appointments were approved by the Regional Deputy Director of Education.
- e) Since, the year 2000, Petitioner worked as a part-time

teacher at Nowrosjee Wadia College and as part-time (Shikshan Sevak) at Ness Wadia College of Commerce with the workload of 18 hours of per week.

f) Upon superannuation of Dr. Lata Rokade, working as a full-time Assistant Teacher on a sanctioned post, fell vacant w.e.f. 17.06.2019.

g) By order dated 10.06.2019, Petitioner was appointed as a full-time Assistant Teacher on the post earlier occupied by of Dr. Lata Rokade.

h) By order dated 07.09.2023, Regional Deputy Director of Education Pune accorded approval to the appointment of the Petitioner as a Assistant Teacher w.e.f. 17.06.2019.

i) On 27.09.2023, Petitioner called upon the Respondent No.2 to compute and release the gratuity amount on the date of her retirement i.e. 30.09.2023.

j) Petitioner retired from service on 30.09.2023 upon attaining the age of superannuation.

k) On 12.04.2024, Petitioner by her representation called upon the Respondent No.2 to release her gratuity amount and process the pension paper.

l) Respondent No.2 neither replied nor complied with the requisition made by the Petitioner.

m) Aggrieved, the Petitioner is before this Court, seeking the following substantial reliefs:-

“[A] That this Honorable Court be pleased to issue a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate writ direction or order under Article 226 of the Constitution of India, 1950 directing the Respondent No.1 and 2 to process the papers of pension and the Respondent Nos. 5 & 6 be further directed to release the pension in the time bound manner.

[B] That this Honorable Court be pleased to issue a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate writ direction or order under Article 226 of the Constitution of India, 1950 directing the Respondent No. 1 and 2 to award the Petitioner the amount of gratuity as per provisions of Payment of Gratuity Act along with appropriate interest”

n) On 21.08.2024, this Court passed the following order:-

“ The grievance of the Petitioner is that even though the Petitioner has retired from service on 28 September 2023, his pension along with the other benefits have not been released. He seeks directions to Respondent Nos. 1 and 2 to process the papers and to Respondent Nos. 5 and 6 to release the pension along with the other benefits.

*2. The learned Counsel appears for Respondent Nos. 1 and 2 and seeks time. Stand over to **9 September 2024**.*

3. If there is no impediment in law and facts, then Respondent Nos. 1 and 2 will take necessary steps to process the pension papers and submit the same to Respondent Nos. 5 and 6 before the next date. If there is any such impediment, then a reply affidavit be filed.

4. The Petitioner will also serve the copy of the Petition to the Officer of the Government Pleader.”

o) On 03.03.2025, Respondent Nos.1 and 2 placed on record compilation of documents and a communication dated

30.12.2024. This Court passed the following order:-

- 1. We have perused the order dated 21.8.2024. We have heard the learned Advocate for Respondent Nos. 1 and 2. We have perused the documents compilation of 37 pages, which is marked as 'X-1' collectively for identification.*
- 2. A copy of the communication dated 30.12.2024, addressed to the Deputy Director of Education, Pune indicating that the College has forwarded the proposal for pension of the Petitioner, is placed before us which is marked as 'X-2' for identification.*
- 3. It is prima facie clear that there is no legal impediment for non-submission of the pension proposal of the Petitioner, in as much as, non-payment of the retiral dues including the gratuity amount. Apparently, the Management of the College which an autonomous college, has not forwarded the proposal until 30.12.2024.*
- 4. We are posting this matter on **6th March, 2025** in the **supplementary board**, to afford an opportunity to the College to explain why such delay was caused with reference to a qualified professor who has superannuated on 30.9.2023, in so far as non submissions of the proposals for pension, which is normally to be done 6 months prior to the retirement of an employee and payment of gratuity*
- 5. On the next date, if we are not satisfied with the explanation of the College, we would proceed to pass an order."*

p) Respondent No.2 has filed affidavit dated 05.03.2025 placing on record a communication dated 03.03.2025 issued by the Respondent No.2 to their Advocate. Respondent No.2 by the said communication has made an attempt to justify the delay in releasing the gratuity amount payable to the Petitioner and the delay caused in processing the retiral benefits of the Petitioner.

Submissions:-

4. Mr. Vaibhav Kulkarni, learned Advocate for the Petitioner submits that the Petitioner though initially appointed as a part-time teacher, the said post was a 100% aided and a sanctioned post. He submits that the Petitioner was appointed as a full-time Assistant Teacher w.e.f. 17.06.2019 which appointment has the approval of the Regional Deputy Director of Education. He submits that Petitioner has rendered service of 25 years (since the year 1998 to September 2023) with the Respondent Nos.1 and 2 and that the Petitioner has more than 10 years of qualifying service as per the Pension Rules, therefore, the Petitioner is entitled to pension and also gratuity which the Respondents have delayed, without any justification. He therefore, prays that the petition be allowed.

5. Mr. S. R. Ronghe, learned Advocate for the Respondent Nos.1 and 2 by relying on the compilation marked as 'X-1', communication dated 30.12.2024 and the communication dated 03.03.2025 submits that though, there was some delay in releasing the gratuity and pensionary benefits, the delay is justified. He submits that the delay in release of the retiral benefits of the Petitioner was in view of the issue pertaining to entitlement to

pension in the context of the part-time service and the full-time service put in by the Petitioner. He submits that the Respondent Nos.3 and 4 had raised deficiencies in the proposals submitted by the Respondent Management, however, the said deficiencies are now complied and the said issue is pending before the Respondent Nos. 3 and 4.

6. Mr. S. P. Kamble, learned AGP for the State submits that delay in release of the gratuity amount and the pensionary benefits, is attributable to the Respondent Nos.1 and 2.

7. From the rival contentions of the parties, the question that falls for determination is whether the inaction on the part of the Respondents, to pay the gratuity amount due and payable to the Petitioner and the delay in processing the pensionary/retiral benefits of the Petitioner is arbitrary, resulting in prejudice being caused to the Petitioner?

Analysis:-

8. Petitioner having rendered service as a part-time teacher from 20.07.1998 up to the month of June 2019 and thereafter, as a full-

time Assistant Teacher w.e.f. 17.06.2019 up to the 30.09.2023 i.e. the date of superannuation, that the appointment of the Petitioner as a part-time teacher and as a full-time Assistant Teacher had the approval from the Competent Authority, are facts which are not in dispute.

9. Respondent Nos.1 and 2 having forwarded the proposal for pension to the Deputy Director of Education Pune vide communication dated 30.12.2024 and the entitlement of the Petitioner to the gratuity amount are also facts which are not in dispute.

10. Despite the above said, neither the gratuity nor the pensionary benefits are paid to the Petitioner, thereby compelling the Petitioner to approach this Court.

11. “Gratuity” under the provisions of the Payment of Gratuity Act, 1972, is payable to an employee on termination of his employment after having rendered continuous service for not less than five years. Due date for payment of gratuity would be after one

month, either upon superannuation or retirement or resignation or death or disablement due to accident or disease.

12. The Hon'ble Supreme Court in the case of Netram Sahu Vs. The State of Chhattisgarh and Anr.¹ has held that the provisions of the Payment of Gratuity Act, 1972 being a welfare legislation meant for the benefit of the employees who serve their employer for a long time, it is the duty of the State to voluntarily pay the gratuity amount to the employee rather than to force the employee to approach the Court to get his genuine claim.

13. In view of the law on payment of gratuity, the Respondent Nos.1 and 2 were under a legal obligation to pay the gratuity amount to the Petitioner on 30.10.2023 i.e. within one month from the date of her retirement. Records placed before us do not justify the delay caused by the Respondents to pay the gratuity amount to the Petitioner within the time specified by law. Assuming that there was any dispute interse between the Management and the Respondent Authorities, in the context of payment of the gratuity amount, then in such an event the Respondent Authorities should

¹ 2018 (5) SCC 430

have paid the gratuity amount to the Petitioner and if any fault being found on the part of the Management, then the Respondent Authorities could have taken steps to recover the said amount from the Management. At any rate, the Petitioner could not be denied of the gratuity amount on the date of her entitlement.

14. We therefore, hold that the delay in payment of the gratuity amount to the Petitioner caused by the Respondents is unjustified and arbitrary. Consequently, we direct the Respondent Nos.1 and 2 to pay the gratuity amount due and payable to the Petitioner within a period of 30 days from today.

15. As we have found the delay in payment of the gratuity amount to the Petitioner, being unjustified and the Petitioner being compelled to approach this Court the Respondent Nos.1 and 2 are liable to pay interest. The question is the rate of interest that would be payable on the said amount. Section 7(3A) of the Payment of Gratuity Act, 1972 deals with such an eventuality. Section (3A) of Payment of Gratuity Act, 1972 is quoted as under:-

“[(3).....

(3A) If the amount of gratuity payable under Section (3) is not paid by the employer within the period specified in Sub-

Section (3), the employer shall pay from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification, specify:

PROVIDED that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.]”

16. The Ministry of Labour, Government of India, in exercise of powers conferred by Sub-section (3A) of Section 7 of the Payment of gratuity Act, 1972 has issued notification dated 01.10.1987 notifying 10% as the rate of simple interest payable by the employer to his employee in cases where the gratuity is not paid within the specific period. Recently, the Hon’ble Supreme Court has held in it’s order dated 3rd March, 2025 passed in SLP No.4468 of 2022 holding that interest on the delayed payment of gratuity, has to be @ 10%, without any excuse. Therefore, We hereby direct the Respondent Nos.1 and 2 to pay the amount of gratuity payable to the Petitioner with interest component of 10% p.a. from 30.10.2023 till actual payment.

17. The second grievance of the Petitioner is with regard to submission of pension papers and release of pension, post

retirement benefits. Though, there appears to be delay in processing the pension papers of the Petitioner, however, the documents placed on record by the Respondent Nos. 1 and 2, marked as 'X-1' and 'X-2' refer to the explanation for delay. We accept the explanation offered by the Respondent Nos.1 and 2, more so in view of the stand now taken by the Respondent Nos.1 and 2. We, therefore, direct the Respondent Nos.1 and 2 to take steps to process the pension papers and to comply with any deficiencies, if any notified by the Respondent Authorities. We expect the Respondents to expedite the process and ensure the pensionary benefits are released to the Petitioner at the earliest.

18. The **Writ Petition is partly allowed** in the above terms and Rule made partly absolute accordingly.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)