

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10651 OF 2025

The General Manager, Greater Mumbai Milk
Scheme & Anr. .. Petitioners

Versus

Bhakti Gajanan Masurkar .. Respondent

-
- Ms. V.S. Nimbalkar, AGP for Petitioners – State
 - Mr. Shailesh S. Pathak, Advocate for Respondent
-

CORAM : MILIND N. JADHAV, J.

Reserved on : AUGUST 21, 2025

Pronounced on : SEPTEMBER 03, 2025

JUDGEMENT:

1. Heard Ms. Nimbalkar, learned AGP for Petitioners – State and Mr. Pathak, learned Advocate for Respondent.

2. Present Writ Petition challenges order dated 28.03.2024 passed by Industrial Court, Mumbai in Complaint (ULP) No.11 of 2024. The order dated 28.03.2024 is appended below Exhibit 'A' at page no. - 14.

3. Briefly stated, Petitioners run and maintain distribution of milk throughout Greater Mumbai and its suburbs. Petitioner No. 1 controls activities carried on by Government of Maharashtra under the Greater Mumbai Milk Scheme, Worli and Petitioner No. 2 is responsible for its day to day activities at the Central Dairy, Goregaon East, Mumbai. Respondent was employed from 1985 in the Central

Dairy until her retirement on 28.02.2019. Her last drawn salary was Rs.36,400/-. Respondent was allotted residential quarter at Aarey, Goregaon which was to be vacated within 3 months post retirement date, however during that time Respondent fell ill and shifted to Sindhudurg for treatment and did not return for the next few months.

3.1. In March 2020, Central and State Government declared lockdown on account of COVID-19 pandemic, restricting transport and other facilities. On 22.04.2022, Government Resolution was notified by the General Administration Department which stated that penal rent shall not be charged from officers and employees who failed to vacate their premises from 01.08.2020 to 30.04.2022 post which penal rent would be charged.

3.2. In 2022, after COVID-19 restrictions were lifted and Respondent returned to Mumbai and handed over possession of her residential quarters to Petitioners on 07.06.2022 after paying all pending electricity and water charges.

3.3. On 16.01.2023 and 20.03.2023, notices were dispatched to Respondent charging penal rent to the tune of Rs.23,23,047/-. On 25.10.2023, Respondent replied to the said notices stating that no penal rent can be charged as per Government Resolution and that all relevant documents for payment of pension and gratuity were filed. However since no response was received to the letter, Respondent filed

Complaint being Complaint (ULP) No.11 of 2024 under Item 5 and 9 under Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short '**MRTU & PULP Act**') along with Application for interim relief in Industrial Court at Mumbai seeking payment of gratuity and pension after deducting penal rent at the rate of Rs.10/- per square foot for the period of June 2019 to June 2022. The application was allowed directing Petitioners to pay the gratuity amount with liberty to deduct penal rent charges till 07.06.2022. Being aggrieved Petitioners filed the present Writ Petition.

4. Ms. Nimbalkar, learned AGP for Petitioners would submit that Order dated 28.03.2024 passed by Industrial Tribunal suffers from several infirmities and displays total non application of mind. She would submit that Item Nos. 5 and 9 of MRTU and PULP Act do not apply to the facts of the present case and there is blatant disregard of the principles of natural justice denying opportunity to Petitioners to file reply to Respondent's Interim Application before passing the impugned order.

4.1. She would submit that Respondent has failed to show and prove any unfair labour practice engaged by Petitioners. She would submit that Respondent retired in February 2019 and was required in law to vacate her residential quarter within a period of 3 months from

the date of her retirement i.e. May 2019. She would submit that Respondent did not vacate her residential quarter until 07.06.2022, hence was liable to pay penal rent as calculated in the notice dated 16.01.2023 appended at Exhibit 'B' Page No. - 50 of Petition. She would submit that Respondent cannot be entitled to any benefit of Government Resolution dated 22.04.2022 on the ground that she had retired from service prior to issuance of the said Resolution and the same applies prospectively only for retirements during the COVID - 19 period.

4.2. She would submit that Respondent retired as Class III employee hence the Maharashtra Civil Services Rules will be applicable to her case. She would submit that as per Rule 27 of the said Rules Petitioners have the power to withhold pension. She would submit that Petitioners do not fall into the purview of "industry", hence Respondent has approached the wrong forum and instead she should have approached the Maharashtra Administrative Tribunal. She would submit that Respondent has already received retirement benefit of Rs. 14,80,023/- and also receives pension of Rs. 18,200/- per month along with 53% dearness allowance as on date. Hence she would submit that direction contained in the impugned order regarding payment of gratuity amount is required to be set aside due to a substantial outstanding amount of penal rent due and payable by the Respondent to Petitioners.

5. *PER CONTRA*, Mr. Pathak, learned Advocate for Respondent supports the impugned order and would submit that Respondent is entitled to payment of gratuity, pension and all retirement dues receivable as per law on her retirement. He would submit Respondent was employed by Petitioners since the year 1985 served 33 years diligently with an unblemished service record until her retirement in the year 2019. He would submit that Respondent was allotted residential quarter in Aarey Colony, Goregaon, Mumbai which was to be vacated within 3 months post her retirement. He would submit that in the year 2019, Respondent fell ill and was operated, however due to certain complications in her operation, she returned to her native place in Sindhudurg to undergo ayurvedic treatment.

5.1. He would submit Respondent retired on 28.02.2019. He would submit later COVID-19 pandemic struck and Central and State Government issued lockdown orders which placed restrictions on travel, transport and other facilities thereby preventing Respondent from returning back to Mumbai to hand over possession of her residential quarters.

5.2. He would submit that when Respondent returned to Mumbai on 07.06.2022, she immediately handed over possession of her residential quarter to Petitioners. He has drawn my attention to Annexure 'A' at Exhibit 'B' appended to page no. 49 and 49A of

Petition to corroborate his submission that possession of residential quarters was handed over to Petitioners. He would submit that Petitioners ought to have paid Respondent her gratuity and pension amount immediately on her retirement. He would submit that all requisite documents, forms, NOC's were submitted by Respondent and no inquiry was pending against Respondent, hence Petitioners have no basis in law to withhold payment of gratuity amount due to the Respondent.

5.3. He would submit that Petitioners have informed the Pension Department and issued Clearance Certificate along with Nomination Form which was duly filled in and submitted by Respondent however she was orally informed that pension and gratuity amounts cannot be disbursed until the outstanding penal rent was paid to Petitioners. He would submit that as per Government Resolution appended to Annexure 'F' in Exhibit 'B' at page no. 58, penal rent was to be excluded for the period from 01.08.2020 to 30.04.2022 in the light of COVID-19 pandemic, hence Petitioners have no right to recover penal rent from Respondent. He would submit that failure to apply the said Government Resolution to Respondent's case amounts to unfair labour practice under Item 9 under Schedule IV of the MRTU and PULP Act.

5.4. He would submit that many other employees of Petitioners challenged imposition of penal rent before the City Civil Court,

Mumbai. He would submit that order passed by the City Civil Court is appended at Annexure 'G' before the Court below and at Page No. Exhibit 'B' Page No. 60. He would submit that the City Civil Court by order dated 10.01.2024 granted benefit of the Government Resolution to several such similarly placed employees and directed them to deposit arrears towards penal rent at the rate of Rs. 10/- per square feet from the date of their retirement. He would submit that Petitioners are also entitled to the same treatment.

5.5. He would submit that Industrial Court passed order in Complaint (ULP) No. 259 of 2021 directing Petitioners to pay gratuity, pension and GIS with liberty to deduct penal rent. He would submit that Petitioners have placed Respondent on a different footing as compared to similarly placed employees who have received favorable orders from the City Civil Court, Mumbai for the levy of penal rent at the rate of Rs. 10/- per square foot. He would submit that such discrimination of the Petitioner needs to be considered by the Court as unfair practice falling within Item 5 under Schedule IV of the MRTU and PULP Act. He would urge the Court to pass appropriate orders in the interest of justice.

6. I have heard Ms. Nimbalkar, learned AGP appearing on behalf of Petitioners - State and Mr. Pathak, learned Advocate appearing on behalf of Respondent and with their able assistance

perused the record of the case. Submissions made by the learned Advocates at the bar have received due consideration of the Court.

7. Material is placed on record appended from page no. 14 onwards until page no. 84 in the form of the impugned order, application filed by Respondent, notices, Government Resolution, forms, certificates, and orders passed by the City Civil Court and Industrial Court to show that Respondent is not entitled to receive gratuity until payment of penal rent. It is seen that Petitioners did not file any reply to the complaint filed by Respondent before the Industrial court and were directed to strictly argue the law points hence the contention made by the Petitioner that Industrial Court did not afford an opportunity to be heard is pressed. It is seen that Petitioners have not placed any documentary evidence on record to show any blemish on Respondent service record, hence the provision of Rule 27 of Maharashtra Civil Service Rules, 1982 is prima facie not applicable. It maybe true that Petitioners were denied with an opportunity of filing reply but merely because of that the impugned order cannot be set aside. Court's duty is to look into the cause of action. Equally Court's duty is to bring finality to an issue which deserved to be decided. Here is a case of a retired employee of the government. *Lis* is only regard she overstaying in her government quarter and required to pay penal rent. Admittedly she retired before the COVID - 19 pandemic. However it is her case that COVID - 19

pandemic precluded her from returning back to the city to handover her quarter which was locked during that time. There is no dispute about these facts. She has also shown her bonafides by handing over her quarter immediately after the lockdown was lifted.

8. It is seen that the impugned order mentions certain Miscellaneous Appeals allowed by the City Civil Court Mumbai of similarly placed employees who could not surrender their quarters during COVID - 19 pandemic period. One such order is appended at Annexure 'G' at page no. 60 wherein it is held that employees of Petitioner were entitled to benefit of Government Resolution and that penal rent would be charged and calculated at the rate of Rs. 10/- per square foot. It is also seen from the order passed by Industrial Court appended at Annexure 'T' at page No. 66 that Petitioners are directed to pay gratuity, provident fund and GIS along with liberty to deduct penal rent charges accordingly. This is objected to by Petitioners. It is seen that Respondent retired from service on 28.02.2019 which is prior to issuance of Government Resolution, however it is seen that there is no exclusion of officers or employees who retired prior to the notification. Hence such officers and employees who are duly covered and entitled to benefit under the aforementioned Government Resolution will have to be extended the same benefit. It is seen that despite the orders passed by the City Civil Court, Mumbai and Industrial Court, Mumbai as well as Government Resolution,

Petitioners have failed to apply the same to Respondent's case which clearly amounts to unfair trade practice under Items 5 and 9 under Schedule IV of the MRTU & PULP Act.

9. With regard to the submission made by Ms. Nimbalkar that no opportunity was granted for hearing, I am not inclined to accept the same. I am of the opinion that Government Resolution ought to have been applied to the Respondent's case in the aforementioned facts. The Respondent was genuinely precluded due to her illness which she was nursing at Sindhudurg after her retirement. This is not a case where Respondent was enjoying her stay in the residential quarter for which penal rent is charged.

10. While taking into account the overall circumstances, the impugned order in my opinion is a well reasoned order giving cogent and reasoned findings in paragraph Nos.08 to 10 of the same. The said order dated 28.03.2024 cannot be faulted with and does not call for any interference of this Court.

11. The Order / Award dated 23.04.2024 is upheld and confirmed. Resultantly, Writ Petition fails. Petitioners shall comply with the said Order / Award forthwith and in any event within a period of two weeks from today.

12. Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

13. After the judgment is pronounced in Court, Ms. Nimbalkar, learned AGP for Petitioners - State persuades the Court to stay the said judgment to enable the Petitioners to test the validity and legality of the judgment in the superior Court.

14. I have considered the request made by Ms. Nimbalkar, however considering the issue involved in the present case, *inter alia*, pertaining to payment of gratuity, request for stay is rejected.

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[MILIND N. JADHAV, J.]