

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.14846 OF 2025

H.A.L. (ND) Employees Co-op. Credit Society Ltd.
through its Secretary Vijay Raghvendra Purandare ... Petitioner
Vs.
Devidas Gopalrao Varkhede and another ... Respondents

Mr. Aadil Parsurampururia a/w. Mr. Sachin D. Kadam for Petitioner.
Mr. Anilkumar Patil a/w. Ms. Zeel Jain and Mr. Digvijay A. Patil for Respondent No.1.
Ms. Vaishali Raje, AGP for Respondent No.2-State.

CORAM : MANISH PITALE, J.
DATE : NOVEMBER 20, 2025

P.C. :

. Heard Mr. Aadil Parsurampururia, learned counsel appearing for the petitioner and Mr. Anilkumar Patil, learned counsel appearing for the contesting respondent No.1. The State of Maharashtra, in the facts and circumstances of the present case, is a formal party. Ms. Vaishali Raje, learned AGP appears for respondent No.2-State.

2. This petition challenges concurrent orders passed by the controlling authority and the appellate authority under the provisions of the Payment of Gratuity Act, 1972 (for short 'Gratuity Act'), whereby the petitioner, which is a credit co-operative society, has been directed to pay gratuity amount to the respondent No.1 along with interest, as the gratuity amount was forfeited by the petitioner.

3. Respondent No.1 was working as secretary of the petitioner society for about 33 years when he was served with a show cause notice dated 30.04.2013 as to why appropriate action of relieving him from service should not be taken in the light of resolutions passed in the

General Body Meetings of the petitioner society, on allegations that certain amounts of the petitioner society had been misappropriated.

4. By a letter dated 17.06.2013, the petitioner society relieved the respondent No.1 on the ground that his explanation given to the said show cause notice was not found to be satisfactory. It is the case of the respondent No.1 that before the aforesaid letter was issued, he had himself tendered his resignation on the very same day i.e. 17.06.2013.

5. It is to be noted that a reference was made in the show cause notice dated 30.04.2013 to a criminal case registered in respect of the alleged illegal siphoning off the amounts of the petitioner society, wherein the respondent No.1 was arraigned as an accused. It is not disputed that charge-sheet is filed wherein the respondent No.1 has also been shown as an accused.

6. Since the petitioner society failed to disburse gratuity amount payable to the respondent No.1 under the provisions of the Gratuity Act, he was constrained to file an application before the controlling authority i.e. the First Labour Court at Nashik, seeking an order for disbursal of gratuity amount along with interest.

7. It is in these proceedings that the petitioner society came up with a case that in the light of the aforesaid acts of the respondent No.1, which amounted to offence involving moral turpitude, the gratuity was withheld by exercising power under Section 4(6)(b)(ii) of the Gratuity Act. The Controlling Authority i.e. the First Labour Court at Nashik considered the rival submissions and held in favour of the respondent No.1, directing payment of gratuity along with interest @10% p.a. from 17.06.2013 till its actual payment.

8. Aggrieved by the said order, the petitioner society filed appeal

before the appellate authority i.e. the Industrial Court at Nashik. As per the statutory requirement, the petitioner society deposited the principal amount payable towards gratuity in order that the appeal be entertained by the appellate authority. By the impugned judgment and order dated 08.05.2025, the Industrial Court (appellate authority) dismissed the appeal and upheld the order dated 07.07.2022 passed by the First Labour Court at Nashik (controlling authority).

9. Aggrieved by the same, the petitioner filed the present petition.

10. Mr. Aadil Parsurampur, learned counsel appearing for the petitioner society submitted that in the light of the settled position of law in respect of the forfeiture of gratuity under the provisions of the Gratuity Act clarified in the judgement of the Supreme Court in the case of *Western Coal Fields Limited Vs. Manohar Govinda Fulzele*, **2025 SCC OnLine SC 345**, the material on record clearly demonstrated that the petitioner society, as the employer, was justified in withholding gratuity as the case of the respondent No.1 was clearly covered under Section 4(6)(b)(ii) of the Gratuity Act. The fact that the respondent No.1 has been arraigned as an accused in a criminal proceeding along with other accused persons, involving allegations of misappropriation of huge amounts of the petitioner society and the fact that he was put to notice by the aforesaid show cause notice dated 30.04.2013 with regard to his misconduct leading to the letter dated 17.06.2013, whereby he was relieved from service, demonstrated that a clear case was made out by the petitioner society for justifiably forfeiting gratuity to the respondent No.1. Considering the huge amount of misappropriation in which the respondent No.1 was involved, forfeiting the gratuity amount was clearly justified. It was submitted that both the authorities below failed to appreciate the facts of the present case in the correct perspective and by the time the matter came up before the appellate authority (Industrial

Court at Nashik), the judgement of the Supreme Court in the case of **Western Coal Fields Limited Vs. Manohar Govinda Fulzele** (*supra*) was holding the field, and therefore, the said judgement should have been applied to the facts of the present case to hold against the respondent No.1.

11. It was further submitted that in the light of the contents of the show cause notice dated 30.04.2013 given to respondent No.1, issuing a separate notice to him for forfeiting gratuity would be an empty formality and therefore, the authorities below were not justified in observing that principles of natural justice were not followed. It was submitted that since the criminal proceeding is still pending, the concurrent orders passed by the authorities below deserve to be set aside.

12. It was further submitted that the respondent No.1 cannot rely upon a report submitted by the Competent Authority under Section 88 of the Maharashtra Co-operative Societies Act, 1960 (for short 'Co-operative Societies Act'), which was confirmed by the Joint Registrar of the Co-operative Societies, exonerating respondent No.1 and others, for the reason that the challenge to the same is pending before the appellate authority i.e. the concerned Minister. On this basis, it was submitted that the writ petition may be allowed.

13. On the other hand, Mr. Anilkumar Patil, learned counsel appearing for respondent No.1 submitted that the fundamental flaw in the present case in the action taken by the petitioner society in forfeiting gratuity, was absence of a notice to the respondent No.1, specifying grounds why gratuity was being forfeited. It was only when the respondent No.1 was constrained to approach the Labour Court (Controlling Authority) raising his grievance, that the petitioner society, for the first time, came forward with its version as to why gratuity was

forfeited.

14. It was further submitted that even if the law laid down by the Supreme Court in the case of **Western Coal Fields Limited Vs. Manohar Govinda Fulzele** (*supra*) is applied to the facts of the present case, in the light of the aforesaid report under Section 88 of the Co-operative Societies Act, exonerating the respondent No.1 holding the field, even on the test of 'preponderance of probabilities', no case is made out by the petitioner society to take the drastic action of forfeiting gratuity. The grounds necessary for exercising power under Section 4(6) (b)(ii) of the Gratuity Act were not available for the petitioner society to forfeit gratuity, and therefore, the petition deserves to be dismissed.

15. Having heard the learned counsel for the rival parties, this Court finds that in the present case, one fact is undeniable. The petitioner society never issued notice to the respondent No.1 before taking the action of forfeiting gratuity payable to the said respondent. The action of forfeiting the gratuity is indeed adverse to the interest of the employee and it can be considered as a drastic action, requiring issuance of notice. The only notice upon which the petitioner society relies is the show cause notice dated 30.04.2013. A perusal of the same shows that in two meetings of the General Body of the petitioner society, much anger was expressed by the members against the manner in which the respondent No.1 as the secretary of the petitioner society had functioned. There was a demand to relieve him from his duties. There was indeed a reference made to the registration of offence with regard to the allegations made against the respondent No.1 and others. This notice merely indicated that in the light of the dissatisfaction and anger expressed by members of the petitioner society, the decision of relieving the respondent No.1 from his service was contemplated. The said notice does not show any whisper about the intention of the petitioner society to forfeit gratuity payable to

the respondent No.1 under the provisions of the Gratuity Act.

16. The documents on record also show that in terms of the letter dated 17.06.2013, the petitioner society 'relieved' the respondent No.1 from his services on the ground that the explanation given by him to the show cause notice was not found to be satisfactory. In other words, no enquiry was conducted and no findings were rendered after a properly instituted enquiry against the respondent No.1 with regard to the allegations of alleged illegal siphoning off the amounts of the petitioner society. It is a matter of record that the respondent No.1 himself had tendered a letter of resignation received by the petitioner society on the very same day i.e. 17.06.2013. A copy of the said document was tendered and it is not seriously disputed that the same formed part of the record of the authorities below (marked as 'Exhibit U28'). Thus, this is not a case of termination of service of the employee pursuant to an enquiry and findings by an enquiry committee against the employee on allegations that would amount to an offence involving moral turpitude on the touchstone of the test of 'preponderance of probabilities' as contemplated in the judgement of the Supreme Court in the case of **Western Coal Fields Limited Vs. Manohar Govinda Fulzele** (*supra*).

17. The absence of a specific notice to the respondent No.1 before taking the drastic action of forfeiting gratuity is also a glaring deficiency in the facts and circumstances of the present case, which renders the aforesaid act of the petitioner society illegal and unsustainable. In fact, the appellate authority (Industrial Court at Nashik), while confirming the order of the controlling authority (First Labour Court at Nashik), recorded that no opportunity or hearing was given in respect of forfeiture of gratuity amount to the respondent No.1. No error can be attributed to the aforesaid finding rendered by the appellate authority.

18. Apart from this, it is also not denied that a report prepared by the

Competent Authority under Section 88 of the Co-operative Societies Act exonerated the respondent No.1 of the allegation of misappropriation of funds. The said report was confirmed by the Joint Registrar of Co-operative Societies. Although a challenge raised on behalf of the petitioner society is pending before the Minister, that in itself, cannot be a ground to justify the drastic action of forfeiting gratuity payable to the respondent No.1.

19. The petitioner society, as the employer, could have exercised power of forfeiting gratuity only within the four corners of Section 4 of the Gratuity Act. It would be necessary to refer to the relevant portion of the said provision, which reads as follows:-

“4. Payment of Gratuity.- (1) ***

(2) to (5) ***

(6) Notwithstanding anything contained in sub-section (i),-

(a) ***

(b) the gratuity payable to an employee may be wholly or partially forfeited.

(i) ***

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.”

20. A bare perusal of the above-quoted provision would show that gratuity payable to an employee can be wholly or partially forfeited, only if services of such an employee have been terminated for an act, which constitutes offence involving mortal turpitude. In the aforesaid judgement of the Supreme Court in the case of **Western Coal Fields Limited Vs. Manohar Govinda Fulzele** (*supra*), while expounding the position of law with regard to the test applied to the phrase ‘offence involving moral turpitude’, the following observations have been made:-

“10. As has been argued by the learned Solicitor General and the learned Counsel appearing for MSRTC, sub-clause (ii) of

Section 4(6)(b) enables forfeiture of gratuity, wholly or partially, if the delinquent employee is terminated for any act which constitutes an offence involving moral turpitude, if the offence is committed in the course of his employment. An 'Offence' as defined in the General Clauses Act, means 'any act or omission made punishable by any law for the time being' and does not call for a conviction; which definitely can only be on the basis of evidence led in a criminal proceeding. The standard of proof required in a criminal proceeding is quite different from that required in a disciplinary proceeding; the former being regulated by a higher standard of 'proof beyond reasonable doubt' while the latter governed by 'preponderance of probabilities'. The provision of forfeiture of gratuity under the Act does not speak of a conviction in a criminal proceeding, for an offence involving moral turpitude. On the contrary, the Act provides for such forfeiture; in cases where the delinquent employee is terminated for a misconduct, which constitutes an offence involving moral turpitude. Hence, the only requirement is for the Disciplinary Authority or the Appointing Authority to decide as to whether the misconduct could, in normal circumstances, constitute an offence involving moral turpitude, with a further discretion conferred on the authority forfeiting gratuity, to decide whether the forfeiture should be of the whole or only a part of the gratuity payable, which would depend on the gravity of the misconduct. Necessarily, there should be a notice issued to the terminated employee, who should be allowed to represent both on the question of the nature of the misconduct; whether it constitutes an offence involving moral turpitude, and the extent to which such forfeiture can be made. There is a notice issued and consideration made in the instant appeals; the efficacy of which, has to be considered by us separately."

21. It is relevant to note that in the said case also, it was noted that a notice had been issued to the employee before proceeding to exercise the power to forfeit gratuity by invoking Section 4(6)(b)(ii) of the Gratuity Act.

22. Since no such notice was ever issued to the respondent No.1, the action of forfeiting gratuity on the part of the petitioner society was rendered unsustainable. Apart from this, the service of the respondent No.1 was not terminated upon holding an enquiry for any specific

charges and the report under Section 88 of the Co-operative Societies Act had exonerated him.

23. In view of the observations made hereinabove, this Court finds no merit in the present writ petition and accordingly, the writ petition is dismissed.

24. Pending applications, if any, also stand disposed of.

(MANISH PITALE, J.)

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