

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14900 OF 2025**

Aidem Ventures Pvt. Ltd.	...	Petitioner
vs.		
Darshan Pitale	...	Respondent

**AND
WRIT PETITION NO. 15266 OF 2025**

Aidem Ventures Pvt. Ltd.	...	Petitioner
vs.		
Deepak Sharma	...	Respondent

Mr. Anand Pai a/w. Mr. Sahil Gandhi, Ms. Riddhi Shah and Ms. Triveni Jawale, i/b. Markand Gandhi & Co. for petitioner in both petitions.

Ms. Sonal Rane a/w. Mr. Suraj Bansode for respondents in both petitions.

CORAM : MANISH PITALE, J

DATE : 21st NOVEMBER, 2025

ORDER:

. These petitions are filed by the same petitioner-Company against ex-employees. The petition arises out of concurrent orders passed by the Controlling Authority (Labour Court) and Appellate Authority (Industrial Court), under the provisions of the Payment of Gratuity Act, 1972 (Gratuity Act). Both the authorities have concurrently held that the petitioner-Company was not justified in forfeiting gratuity payable to the respondents, by taking recourse to Section 4(6)(b)(ii) of the Gratuity Act and accordingly, while allowing the applications of the respondents, a direction has been issued to the petitioner-Company to pay the gratuity with simple interest at the rate of 10% per annum, till payment of such amounts.

2. Mr. Anand Pai, the learned counsel appearing for the petitioner-Company in both these petitions, submitted that the concurrent orders passed by the two authorities below, deserve interference, for the reason that the acts of the respondents, as alleged by the petitioner-Company, amounted to acts of moral turpitude and hence, the petitioner-Company was justified in forfeiting the gratuity by taking recourse to Section 4(6)(b)(ii) of the Gratuity Act. Attention of this Court was invited to Section 4(1) of the Gratuity Act, to submit that termination of employment under the said provision, is contemplated in various situations, including superannuation, retirement or resignation, death or disablement due to accident or disease. It was emphasized that since in the present case, both the respondents had resigned from their employment with the petitioner-Company, that in itself would not come in the way of the petitioner-Company exercising power under Section 4(6)(b)(ii) of the Gratuity Act, which refers to termination of service of an employee.

3. It was further submitted that in the present case, it is undisputed that there was a non-disclosure policy contained in the employees handbook, which applied to the respondents and it mandated that the employees would not disclose trade secrets or confidential business information of the petitioner-Company. Any violation of the said stipulation would invite disciplinary action, including termination of employment.

4. The learned counsel for the petitioner-Company submitted that after resigning from the petitioner-Company, the respondents took up employment with a rival company, in breach of the relieving letter, which stipulated that they would not take such employment with a

rival company within a period of one year from cessation of their employment with the petitioner-Company. It was submitted that the respondents-employees not only breached the said stipulation, but they acted in a manner prejudicial to the petitioner-Company to the extent that at least two clients of the petitioner-Company were poached by the rival company, indicating that the respondents had utilized the trade secrets and confidential business information of the petitioner-Company. According to the petitioner-Company, this clearly amounted to an act constituting an offence of moral turpitude, justifying recourse to Section 4(6)(b)(ii) of the Gratuity Act.

5. Reliance was placed on the judgment of the Supreme Court in the case of *Western Coal Fields Ltd. vs. Manohar Govinda Fulzele* (2025 SCC OnLine 345), to contend that the law pertaining to the aforesaid provision, was now clarified by the Supreme Court to the effect that the expression ‘offence’ used in the aforementioned provision, would not mean an offence involving moral turpitude requiring conviction in a criminal proceeding, but it would be tested on the touchstone of the test of ‘preponderance of probabilities’.

6. It was further submitted that the respondents could not claim breach of principles of natural justice on the ground that notice was not issued before forfeiting the gratuity, for the reason that the petitioner-Company had placed sufficient material on record before the Controlling Authority to prove its case of clear act of moral turpitude on the part of the respondents, justifying forfeiture of gratuity. A parallel was drawn with proceedings under the labour and industrial laws, where an employer has an opportunity to lead evidence before the Court, if it is found that domestic enquiry

suffered from violation of principles of natural justice. Reliance was placed on the judgment of a Division Bench of this Court in the case of *Ramchandra S. Joshi vs. Bank of Baroda, Mumbai* [2010 (6) Mh.L.J. 421], to emphasize upon the definition of ‘moral turpitude’. It was further submitted that the petitioner-Company had filed civil suits against the respondents, claiming damages to the extent of ₹ 40 lakhs each from the respondents. It was submitted that the findings rendered by the authorities below, would be prejudicial to the case of the petitioner-Company in the pending civil suits, unless such findings were interfered with.

7. On the other hand, Ms. Rane, the learned counsel appearing for the respondents in both these petitions submitted that the forfeiture of gratuity can be undertaken only by exercising statutory power under Section 4(6)(b)(ii) of the Gratuity Act. The petitioner-Company cannot be permitted to take recourse to the said provision, as alleged acts of moral turpitude, even according to the petitioner-Company, were not committed during the course of employment of the respondents with the petitioner-Company. It was further submitted that the Supreme Court, in the case of *State of Jharkhand and others vs. Jitendra Kumar Srivastava and another* [(2013) 12 SCC 210], has held that gratuity is not a bounty, but property belonging to a person akin to property under Article 300A of the Constitution of India. It was submitted that the petitioner-Company could not be permitted to deprive the respondents of their property and that too, by arbitrarily exercising power, not within the four corners of the provisions of the Gratuity Act.

8. Having heard the learned counsel for the rival parties, this Court is of the opinion that reference to Section 4(6)(b)(ii) of the

Gratuity Act, would be necessary to properly appreciate the rival submissions. The said provision 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.”

9. A perusal of the above-quoted provision shows that an employer would be able to forfeit gratuity payable to an employee wholly or partially, if the service of such employee is terminated for an act constituting an offence involving moral turpitude. The last portion in Section 4(6)(b)(ii) of the Gratuity Act is crucial as it stipulates that such power for forfeiting gratuity, could be exercised by the employer, only if the offence or act involving moral turpitude, is committed by the employee ‘in the course of his employment’. The aforesaid words are crucial and the rival submissions need to be appreciated in the context of the said words.

10. The documents and material on record show that even according to the petitioner-Company, the alleged act involving moral turpitude committed by the respondents, took place after their cessation of employment with the petitioner-Company. The allegation is that the respondents violated specific stipulation in their relieving letter that they would not join a rival company within one year of cessation of their employment and after joining such rival company,

violating the said stipulation, they proceeded to allegedly disclose trade secrets and confidential business information of the petitioner-Company, thereby causing pecuniary loss to it. Even if the allegation made against the respondents, is to be accepted as it is, it clearly does not concern an act committed by the respondents in the course of their employment. On this short ground, this Court is of the opinion that the petitioner-Company could not have taken recourse of Section 4(6)(b)(ii) of the Gratuity Act.

11. It is a matter of record that no notice was ever issued to the respondents, calling upon them as to why gratuity payable to them should not be forfeited. Although there is substance in the contention raised on behalf of the petitioner-Company that since termination of employment of an employee, can also be through resignation, as contemplated under Section 4(1) of the Gratuity Act, but, the least that was expected was that the petitioner-Company would issue notice to the respondents before taking the drastic action of forfeiting their gratuity, which has civil consequences. Reliance placed on behalf of the respondents on the judgment of the Supreme Court in the case of **State of Jharkhand and others vs. Jitendra Kumar Srivastava and another** (*supra*), is apposite as it lays down that gratuity is not a bounty, but property belonging to a person akin to property under Article 300A of the Constitution of India. Absence of any notice being issued to the respondents, is another ground showing that the impugned orders passed by the two authorities below, do not deserve interference.

12. As regards reliance placed on the judgment of the Supreme Court in the case of **Ramchandra S. Joshi vs. Bank of Baroda, Mumbai** (*supra*), there can be no quarrel with the definition of

‘moral turpitude’, as laid down in the said judgment. But, the crucial aspect is that the question as to whether the act alleged against the respondents amounts to an act of moral turpitude, would arise in proceedings under the Gratuity Act, only if the allegation is that such an act was committed in the course of employment of the employee. In the facts of the present case, the aforesaid judgment would not be of any assistance to the petitioner-Company.

13. Reliance was placed on the judgment in the case of *Workmen of the Motipur Sugar Factory Private Ltd. vs. The Motipur Sugar Factory* (**AIR 1965 SC 1803**) on the proposition that the petitioner-Company could prove such an act of moral turpitude even before the Controlling Authority, if it was found that the principles of natural justice had been violated. The same could take the case of the petitioner-Company further, only if the allegation against the respondents was that during the course of their employment, they had committed the alleged act involving moral turpitude.

14. It is to be noted that in the present case, during the course of employment, not a single notice was issued to the respondents, alleging that they had disclosed trade secrets or confidential business information. In fact, the whole case of the petitioner-Company is that after cessation of employment, the respondents joined the rival company and indulged in the act of disclosing trade secrets. It is not even the case of the petitioner-company that the services of the respondents were terminated on such allegations.

15. The drastic power of forfeiting gratuity, which is property rightly owned by the employee, can be undertaken strictly within the statutory framework of the said Act and since in the present case, the

petitioner-Company could not have taken recourse to Section 4(6)(b) (ii) of the Gratuity Act, this Court finds no substance in the contentions raised on behalf of the petitioner-Company. Hence, the writ petitions deserve to be dismissed.

16. At this stage, the learned counsel for the petitioner-Company submitted that this Court may observe that the order passed in these writ petitions and the observations made by the authorities below, may not come in the way of the petitioner-Company pursuing its civil suits filed against the respondents.

17. In view of the above, the writ petitions are dismissed. Pending applications, if any, also stand disposed of.

18. Needless to say, the observations made in this order and the findings rendered by the Controlling as well as Appellate Authority, would not prejudice the petitioner-Company in pursuing the civil suits filed against the respondents on their own merits.

(MANISH PITALE, J.)

Priya Kambli

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