

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.232 OF 2025

Sadguru Daskishan Sai Baba Mandal

....Petitioner

V/S

Vaishali More

....Respondent

Mr. Mahesh Shukla i/b Mr. Niraj Prajapati for the Petitioner.

Mr. Shailesh S. Pathak a/w Mr. T.R. Yadav for Respondent.

CORAM : SANDEEP V. MARNE, J.

DATE : 24 NOVEMBER 2025.

P.C.:

1. The challenge in the Petition is to the the order dated 10 May 2024 passed by First Labour Court, Mumbai rejecting Application at Exhibit-C-6 filed by the Petitioner-employer seeking refund of amount of gratuity paid to the Respondent. The prayer for refund of paid gratuity was made in the light of reference raised at the instance of the Respondent regarding termination of her services.

2. I have heard Mr. Shukla, the learned counsel appearing for the Petitioner and Mr. Pathak, the learned counsel appearing for the Respondent.

3. Mr. Shukla would rely upon judgment of this Court in ***Sheikh Mehmood s/o Abdul Mannan vs. Universal Medikit Private Limited***,¹ in support of his contention that once termination is questioned, the

¹ 2020 (1) Mh.LJ 11

amount of gratuity becomes inadmissible. I have gone through the judgment in ***Sheikh Mehmood s/o Abdul Mannan*** (supra). In that case, the Petitioner therein had filed Application before the Controlling Authority for payment of gratuity. The Controlling Authority allowed the Application and directed payment of gratuity, which order was assailed by the employer contending that the Petitioner therein had already filed complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. It is in the light of the above factual position that Single Judge of this Court was persuaded to hold that adjudication with regard to right of employee to receive gratuity cannot be made unless finality is attained with regard to validity of termination. In the present case, however, the Respondent has already been paid gratuity by the Petitioner-employer. Respondent has not initiated any proceedings for payment of gratuity. Therefore, the judgment in ***Sheikh Mehmood s/o Abdul Mannan*** (supra) rendered in the light of challenge raised to order passed by the Controlling Authority under Payment of Gratuity Act cannot be used for the purpose of seeking refund of amount of gratuity already paid to the Respondent. The principle of making an employee refund the benefits is made applicable only in relation to voluntary retirement scheme and the said principle cannot be imported in proceedings challenging termination. The principle of refund of VRS benefits is made applicable to deter employees from challenging VRS after opting for benefits under the scheme. The act of receipt of VRS benefits is 'voluntary' whereas payment of gratuity of termination is not a voluntary act of the employee. I therefore do not find any valid reason to interfere in the impugned order. The Petition is accordingly rejected.