



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 887 OF 2024

Municipal Council Achalpur,
through its Chief Officer,
Achalpur, District Amravati.

.... **PETITIONER**

// VERSUS //

Anil Laxmanrao Pataskar,
Aged about 66 years, Occu.- Non known,
R/o. Tilak Chowk, Kadali Road,
Achalpur, Tq. Achalpur,
District – Amravati.

.... **RESPONDENT**

WITH

WRIT PETITION NO. 813 OF 2024

Municipal Council Achalpur,
through its Chief Officer,
Achalpur, District Amravati.

.... **PETITIONER**

// VERSUS //

Purushottam Janardhan Hirulkar (Deceased)
(Original Applicant) through his legal heirs :

- 1) Smt. Nanda Wd/o. Purushottam Hirulkar,
Aged about 64 years, Occu.- Non known,
- 2) Sagar S/o. Purushottam Hirulkar,
Aged about 36 years, Occu.- Non known,
- 3) Anup S/o. Purushottam Hirulkar,
Aged about 32 years, Occu.- Non known,

All R/o. Sultanpura, Achalpur,
Tq. Achalpur, Distt. – Amravati.

.... **RESPONDENT**

WITH

WRIT PETITION NO. 889 OF 2024

Municipal Council Achalpur,
through its Chief Officer,
Achalpur, District Amravati.

.... **PETITIONER**

// VERSUS //

Nandkishor Kashiram Bundele,
Aged about 68 years, Occu.- Non known,
R/o. Nagar Parishad Quarter,
Achalpur Camp, Tq. Achalpur,
District – Amravati.

.... **RESPONDENT**

WITH

WRIT PETITION NO. 340 OF 2024

Municipal Council Achalpur,
through its Chief Officer,
Achalpur, District Amravati.

.... **PETITIONER**

// VERSUS //

Narayan S/o Shriram Ingole,
Aged about 65 years, Occu.- Non known,
R/o. Chota Bazar, Paratwada,
Tq. Achalpur, Distt. – Amravati.

.... **RESPONDENT**

Mr. Rohan Bhishikar, Advocate for the Petitioners.
Mr. N. R. Saboo, Advocate for the Respondents.

CORAM : SMT. M.S. JAWALKAR, J.

DATE : JANUARY 22, 2025.

COMMON JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

2. Since the issue involved in all these petitions is similar hence, they are being disposed of by this common judgment.

3. In Writ Petition No.887/2024, the petitioner is challenging the order dated 27.06.2023, passed by the Appellate Authority under the Payment of Gratuity Act, 1972, Amravati in P.G.A. Appeal No.12/2021 and further challenging the judgment and order dated 26.10.2021, passed by the Controlling Authority, Labour Court, Amravati in Application (PGA) No.09/2016.

4. In Writ Petition No.813/2024, the petitioner is challenging the order dated 27.06.2023, passed by the Appellate Authority under the Payment of Gratuity Act, 1972, Amravati in P.G.A. Appeal No.13/2021 and further challenging the judgment and order dated 26.10.2021, passed by the Controlling Authority, Labour Court, Amravati in Application (PGA) No.08/2016.

5. In Writ Petition No.889/2024, the petitioner is challenging the order dated 27.06.2023, passed by the Appellate Authority under the Payment of Gratuity Act, 1972, Amravati in P.G.A. Appeal No.08/2022 and further challenging the judgment and order dated 15.02.2022, passed by the Controlling Authority, Labour Court, Amravati in Application (PGA) No.34/2015.

6. In Writ Petition No.340/2024, the petitioner is challenging the order dated 27.10.2023, passed by the Appellate Authority under the Payment of Gratuity Act, 1972, Amravati in P.G.A. Appeal No.15/2022 and further challenging the judgment and order dated 25.05.2022, passed by the Controlling Authority, Labour Court, Amravati in Application (PGA) No.07/2016.

7. It is the contention of the petitioner – Municipal Council, Achalpur that the petitioner is a local authority and is governed by the provisions of the Maharashtra Municipal Councils, Nagar Panchayat and Industrial Townships Act, 1965. The respondents were initially engaged in the services of the petitioner as a daily wager and thereafter, they were confirmed in the services as per the order and approval given by the Director of Municipal Administration in Writ Petition No.887/2024 from 02.05.2001 till 30.04.2024, in Writ Petition No.813/2024 from 02.05.2001 till 31.12.2012, in Writ Petition No.889/2024 from 01.07.1989 till 31.03.2013 and Writ Petition No.340/2024 from 20.09.2002 till 31.01.2014. The respondents filed the Applications bearing (PGA) Nos. 09/2016, 08/2016, 34/2015 and 07/2016, before the Controlling Authority alleging that they are governed by the Payment of Gratuity Act, 1972 and amount of gratuity is not paid properly. The Controlling Authority after hearing both the parties, directed the Municipal Council – petitioner to pay the

respondent in Writ Petition No.887/2024 of Rs.1,38,061/- with interest at the rate of 10% per annum from 01.06.2014 till actual payment of gratuity, in Writ Petition No.813/2024 of Rs.1,17,442/-with interest at the rate of 10% per annum from 01.02.2013 till actual payment of gratuity, in Writ Petition No.889/2024 of Rs.2,27,978/- with interest at the rate of 10% per annum from 01.05.2013 till actual payment of gratuity and in Writ Petition No.340/2024 of Rs.2,87,522/- with interest at the rate of 10% per annum from 01.10.2014 till actual payment of gratuity.

8. The said judgments and orders were assailed by filing appeals bearing P.G.A.-Appeal Nos.12/2021, 13/2021, 08/2022 and 15/2022 before the Appellate Authority, under the Payment of Gratuity Act, 1972, Amravati. The learned Appellate Authority dismissed the Appeals holding that there is no illegality or perversity in the orders passed by the Controlling Authority.

9. It is the contention of the petitioner that amount of gratuity was paid as per the Rule 111 of the Maharashtra Civil Services (Pension) Rules, 1982 however, in view of Section 4(5) of the Payment of Gratuity Act, 1972, which reads as under :

“Nothing in this section shall affect the right of an employee to receive better terms of gratuity under

any award or agreement or contract with the employer”.

Section 5 of the Act provides for exemption of any establishment by the appropriate Government.

10. The learned Counsel for the petitioner has relied upon the case of ***M. Karunanidhi Vs. Union of India and Anr.***, reported in **(1979) 3 SCC 431**, however, it has no relevance as issue involved in the said matter at the hands of Supreme Court was about the interpretation of statutes when there is repugnancy. In such cases, intention of legislator to be gathered, however, there is no such repugnancy and Act is very clear.

11. Admittedly, the payment of gratuity under the Payment of Gratuity Act, 1972 is more beneficial to the respondent employee as compared to the gratuity payable under the Maharashtra Civil Services (Pension) Rules, 1982. It has also not brought on record that the Municipal Council has sought exemption under Section 5 of the Act of 1972, from the appropriate Government by notification and subject to such conditions as may be specified in the notification, exempting employee of Municipal Council/petitioner. There is no such exemption applied for. Even though, the petitioner claimed that in appointment orders, it is specifically mentioned the respondents will be governed by

the MCSR rules and conditions. However, in absence of any such exemption, the employees are entitled for gratuity under beneficial legislation to receive the payment. This issue has already been decided in various judgments and this Court in **Writ Petition No.1307/2021** (*Chief Officer, Municipal Council Chikhli Vs. Sheikh Javed Sheikh Wahed*) with another connected matters, decided on 12th September, 2022, wherein this Court held in para No.11 and 12, which reads as under :

“11. A perusal of the MSCR (Pension) Rules, 1982, would show that Rule 110 pertains to calculation of the amount of pension payable to an employee of the Municipal Council, as the said Rules are admittedly applicable and Rule 111 of the MSCR (Pension) Rules, 1982, pertains to the scheme of gratuity payable to the employees. These are two separate and distinct Rules, which pertain to distinct and separate benefits of pension and gratuity, as contemplated under the MSCR (Pension) Rules, 1982. The mixing of the same and claiming the same to be a package deal on behalf of the Council is nothing but a desperate attempt to wriggle out the Act of 1972 and the position of law laid down by the Hon’ble Supreme Court in the aforesaid judgments in that regard.

12. A perusal of the aforesaid judgments would show that the position of law is very clear. It is absolutely clear that unless an establishment is exempted by the appropriate Government under Section 5 of the Act of 1972, the provisions of the said Act would be applicable. It is also clear that only when the payment of gratuity under the scheme formulated by the establishment is found to

be more beneficial for the employee as compared to the amount of gratuity payment under the Act of 1972, the establishment could claim that the provisions of the Act of 1972, would not be applicable. This clearly indicates the beneficial nature of the Act of 1972 and hence, it has been interpreted accordingly by the Hon'ble Supreme Court in the aforesaid judgments."

12. In view of this position, the petitions are devoid of any merit and liable to be dismissed. Accordingly, all the writ petitions are **dismissed**. No costs.

(SMT. M.S. JAWALKAR, J.)

Kirtak