IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.8592/2022

1. Zilla Parishad, Wardha,
through its Chief Executive Officer.

2. Executive Engineer, Works Division,
Zilla Parishad, Wardha.

3. Zilla Parishad Works Sub-Division,
Hinganghat, through its Sub-Divisional
Engineer, Zilla Parishad Works
Sub-Division Hinganghat,
Tq. Hinganghat, Distt. Wardha. ... Petitioners
(Original Non-applicants)

- Versus -

Kamlakar S/o Shamrao Washimkar
since dead through his legal heirs.

1. Smt. Sunita Kamlakar Washimkar,
aged about 64 Yrs., Occu. Household,

2. Meena Kamlakar Washimkar,
aged about 34 Yrs., Occu. Private Job,

3. Nikhil Kamlakar Washimkar,
aged about 32 Yrs., Occu. Business,

All respondent Nos.1 to 3 are
R/o Vitthal Mandir Ward,
Near Three Temple Hinganghat,
Tah. Hinganghat, Distt. Wardha. ... Respondents
(Original Applicants)

Mr. N.M. Kolhe, Advocate for the petitioners.
Mr. A.J. Pathak, Advocate for the respondents.

CORAM: MRS.VRUSHALI V. JOSHI, J.
DATE OF RESERVING THE JUDGMENT: 11.6.2025.
DATE OF PRONOUNCING THE JUDGMENT: 26.6.2025.

JUDGMENT

Rule. Rule made returnable forthwith. Heard finally with the consent of learned Advocates for the parties.

2. This petition challenges the judgment and order passed by the Appellate Authority under the Payment of Gratuity Act, Industrial Court, Maharashtra, Nagpur Bench, Nagpur in Appeal (PGA) No.17/2019, whereby the learned Authority has dismissed the appeal filed by the petitioners challenging the judgment and order dated 24.1.2019 passed by the Controlling Authority under the Payment of Gratuity Act for Wardha Region in Application (PGA) No.25/2018.

3. The respondent was appointed as a Samipal on 8.1.1965 and stood superannuated on 30.4.2004. He was governed by the provisions of the Maharashtra Civil Services

Rules. According to the petitioners, last drawn salary of the respondent was Rs.6,900/- and accordingly the gratuity amount was paid as per Rule 111 of the Maharashtra Services (Pension) Rules, 1982.

4. By office order dated 14.7.2004 the respondent was paid Rs.99,000/- towards the gratuity amount and the petitioners have paid total Rs.1,13,850/- towards gratuity amount to the respondent.

5. After 14 years the respondent issued notice to the office of the petitioners on 31.3.2018 demanding difference of gratuity amount of Rs.1,51,846/- along with interest as per the provisions of the Payment of Gratuity Act. It is submitted by the respondent that he has rendered total service of more than 34 years and as per the provisions of the Payment of Gratuity Act his last salary for calculating the amount of gratuity is Rs.6,900/-. Therefore, the respondent claimed that he is entitled to receive

total gratuity amount of Rs.2,09,786/- as per the provisions of the Payment of Gratuity Act. However, the petitioners have only paid Rs.57,940/- towards gratuity amount to the respondent. Therefore, he is entitled to receive difference amount of gratuity of Rs.1,51,846/- from the petitioners along with interest @ 18 per annum from its due date till actual realization.

6. The petitioners have stated that the service condition of respondent is governed by the Maharashtra Civil Services Rules. The calculation of gratuity is done according to the Rules applicable to the respondent and no fault can be drawn against them. The calculation of gratuity amount is proper. There is unreasonable delay in filing the application. The respondent does not fit in the definition under the Payment of Gratuity Act, 1972. On 24.1.2019 the Authority and the Labour Court has passed the judgment and order and allowed the application filed by the respondent under the Payment of Gratuity Act and directed the petitioners to pay difference of gratuity amount of

Rs.1,51,846/- to the respondent with simple interest at the rate of 10% per annum from the date of superannuation i.e. from 24.1.2019 till the date of realization of the amount. The petitioners had challenged the above order before the Appellate Authority which was dismissed. Being aggrieved by the said orders, the petitioners have filed this petition.

7. The learned Advocate for the petitioners has stated that rule 6 of the Maharashtra Zilla Parishads District Services Rules, 1968 clearly mentions the applicability of the Maharashtra Civil Services Rules (Pension) Rules, 1982 wherein definition of pay is clearly mentioned at rule 9(36)(i) which only states about pay and it does not include dearness allowance and, therefore, gratuity of respondent was calculated as per the said statutory Rules and, therefore, no fault can be found in respect of said payment of amount of gratuity paid to the respondent. The respondent has admitted applicability of the Maharashtra Civil Services (Pension) Rules, 1982 and as per said definition the

respondent is getting pension and when the definition under the Maharashtra Civil Services Rules specifically includes the gratuity under the provisions of the Payment of Gratuity Act, 1972, same is controlled by the law laid down by the High Court of Gujarat in case of Junagad District Panchayat V/s. Surendrasinh Dayabhai Rathod and others reported in MANU/GJ/8535/2006 and, therefore, prayed to set aside the judgment and order passed by the Appellate Authority.

8. The learned Advocate for the respondent has submitted that the Payment of Gratuity Act is applicable to Zilla Parishads. The employees are entitled for gratuity under the beneficial legislation to receive the payment. The issue is discussed and already been decided in various judgments. The respondent has relied on the observations of this Court in paragraphs 11 and 12 in Writ Petition No.1307/2021 (Chief Officer, Municipal Council, Chikhli V/s. Sheikh Javed Wahed) which read as under:-

> *"11. A perusal of the MCSR (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 MCSR (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 MCSR (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.*
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> *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."*

9. It appears from the impugned judgment and order that the application was opposed mainly on the ground of delay and quantum of amount as was claimed by the respondent

towards gratuity. The petitioners did not dispute the entitlement of the respondent to receive the amount of gratuity and certain amount was specified to be payable to the respondent. Sub-section (2) of Section 7 of the Act lays down that irrespective of whether an application, as provided in sub-section (1) has been made or not, the employer shall as soon as gratuity becomes payable, determine the amount of gratuity and give a notice in writing to the person to whom gratuity is payable and to the Controlling Authority, specifying the amount of gratuity so determined. Sub-section (3) provides that the employer shall arrange to pay the amount of gratuity within 30 days from the date on which it becomes payable to the person to whom gratuity is payable. Sub-section (4)(a) then provides that if there is any dispute as to the amount of gratuity payable to an employee under the Act or as to the admissibility of any claim or in relation to an employee for payment of gratuity or as the person entitled to receive the gratuity, the employer must deposit with the Controlling Authority such amount as he admits to be payable.

Sub-section (4)(b) provides that upon there being a dispute with regard to any matter, specified in clause (4)(a), the employer or the employee or any other person raising the dispute, may make an application to the Controlling Authority for deciding the dispute. The Controlling Authority has thereupon been empowered to adjudicate upon the dispute. Section 7 of the Payment of Gratuity Act provides that it is the duty of the employer to calculate the amount of gratuity legally due to the employee even if no application is preferred. Learned Appellate Court has rightly observed that in case of *Dnyanoba Vishnu Sawant and others V/s. Sitaram Mills, Unit of National Textile Corporation, North Maharashtra and another* reported in **2017 II CLR 414** it is observed that if there is recurring cause of action in view of failure of the employer to make calculation under Section 7 of the Payment of Gratuity Act, the findings are to be recorded as per the evidence on record and should be in consonance with the provisions of the Act.

10. In view of above observations, the orders passed by both the Authorities below need no interference at the hands of this Court. Writ Petition is accordingly dismissed with no orders as to costs. Rule discharged.

(MRS.VRUSHALI V. JOSHI, J.)

Tambaskar.