



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

WRIT PETITION NO. 4810 OF 2024
WITH
WRIT PETITION NO. 2461 OF 2024
WITH
WRIT PETITION NO. 2450 OF 2024
WITH
WRIT PETITION NO. 2592 OF 2024
WITH
WRIT PETITION NO. 5180 OF 2023
WITH
WRIT PETITION NO. 2724 OF 2023

WRIT PETITION NO. 4810 OF 2024

Suresh S/o Laxmanrao Tikhile,
Aged about 69 years, Occ.- Retired,
R/o. Sultanpura, Achalpur,
District – Amravati.

.... PETITIONER

// **VERSUS** //

Municipal Council, Achalpur,
Through its Chief Officer,
At Achalpur, Taluka Achalpur,
District Amravati.

.... RESPONDENT

WITH

WRIT PETITION NO. 2461 OF 2024

Pruthviraj Gendalal Chandel,
Aged about 69 years,
Occ.- Retired employee,
R/o. Gatarmal Pura, Shivaji Marg,
Paratwada, Distt. Amravati.

.... PETITIONER

// **VERSUS** //

The Chief Officer,
Municipal Council, Achalpur,
District Amravati.

.... RESPONDENT

WITH**WRIT PETITION NO. 2450 OF 2024**

Ashok Uttamrao Malthane,
Aged about 69 years, Occ.- Retired,
R/o. Vittalwadi, Kandli, Achalpur,
Tq. Achalpur, Distt. Amravati.

.... **PETITIONER**

// **VERSUS** //

The Chief Officer,
Municipal Council, Achalpur,
District Amravati.

.... **RESPONDENT**

WITH**WRIT PETITION NO. 2592 OF 2024**

- 1) Jijabai wd/o Bhikaramji Durge,
Aged about 64 years, Occ.- Household,
- 2) Sachin s/o Bhikaramji Durge,
Aged about years, Occ.- Nil,
Both R/o. Babhulgaon,
Tq. Babhulgaon, Distt. Yavatmal.

.... **PETITIONERS**

// **VERSUS** //

The Chief Officer,
Municipal Council, Achalpur,
District Amravati.

.... **RESPONDENT**

WITH**WRIT PETITION NO. 5180 OF 2023**

Municipal Council, Achalpur,
through its Chief Officer, Achalpur,
Tq. Achalpur, Distt. Amravati.

.... **PETITIONER**

// **VERSUS** //

Murlidhar Motiramji Wange,
Aged Adult, Occ.- Not known,
R/o. Tilak Chowk, Kandli Road,
Paratwada, Tq. Achalpur,
District Amravati.

.... **RESPONDENT**

WITH**WRIT PETITION NO. 2724 OF 2023**

Municipal Council, Achalpur,
through its Chief Officer, Achalpur,
Tq. Achalpur, Distt. Amravati.

.... **PETITIONER**

// VERSUS //

Yashwant Pundlikrao Bardekar,
Aged about 63 years, Occ.- Not known,
R/o. Dayalghat, Civil Lines, Paratwada,
Tq. Achalpur, Distt. Amravati.

.... **RESPONDENT**

Mr. U. A. Gosavi, Advocate for Petitioner in WP No.4810/2024.

Ms. Archana Lanjewar, Advocate holding for Mr. N. R. Saboo,
Advocate for Petitioners in WP Nos.2461/2024, 2450/2024 &
2592/2024.

Mr. N. S. Khandewale, Advocate for Petitioner in WP Nos.
5180/2023 & 2724/2023 and for Respondent in WP
Nos.4810/2024, 2461/2024, 2450/2024 & 2592/2024.

Mr. R. D. Wakode, Advocate for Respondent in WP No.
5180/2023.

Mr. R. R. Gaur, Advocate for Respondent in WP No.2724/2023.

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

DATE ON RESERVING THE JUDGMENT : **19.03.2025.**

DATE ON PRONOUNCING THE JUDGMENT : **15.04.2025.**

COMMON JUDGMENT :

1. **RULE.** Rule made returnable forthwith. Heard finally
with the consent of the learned Counsel appearing for the parties.

2. Writ Petition No.4810/2024 is filed by the Petitioner challenging the order passed by the Appellate Authority under the Payment of Gratuity Act, 1972 Industrial Court, Amravati dated 07.01.2020 in P.G.A. Appeal No.16/2018 and order dated 05.03.2024 passed in Review Application No.11/2020.

3. Writ Petition No.2461/2024 is filed by the Petitioner challenging the order passed by the Appellate Authority under the Payment of Gratuity Act, 1972 Industrial Court, Amravati dated 05.03.2024 in Review Application No.01/2020 and order dated 07.01.2020 passed in P.G.A. Appeal No.15/2018.

4. Writ Petition No.2450/2024 is filed by the Petitioner challenging the order passed by the Appellate Authority under the Payment of Gratuity Act, 1972 Industrial Court, Amravati dated 05.03.2024 in Review Application No.09/2020 and order dated 07.01.2020 passed in Appeal P.G.A. No.11/2018.

5. Writ Petition No.2592/2024 is filed by the Petitioners challenging the order passed by the Appellate Authority under the Payment of Gratuity Act, 1972 Industrial Court, Amravati dated

05.03.2024 in Review Application No.10/2020 and order dated 07.01.2020 passed in Appeal P.G.A. No.17/2018.

6. Writ Petition No.5180/2023 is filed by the Petitioner/ Municipal Council, Achalpur challenging the order passed by the Appellate Authority under the Payment of Gratuity Act, 1972, Amravati dated 13.02.2023 in P.G.A. Appeal No.04/2022 and also Judgment and order dated 11.01.2022, passed by the learned Controlling Authority, Labour Court, Amravati passed in Application PGA No.15/2016.

7. Writ Petition No.2724/2023 is filed by the Petitioner/ Municipal Council, Achalpur challenging the order passed by the Appellate Authority under the Payment of Gratuity Act, 1972, Amravati dated 16.09.2022 in P.G.A. Appeal No.11/2021 and also Judgment and order dated 28.07.2021, passed by the learned Controlling Authority, Labour Court, Amravati passed in Application PGA No.03/2019.

8. As all the matters are involving a similar issue therefore, they are taken up to decide together. Writ Petition

No.4810/2024 is taken as leading case for consideration of facts and other material.

9. Petitioner came to be appointed by the Respondent as a 'Clerk' in Water Supply Department on daily wage basis on 03.04.1983. The services of the Petitioner were confirmed as a Clerk on 23.05.2001. He is receiving the remuneration under the terms and conditions of the Respondent Municipal Council, Achalpur and as per the Resolution of the Government of Maharashtra. After completion of continuous service of 28 years, the Petitioner attained the age of superannuation and was retired from services. On retirement, he was entitled to receive an amount of Rs.2,48,850/- towards gratuity but, only received Rs.51,187/- from the Respondent. The Petitioner filed an application before the Controlling Authority, Labour Court, Amravati under the Payment of Gratuity Act, 1972 (for short the "PG Act") for remaining amount of gratuity along with interest. The said application came to be registered as Application (PGA) No.21/2014. In the said application, the Petitioner prayed for payment of remaining gratuity amount i.e. Rs.1,97,663/- along with interest. The notice was issued to the Respondent. Respondent filed its written-statement. There was no dispute over

the fact that the Petitioner was working as a Clerk in Class-III cadre and was getting remuneration as per the direction of the Government of Maharashtra. Parties led their respective evidence. The learned Authority vide order dated 01.10.2018 was pleased to partly allowed the application with cost and directed Respondent to pay the remaining gratuity amount i.e. Rs.1,96,663/- along with interest at the rate of 10% per annum since the date of due till its actual realization.

10. Being aggrieved by the said judgment, on 02.11.2018, the non-applicant preferred an Appeal bearing PGA Appeal No.16/2018 before the learned Appellate Authority, Amravati under the Payment of Gratuity Act. The learned Appellate Authority vide its order dated 07.01.2020 allowed the appeal and Judgment and order dated 01.10.2018 passed by the Controlling Authority in Application (PGA) No.21/2014 was quashed and set aside. The Review Application filed by the Petitioner came to be dismissed on 05.03.2024. By the present petition, the Petitioner challenging the judgment passed on 07.01.2020 by the learned Appellate Authority in Appeal PGA No.16/2018. In the said appeal, the ground is raised on the point of limitation. The appellant therein relied on Section 10(iii) of the Payment of

Gratuity (Maharashtra) Rules, 1972 which provides that, “application under Rule 7 fails to issue any notice; required under Rule 8 within the time specified therein, the claimant employee, nominee or legal heir, as the case may be, may, within ninety days of the occurrence of the cause for the application, apply in Form ‘I’ to the controlling authority for issuing a direction under subsection (4) of Section 7”. The second ground challenging the order of Controlling Authority that employee of Municipal Council is governed by Maharashtra Civil Services (Pension) Rules, 1982 and therefore, the provisions of PG Act is not applicable to the employees of Municipal Council in Maharashtra State. The learned Appellate Authority held that the provisions of two Acts cannot be applicable to one institution. The Municipal Council, Achalpur is a local body and which comes under the State Government and for that rules has been framed by the State Government for the purpose of similar function by amending rules regarding retirement and its benefits. The learned Appellate Authority also emphasizes on the fact that from the evidence of the applicant before the Controlling Authority seeking the gratuity under the PG Act was not aware whether Maharashtra Civil Services (Pension) Rules, 1982 are applicable or not. There is no

any circular filed to show that PG Act is applicable to the Municipal Council, Achalpur.

11. So far as limitation is concerned, the Controlling Authority relied on sub-Section 2 of Section 7 of the PG Act read with sub-Rule 5 of Rule 8 which provides that, “if the notice under Section 7(2) of the PG Act is not sent to the employee by the employer, then the employee file an application before the competent authority, in that case, the clause of limitation does not create the obstruction to that application”. As the Municipal Council, Achalpur has not issued notice to the applicant, therefore, period of limitation would not began to run. However, the Appellate Authority come to the conclusion that if the provisions of PG Act is applicable to the Municipal Council of Maharashtra State, in that case, the provisions of issuing the notice under Section 7(2) of the PG Act is binding to the Municipal Council. If the MCS Rules are applicable to the Municipal Councils in the Maharashtra State, in that case, there is no provision to issue notice under Section 7(2) of the PG Act and allowed the appeal holding that judgment and order passed by the Controlling Authority is not legal and proper.

12. Learned Counsel for the Respondent/Municipal Council, Achalpur supported the order passed by the learned Appellate Authority and submitted that there is no need to interfere in the order passed by the Appellate Authority and it needs to be confirmed. Learned Counsel for the Respondent/Municipal Council, Achalpur also submitted that the petition filed by the Municipal Council, Achalpur i.e. W.P. No.5180/2023, wherein the order passed by the Controlling Authority, Labour Court Amaravati as well as the Appellate Authority, Industrial Court, Amravati are not legal and proper hence they be quashed and set aside.

13. It appears from the above reasoning from the Appellate Authority that the Appellate Authority has not considered the provisions in PG Act. In fact, this issue is already considered by this Court in the judgment passed in ***Writ Petition No.887/2024*** (*Municipal Council Achalpur through its Chief Officer Vs. Anil Laxmanrao Pataskar*) along with connected petitions, decided on **22.01.2025** wherein the Municipal Council was the Petitioner.

14. This Court in the above referred writ petition filed by Municipal Council, Achalpur considered the provisions of the Payment of Gratuity, Act 1972 specifically Section 4(5), which reads as under :

“Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award of agreement or contract with the employer”.

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

Para 11 of the above referred judgment reads as under :

*“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.”

15. Learned Counsel for the Petitioner also relied on ***Writ Petition No.9134/2016*** (*Kantaram Govindrao Shejwal Vs. State of Maharashtra and two others*), decided on **07.12.2018**, in support of his contention that the services rendering as a daily wager after their regularization required to be considered for benefit of gratuity, wherein paras 11, 12 and 13 reproduced as under :

“11. Rule 9(39) of the Rules 1982, defines pensionable service as service which qualifies the Government servant performing it to receive the pension from the Consolidated Fund. Rule 30 provides that the qualifying service of a government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity, provided that at the time of retirement he shall hold substantively permanent post in Government service or holds a suspended lien or certificate of permanency. It is not disputed that the petitioner is made permanent under the order dated 25.10.2001.

12. Note 1 of Rule 57 of the Rules 1982 provides that in cases of employees paid from contingencies who are subsequently brought on a regular pensionable establishment by conversion of their posts, one-half of their previous continuous service shall be allowed to be counted for pension. The petitioner it appears was paid his emoluments from the contingency while working on daily wages. The regularisation order nowhere provides that the earlier service rendered by the petitioner on daily wages is excluded or is brought outside the purview of Note - 1 of Rule - 57 of the Rules 1982. The respondents are harping upon Clause 8 of the order

dated 25.10.2001. The said Clause is in a regional language and the same reads thus :

“८. मागील रोजंदारीवरील सेवा कोणत्याही आर्थिक व सेवा विषयक लाभासाठी ग्राह्य धरण्यात येणार नाही.”

13. Reading the Rules 1982, it is manifest that the services rendered by the petitioner on daily wages shall be counted as half for the purpose of pension.”

16. In view of Section 14 of the PG Act, “the provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act”. The PG Act in Section 14 provides that, “the Act shall override other enactments to the extent of any inconsistency contained in any other such enactments”. Thus, findings recorded by the Appellate Authority that provisions of two Acts cannot be applicable to one institution is contrary to provisions of law. Unless Municipal Council, Achalpur place on record any notification of the Government exempting the Municipal Council, Achalpur under Section 5 of the PG Act, the PG Act is applicable to the Municipal Council, Achalpur.

17. As such, the orders passed by the Appellate Authority are patently erroneous and without considering the provisions in its proper perspective and are liable to be set aside. In view of that, I pass the following order :

- (i) The Writ Petition Nos.4810/2024, 2461/2024, 2450/2024 and 2592/2024 stand **allowed** and Writ Petition Nos.5180/2023 and 2724/2023 filed by Municipal Council, Achalpur stand **dismissed**.
- (ii) In Writ Petition No. 4810/2024, the order dated 07.01.2020 passed by the learned Appellate Authority under the Payment of Gratuity Act, 1972, Amravati in P.G.A. Appeal No.16/2018 and order dated 05.03.2024 passed in Review Application No.11/2020 are hereby quashed and set aside.
- (iii) In Writ Petition No.2461/2024, the order dated 05.03.2024 in Review Application No.1/2020 and order dated 07.01.2020 passed in Appeal PGA No.15/2018 by the learned Appellate Authority under the Payment of Gratuity Act, 1972, Amravati are hereby quashed and set aside.
- (iv) In Writ Petition No.2450/2024, the order dated 05.03.2024 in Review Application No.09/2020 and order dated 07.01.2020 passed in Appeal PGA No.11/2018 by the learned Appellate Authority under

the Payment of Gratuity Act, 1972, Amravati are hereby quashed and set aside.

- (v) In Writ Petition No.2592/2024, the order dated 05.03.2024 in Review Application No.10/2020 and order dated 07.01.2020 passed in Appeal PGA No.17/2018 by the learned Appellate Authority under the Payment of Gratuity Act, 1972, Amravati are hereby quashed and set aside.
- (vi) In Writ Petition No.5180/2023, filed by Municipal Council, Achalpur, the order dated 13.02.2023 passed in PGA Appeal No.04/2022 by learned Appellate Authority under the Payment of Gratuity Act, 1972, Amravati and order dated 11.01.2022 passed in Application PGA No.15/2016 by the Controlling Authority, Labour Court, Amravati are hereby confirmed.
- (vii) In Writ Petition No.2724/2023, filed by Municipal Council, Achalpur, the order dated 16.09.2022 passed in PGA Appeal No.11/2021 by learned Appellate Authority under the Payment of Gratuity Act, 1972, Amravati and order dated 28.07.2021 passed in Application PGA No.03/2019 by the Controlling Authority, Labour Court, Amravati are hereby confirmed.

All the Writ Petitions stand disposed of in the above terms. No order as to costs.

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

Kirtak