



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

WRIT PETITION NO. 4887 OF 2024

**Chief Executive Officer,
Zilla Parishad, Akola,
Tah. and District Akola.**

.... **PETITIONER**

// **VERSUS** //

**Pralhad Mahadeo Shitre,
Aged about 65 years,
R/o. Shriram Nagar, Shegaon,
District : Buldhana.**

.... **RESPONDENT**

Mr. B. N. Jaipurkar, Advocate for the Petitioner.
Mr. P. S. Giradkar, Advocate for the Respondent.

CORAM : SMT. M.S. JAWALKAR, J.
DATE : 16th APRIL, 2025.

ORAL JUDGMENT :

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

2. By this Petition, the Petitioner is challenging the order dated 02.12.2023 passed by the Controlling Authority/Labour Court, Akola under the Payment of Gratuity Act, 1972 (for short the "PG Act") in Application PGA No.99/2022.

3. It is the case of the Petitioner that the Respondent was the employee of Zilla Parishad, Akola and when he retired from service, he has been given all the retirement benefit including gratuity as per the Maharashtra civil Services (Pension) Rules, 1982 (for short the "MCSR Rules"). Being aggrieved, the Respondent approached before the learned Controlling Authority/ Labour Court, Akola by filing Application PGA No.99/2022. The learned Controlling Authority partly allowed the application and directed the Petitioner to pay the amount of gratuity of Rs.88,804/- along with interest @ 10% per annum from the date of application till its actual realization. The said order of learned Controlling Authority is the subject matter of this Petition.

4. Heard learned Counsel for both the parties. Perused the impugned order as well as documents placed on record.

5. Learned Counsel for the Petitioner submitted that the learned Controlling Authority without considering the fact that the Respondent was the employee of Zilla Parishad and after his retirement, he has given all the retiral benefit including gratuity as per MCSR Rules, the learned Controlling Authority allow the

application illegally. Learned Counsel for the Petitioner submitted that the order passed by the learned Controlling Authority is not legal and proper hence it be quashed and set aside.

6. Learned Counsel for the Respondent supported the order passed by learned Controlling Authority and submitted that there is no need to interfere in the order passed by the Controlling Authority and it needs to be confirmed.

7. It appears that this issue is already considered by this Court in the judgment passed in ***Writ Petition No.1307/2021*** (*Chief Officer, Municipal Council Chikhli Vs. Sheikh javed Sheikh Wahad*) along with connected petitions, decided on **12.09.2022** wherein the Municipal Council was the Petitioner. This Court in the above referred writ petition filed by Municipal Council, Chikhli observed that, “it is absolutely clear that unless an establishment is exempted by the appropriate Government under Section 5 of the PG Act, 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 PG Act, the establishment could claim that the provisions of the PG Act would not be applicable. This clearly indicates the beneficial nature of the PG Act.

8. This Court in the above referred writ petition opined that the Municipal Council cannot claim that the respondent/employee are faced with an either or situation, whether they would have to choose gratuity with pension under MCSR Rules, on the one hand or only gratuity without pension under the PG Act. Such an interpretation would be in the teeth of the provisions of the PG Act, the MCSR Rules as also the law clarified by the Hon'ble Supreme Court in the judgment of *Municipal Corporation of Delhi Vs. Dharam Prakash Sharma & Anr.*, reported in (1998) 7 SCC 221 and *Allahabad Bank & Anr. Vs. All India Allahabad Bank Retired EMPS, ASSN.*, reported in 2010(124) FLR 192. and dismissed the writ petitions filed by Municipal Council, Chikhli.

9. In the present matter, in spite of granting ample opportunity to the learned Counsel for the Petitioner, he could not place on record any exemption granted under Section 5 of the

PG Act. As such, there is no merit in the present writ petition and the order passed by the learned Controlling Authority need not require any interference. Hence, this writ petition liable to be dismissed. It is dismissed. No order as to costs.

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

Kirtak