2025:BHC-NAG:5300

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

WRIT PETITION NO. 2197/2024

(1) **Zilla Parishad**,
Through its Chief Executive Officer,
Zilla Parishad, Amravati,
Tq. & District Amravati

(2) **Executive Engineer**,
Construction Division, Zilla Parishad,
Amravati, Tq. & District Amravati

.... **PETITIONERS**

// VERSUS //

Pradeep Bhaurao Pokale,
Aged 60 years, Occ. Retired,
R/o. Sai Nagar, Near Sai Mandir,
Amravati, Tq. & District Amravati

.... **RESPONDENT**

Shri Milind Rathi, Advocate for the Petitioners.
Shri S.T. Harkare, Advocate for the Respondent.

CORAM : M.S. JAWALKAR, J.
CLOSED FOR JUDGMENT ON :- MAY 08, 2025
JUDGMENT PRONOUNCED ON :- JUNE 09, 2025

JUDGMENT :-

. Heard finally by consent of learned Counsel for the respective parties at the stage of admission.

(2) The present Petition is filed by the Zilla Parishad, Amravati which is a local body/authority created under the Statute and is governed by the provisions of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.

(3) It is the contention of the Zilla Parishad that the services and retirement benefits of the Respondent are governed by the Rules framed under the said Act. The Respondent – Employee stood retired on 31/10/2020. By way of this Writ Petition, the Petitioners are challenging the judgment and order dated 19/01/2023 passed by the Controlling Authority in Case (PGA) No. 191/2022 under the provisions of the Payment of Gratuity Act, 1972 (hereinafter referred to as "the PG Act"), directing the Petitioners to pay to the Respondent the amount of gratuity to the tune of Rs. 20,00,000/- along with interest @ 10% per annum.

(4) It is the contention of the Zilla Parishad that as the Respondent is the Employee of Zilla Parishad, his services and

retirement benefits like the pension and gratuity are governed by the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 and not by the PG Act. The State Government, vide its Government Resolution dated 01/03/2019, has restricted maximum amount of gratuity payable to the Zilla Parishad's Employee upto Rs. 14,00,000/- only. In view of Rule 130 of the Rules of 1982, the Employer is entitled to withhold the payment of amount of gratuity of the retired Employee in case of any departmental enquiry or judicial Proceedings pending against him.

(5) It is submitted that apart from three departmental enquiries, the Respondent is facing criminal trial in Amravati Court for offence punishable under the provisions of Prevention of Corruption Act for which he faced a departmental enquiry. The said criminal Proceedings are still pending and the Respondent was under suspension when he stood retired. Knowing all these facts, the Respondent preferred an Application on 18/05/2022 under the provisions of the PG Act before the Controlling Authority praying for directions to the Petitioners to pay him an amount of gratuity to the tune of Rs. 20,00,000/-. After

recording the evidence, the Controlling Authority, vide its judgment dated 19/01/2023 allowed the said Application. It is the contention of the Zilla Parishad that the Controlling Authority failed to appreciate that the PG Act is not applicable to the Zilla Parishad's Employees and passed the impugned order.

(6) Learned Counsel for the Petitioners, in support of his contentions, relied on the following citations:-

(a) **Chairman-cum-Managing Director, Mahanadi CoalFields Limited vs. Sri Rabindranath Choubey, AIR 2020 SC 2978**;

(b) **Civil Appeal No. 2608/2025 (Western CoalFields Limited vs. Manohar Govinda Fulzele).**

(7) Learned Counsel for the Respondent raised preliminary objection to the tenability of the Petition. It is contended that there is a statutory Appeal provided under Section 7(7) of the PG Act. However, the Zilla Parishad not opted for filing the Appeal as there was limitation of 60 days and the Appellate Authority has power to condone further delay of 60 days only. Thereafter, the

Appeal is not tenable. Therefore, the Zilla Parishad preferred this Writ Petition instead of Appeal.

(8) Learned Counsel for the Respondent, in support of his contentions, relied on the following citations:-

(a) **Purushottam Kashinath Kulkarni & others vs. State of Maharashtra & others, 2016(3) Mh.L.J. 300**;

(b) **Cuttack Central Co-operative Bank Limited vs. Controlling Authority-cum-under the Payment of Gratuity Act-cum-Asstt. Labour Commissioner & another;**

(c) **Nivedita Sharma vs. Cellular Operators Association of India & others, (2011) 14 SCC 337;**

(d) **Jaswant Singh Gill Vs. Bharat Coking Coal Ltd., & Others, 2006 DGLS (SC) 987;**

(e) **Shankar Dadoba Naik Vs. Maharashtra S.R.T.C., Palghar and Others, 2019 DGLS (Bom.) 2015;**

(f) **Ambadas Digambar Deshpande Vs. Education Officer (Secondary), Zilla Parishad, Aurangabad and Others, 2019 DGLS (Bom.) 2093;**

(g) **Vasant B. Bhujbal Vs. Controlling Authority, 2020 DGLS (Bom.) 1383;**

(9) Heard learned Counsel for the respective parties, perused the impugned order and considered the citations relied on by both the parties.

(10) Insofar as the contention about maintainability of the Application before the Controlling Authority is concerned, this issue is already covered in ***Writ Petition No. 4810/2024*** (*Suresh Laxman Tikhile vs. Municipal Council, Achalpur*) and connected matters wherein this Court has considered the provisions of PG Act, specifically Section 4(5), which reads as under:-

> *"4(5). 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. "*

(11) Section 5 of the PG Act provides for exemption of any establishment by the appropriate Government. This Court, by placing reliance upon the judgment passed in ***Writ Petition No. 887/2024*** (*Municipal Council, Achalpur, through its Chief Officer vs. Anil Laxmanrao Pataskar*), held that the issue is already considered by this Court and quoted the relevant portions of judgment in Writ Petition No. 887/2024 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."*

(12) After considering the other citations, this Court has already concluded that unless there is an exemption under Section 5 of the PG Act, the Employees of the establishment will be governed by the PG Act to the extent of entitlement of gratuity is concerned.

(13) Learned Counsel for Respondent relied on ***Purushottam Kashinath Kulkarni*** (supra), wherein it is held that the employee is entitled for pension, gratuity and leave encashment relying on the judgment of the Hon'ble Apex Court in the case of State of ***Jharkhand and Ors. Vs. Jitendra Kumar Srivastava and Anr.***, reported in ***(2013) 12 SCC 210***. However, the facts involved in the matter are different. The

inquiry initiated against the employee under Section 88 of the Maharashtra Co-operative Societies Act has been completed and the petitioner has been exonerated in the said inquiry, however the offence is pending against the petitioner. In the present matter, the criminal proceedings are pending as well as trial is yet to be concluded. The Controlling Authority will have to look into the matter and decide entitlement of employee for amount of gratuity in this background.

(14) Learned Counsel for the Respondent also placed reliance on ***Chief Executive Officer, Zilla Parishad, Beed*** (supra), wherein the preliminary objection of the respondent was that the appeal is maintainable against the order of Controlling Authority under Section 7(7) of the PG Act. This Court (Aurangabad Bench), in para 12 held as under :-

> *"12. I have therefore no hesitation in concluding that this writ petition, filed with an intent and object of avoiding deposit of determined amount without preferring an appeal, is not maintainable before this Court by bypassing the Appeal provision under Section 7(7) of the PG Act."*

However, the basic issue of challenge was application of payment of Gratuity Act and therefore, this contention of the petitioner that the Controlling Authority has no jurisdiction. Moreover, it is not a case that the Petitioners have not deposited full amount before this Court as per direction of the Controlling Authority. The total amount of Rs.14,00,000/- came to be deposited on 23.04.2024 before this Court. As such there is no question of any avoidance to deposit of determined amount.

(15) Learned Counsel for the Respondent also placed reliance on ***Cuttack Central Co-operative Bank Ltd.,*** and also ***Nivedita Sharma*** (supra), however for the same reason as referred above, the judgments are also not applicable.

(16) Learned Counsel for the Respondent also relied on ***Jaswant Singh Gill*** (supra), however in the matter of ***Chairman-cum-Managing Director, Mahanandi Coal Fields Limited*** (supra), the three judges Bench held as referred above and therefore, the ratio laid down in the case of ***Jaswant Singh Gill*** is not applicable in the present set of fact.

(17) Learned Counsel for the Respondent also placed reliance on ***Shankar Dadoba Naik*** (supra), however facts involved in the said matter are different. In the said matter the Petitioner was not charge-sheeted nor convicted for the offences involving moral turpitude under Section 4(6)(b)(ii) of the PG Act and in view of that matter, the Respondents were directed to release gratuity of Petitioner. However, in the present matter as held in ***Chairman-cum-Managing Director, Mahanandi Coal Fields Limited*** (supra), the departmental inquiry is yet to be completed and after conclusion of the disciplinary inquiry, if held guilty, indeed a penalty can be inflicted upon an employee/delinquent who stood retired from service.

(18) Learned Counsel for the Respondent also placed reliance on ***Ambadas Digambar Deshpande*** (supra), wherein this Court (Aurangabad Bench) in para 12 held as under :-

> *"**12**. The Payment of gratuity can be disallowed only under the circumstances as detailed in sub-section 6 of Section 4 of the Payment of Gratuity Act, 1972. It is not the case that some damage or loss has been caused to the society by the act of the petitioner or that his services are terminated for riotous or disorderly conduct or any other act of*

> *violence nor is terminated for any act which constitutes an offence involving moral turpitude. None of the ingredients as detailed in sub-section 6 of section 4 of the Payment of Gratuity Act, 1972 are attracted. In the light of that, the petitioner cannot be denied the benefit of the gratuity.”*

(19) The similar view is also taken in **Vasant B. Bhujbal** (supra).

(20) There is no dispute about the proposition of law, however this issue can be agitated before the Controlling Authority.

(21) As against this, the learned Counsel for Petitioners relied on ***Chairman-cum-Managing Director, Mahanandi CoalFields Limited*** (supra), wherein para 28 held as under :-

> *“**28**. To sum up, my conclusion to the question is as under :*
> *Que. 1) Whether it is permissible in law for the employer to withhold the payment of gratuity even after the employee has attained his superannuation from service because of the pendency of disciplinary proceedings against him?*
> *Ans.- I am in agreement with the view expressed by brother Justice Shah that in view of Rule 34.3 of the Rules, 1978, the employer has a right to withhold gratuity during pendency of the disciplinary proceedings.*

> *Que. 2) Whether the penalty of dismissal could be imposed after the employee stood retired from service?*
> *Ans.- In my considered view, after conclusion of the disciplinary inquiry, if held guilty, indeed a penalty can be inflicted upon an employee/delinquent who stood retired from service and what should be the nature of penalty is always depend on the relevant scheme of Rules and on the facts and circumstances of each case, but either of the substantive penalties specified under Rule 27 of the Rules, 1978 including dismissal from service are not open to be inflicted on conclusion of the disciplinary proceedings and the punishment of forfeiture of gratuity commensurate with the nature of guilt may be inflicted upon a delinquent employee provided under Rule 34.3 of Rules, 1978 read with sub-section (6) of Section 4 of the Act, 1972."*

(22) Learned Counsel for the Petitioners also placed reliance on ***Western Coal Fields Ltd. vs. Manohar Govinda Fulzele*** (supra), wherein it was held that even when the employee retired during the pendency of disciplinary proceedings, the services are deemed to be continued, for the purpose of continuation of the proceedings as per rules. Even a major penalty of termination could be imposed on the delinquent employee, who has superannuated during the pendency of the proceedings.

(23) As such, law position is very clear that Zilla Parishad Amravati is not exempted under Section 5 of the PG Act therefore, PG Act would apply in the present set of fact.

(24) It is contention of the learned Counsel for the Petitioners that apart from departmental inquiry, the respondent is facing the criminal trial in the Court of law for offence punishable under the provision of the Prevention of Corruption Act, for which, he faced departmental inquiry too and later on he came to be suspended. He was under suspension when he stood retired. The said criminal trial is still pending.

(25) It appears that the Controlling Authority has not considered the effect of Section 4(6) of the PG Act. Section 4(6) of the PG Act reads as under :

> *"**4. Payment of Gratuity**.- (1) ....*
> *(2) ....*
> *(3) ....*
> *(4) ....*
> *(5) ....*
> *(6) Notwithstanding anything contained in sub-section (1), -*
>
> > *(a) the gratuity of an employee, whose services have been terminated for any act, wilful*

> *omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;*
>
> *(b) the gratuity payable to an employee may be wholly or partially forfeited -*
>
> > *(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or*
> >
> > *(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."*

(26) The object of Section 4(6) of the PG Act is that wherever termination of the service of an inquiry has been made for conduct which has caused any loss to the employer or which is riotous or disorderly conduct or any other violence act which is an offence involving moral turpitude, such conduct should, on the part of employee, entail certain consequence either by way of reduction of gratuity payable or by its total forfeiture.

(27) Considering the facts involved in the matter, admittedly, criminal trial against the Respondent is pending under the

Prevention of Corruption Act therefore, the Controlling Authority ought to have considered the contention of the employer before fixing gratuity amount. It appears that there is no consideration to this aspect that criminal proceeding is pending against the Respondent in Criminal Court initiated by Anti Corruption Department. There is a specific averment in para 6 of the written statement of the Zilla parishad Amravati. In view of my opinion, the issue regarding entitlement can be decided by the Controlling Authority after due consideration to the facts and circumstances. In view thereof, it is necessary to remand the matter back for fresh consideration in view of Section 4(6) of the PG Act to decide the amount of gratuity afresh. Accordingly, I proceed to pass the following order :

(i) The Writ Petition is **partly allowed**.

(ii) The order dated 19.01.2023, passed by the Controlling authority, the Labour Court, Amravati in Case (PGA) No.191/2022 is hereby quashed and set aside.

(iii) The proceedings are remitted back to the Controlling Authority, Payment of Gratuity Act, 1972 for fresh consideration specifically in view of Section 4(6) of the PG Act.

(iv) It is declared that the Payment of Gratuity Act, 1972 is applicable to the Zilla Parishad, Amravati.

(v) The Registry of this Court is directed to transfer the amount along with accrued interest thereon, deposited by present Petitioner/Zilla Parishad, Amravati, as per the order dated 04.04.2024, to the Registrar, Controlling Authority/Labour Court, Amravati.

The Writ Petition stands **disposed of** in the above terms. No order as to costs. Pending Application(s), if any, stand(s) **disposed of**.

(M.S. JAWALKAR, J.)

Kirtak