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

WRIT PETITION NO. 2596/2024

Chief Executive Officer,
Zilla Parishad, Amravati,
Tq. & District Amravati.

.... **PETITIONER**

// VERSUS //

Ganesh Gulabrao Nawale,
Aged 62 years, Occ. Retired,
R/o. Ashtavinayak Colony,
Kathora Road, Amravati,
Tq. & District Amravati

.... **RESPONDENT**

Shri Milind Rathi, Advocate for the Petitioner.
Shri C. D. Gawande, Advocate for the Respondent.

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

JUDGMENT :-

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

(2) The present Petition is filed by the Chief Executive Officer, Zilla Parishad, Amravati. The Petitioner 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 Petitioner that the services and retirement benefits of the Zilla Parishad employees are governed by the Rules framed under the said Act. The Respondent – Employee stood retired on 31/01/2020. By way of this Writ Petition, the Petitioner is challenging the judgment and order dated 03/12/2022 passed by the Controlling Authority in Case (PGA) No. 14/2020 under the provisions of the Payment of Gratuity Act, 1972 (hereinafter referred to as “the PG Act”), directing the Petitioner to pay to the Respondent the amount of gratuity to the tune of Rs. 18,33,300/- along with interest @ 10% per annum.

(4) It is the contention of the Petitioner that as the Respondent indulged in almost six judicial proceedings pending in the Court of law at Amravati and Nagpur for various reasons like the

departmental inquiries, suspension, punishment etc. he faced. The PG Act is not applicable to the employees of Zill Parishad, Amravati. 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 Maharashtra Civil Services (Pension) 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) As against this, learned Counsel for Respondent submitted that 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. Though pension to the Respondent as per MCS Rules is assumed, even in that case

it does not necessarily imply that the gratuity payable to the Respondent should also be according to the MCS Rules given regard to the provisions of Sections 5 and 14 of the PG Act. So far as contention of the Petitioner is concerned that various matters are pending before the various Courts, there is no reason to withhold the gratuity. It is submitted that in the inquiry, which was initiated against the Respondent for his misconduct, as the charges against the Respondent were proved, the Petitioner vide it's order dated 11.12.2014 passed the order to bring the Respondent on his original pay-scale. On the basis of this order, the concerned Block Development Officer vide it's order dated 30.12.2014 made a Pay-fixation of the Respondent bringing him to the original Pay-scale of Rs.7510/- and Grade Pay of Rs.2400/-. The learned Industrial Court in complaint ULP No.93/2014 preferred by the Respondent granted stay to the said punishment order and the said complaint is pending till final decision.

(6) Heard learned Counsel for the respective parties, perused the impugned order.

(7) Insofar 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. "*

(8) 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."

(9) 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.

(10) After considering the facts, admittedly, the Departmental Inquiry was concluded and punishment of bringing the Respondent on his original pay-scale is awarded, which is under challenged before the Industrial Court. If the order passed by Chief Executive Officer, Zilla Parishad, Amravati dated 11.12.2014 is perused, charge No.1 was in respect of arrogance and filthy language used towards senior officers. The Charge Nos.2, 3 and 5 were not established against the Respondent. The Charge No.4 is in respect of defiance of order passed by Senior Officer.

(11) As such, there is no question of withholding any gratuity under Section 4(6) and no ingredient of sub-section 6(a) are there to withhold the gratuity. The services are not terminated but punishment of bring him into original pay-scale and grade-pay is awarded. There is no case of damage or loss or destruction of property due to willful omission or negligence of the employee. As per Section 4(6)(b) of the PG Act is concerned, the gratuity

may be full or partially forfeited in case service of said employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part or if the services of such employee had 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. The services of the Petitioner is not terminated, the inquiry against him is already concluded therefore, whatever punishment is imposed even if the Petitioner herein succeeds in ULP complaint will remain as it is. In view thereof, the Petitioner is entitled for gratuity as directed by the Controlling Authority.

(12) As such, there is no merit in the petition and it is liable to be dismissed. Hence, I pass the following order :

(i) The Writ Petition stands **dismissed**.

(ii) The Respondent is entitled for amount deposited by the Petitioner in this Court along with accrued interest thereon as well as the remaining amount out of **Rs.18,33,300/-** and

10% interest thereon from 31.01.2020 as per direction of Controlling authority.

The Writ Petition stands **dismissed** with above direction. No order as to costs. Pending Application(s), if any, stand(s) **disposed of**.

(M.S. JAWALKAR, J.)

At this juncture, learned Counsel for the Petitioner/Zilla Parishad, Amravati, prayed for order prohibiting the Respondent from withdrawing the amount for further eight weeks, as Zilla Parishad, Washim has approached to the Hon'ble Apex Court in similar issue. However, there is no order before me that the Hon'ble Apex Court has entertained the referred matter to the Larger Bench.

As such, I am not inclined to pass such orders prohibiting the Respondent from withdrawing the amount. Hence, the oral request is rejected.

(M.S. JAWALKAR, J.)

Kirtak