

MPBalekar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2875 OF 2025**

**SHABNOOR  
AYUB  
PATHAN**

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**Gundu Daji Desai,**

Aged 65 years, Occ.: - Retired,  
R/at: A-202, Sai Karuna CHSL,  
Neelam Nagar, Phase II, Gavanpada,  
Mulund (East), Mumbai, 400 081.

... Petitioner

**V/s.**

**M/s. Aplab Ltd.,**

Plot No.12, TTC Industrial Area,  
Thane – Belapur Road, Digha, Navi  
Mumbai, 400 708.

... Respondent

**WITH**

**WRIT PETITION NO. 2888 OF 2025**

**Jayprakash Jagannath Raut,**

... Petitioner

**V/s.**

**M/s. Aplab Ltd.**

... Respondent

**WITH**

**WRIT PETITION NO. 2879 OF 2025**

**Anil Vaman Nemade**

... Petitioner

**V/s.**

**M/s. Aplab Ltd.**

... Respondent

**WITH**

**WRIT PETITION NO. 2878 OF 2025**

**Manish V. Chavan**

... Petitioner

**V/s.**

**M/s. Aplab Ltd.**

... Respondent

**WITH**

**WRIT PETITION NO. 2889 OF 2025**

**Sandeep Waman Athavale**

... Petitioner

**V/s.**

**M/s. Aplab Ltd.**

... Respondent

WITH  
WRIT PETITION NO. 2881 OF 2025

Pratik Rajaram Gupte ... Petitioner  
V/s.  
M/s. Aplab Ltd. ... Respondent

WITH  
WRIT PETITION NO. 2887 OF 2025

Rosariya Thomas ... Petitioner  
V/s.  
M/s. Aplab Ltd. ... Respondent

WITH  
WRIT PETITION NO. 2884 OF 2025

Shrikrushna Pandurang Zope ... Petitioner  
V/s.  
M/s. Aplab Ltd. ... Respondent

WITH  
WRIT PETITION NO. 2885 OF 2025

Yogesh Suresh Dewasthali ... Petitioner  
V/s.  
M/s. Aplab Ltd. ... Respondent

WITH  
WRIT PETITION NO. 4113 OF 2025

M/s. Aplab Ltd. ... Petitioner  
V/s.  
Shrikrushna Pandurang Zope ... Respondent

WITH  
WRIT PETITION NO. 4947 OF 2025

M/s. Aplab Ltd. ... Petitioner  
V/s.  
Sandeep Vaman Athavale ... Respondent

WITH  
WRIT PETITION NO. 4114 OF 2025

M/s. Aplab Ltd. ... Petitioner  
V/s.  
Gundu Daji Desai ... Respondent

WITH  
WRIT PETITION NO. 4925 OF 2025

M/s. Aplab Ltd. ... Petitioner  
V/s.  
Yogesh Suresh Dewasthali ... Respondent

WITH  
WRIT PETITION NO. 4944 OF 2025

M/s. Aplab Ltd. ... Petitioner  
V/s.  
Rosariya Thomas ... Respondent

WITH  
WRIT PETITION NO. 5062 OF 2025

M/s. Aplab Ltd. ... Petitioner  
V/s.  
Jayprakash Jagannath Raut ... Respondent

WITH  
WRIT PETITION NO. 4116 OF 2025

M/s. Aplab Ltd. ... Petitioner  
V/s.  
Pratik Rajaram Gupte ... Respondent

WITH  
WRIT PETITION NO. 4941 OF 2025

M/s. Aplab Ltd. ... Petitioner  
V/s.  
Manish V. Chavan ... Respondent

**WITH  
WRIT PETITION NO. 4926 OF 2025**

|                          |             |                       |
|--------------------------|-------------|-----------------------|
| <b>M/s. Aplab Ltd.</b>   | <b>V/s.</b> | <b>... Petitioner</b> |
| <b>Anil Vaman Nemade</b> |             | <b>... Respondent</b> |

**WITH  
WRIT PETITION NO. 5072 OF 2025**

|                                   |             |                       |
|-----------------------------------|-------------|-----------------------|
| <b>M/s. Aplab Ltd.</b>            | <b>V/s.</b> | <b>... Petitioner</b> |
| <b>Dharmatma Suryabali Pandey</b> |             | <b>... Respondent</b> |

**WITH  
WRIT PETITION NO. 5052 OF 2025**

|                          |             |                       |
|--------------------------|-------------|-----------------------|
| <b>M/s. Aplab Ltd.</b>   | <b>V/s.</b> | <b>... Petitioner</b> |
| <b>Nitendra Upadhyay</b> |             | <b>... Respondent</b> |

Mr. Yogendra M. Pendse a/w Ms. Priyanka Patkar for the Petitioner in WP Nos. 2875 of 2025, 2888 of 2025, 2879 of 2025, 2878 of 2025, 2881 of 2025, 2887 of 2025, 2884 of 2025, 2885 of 2025, and 2889 of 2025; and for the Respondents in WP Nos. 4113 of 2025, 4947 of 2025, 4114 of 2025, 4925 of 2025, 4944 of 2025, 5062 of 2025, 4116 of 2025, 4941 of 2025, 4926 of 2025, 5072 of 2025, 5052 of 2025.

Mr. Kiran S. Bapat, Sr. Advocate a/w Mr. Jayesh Desai i/by Desai & Desai Associates for the Petitioner in W.P. Nos. 4113 of 2025, 4947 of 2025, 4114 of 2025, 4925 of 2025, 4944 of 2025, 5062 of 2025, 4116 of 2025, 4941 of 2025, 4926 of 2025, 5072 of 2025, 5052 of 2025 and for the Respondents in WP Nos. 2875 of 2025, 2888 of 2025, 2879 of 2025, 2878 of 2025, 2881 of 2025, 2887 of 2025, 2884 of 2025, 2885 of 2025, and 2889 of 2025.

**CORAM : AMIT BORKAR, J.**

**RESERVED ON : MARCH 6, 2026**

**PRONOUNCED ON : MARCH 7, 2026**

**JUDGMENT:**

1. As all the petitions arise out of a common judgment and order, they are being disposed of by this common judgment. For the purpose of convenience and clarity, the facts stated in the petition filed by the employer are treated as the primary facts of the dispute.
2. The present writ petition is directed against the judgment dated 09.11.2023 passed by the learned Controlling Authority under the Payment of Gratuity Act, 1972, who is also the learned Judge of the Fourth Labour Court at Thane, in Application (PGA) No.173 of 2022. The petition also challenges the judgment dated 19.10.2024 delivered by the learned Appellate Authority under the Payment of Gratuity Act, 1972, who is the learned Member of the Industrial Court at Mumbai, in Appeal (PGA) No.8 of 2024. The petitioner company is a limited company registered under the provisions of the Indian Companies Act, 1913. It carries on the business of manufacturing UPS systems and industrial AC and DC power units and engages employees in different categories for its production and administrative activities. At the time of his resignation, the respondent was working in the capacity of Chief Regional Manager and his last drawn basic salary was Rs.36,500 per month. The respondent tendered his resignation without

giving the prescribed notice period of three months as required under the rules of the company. However, in his resignation letter he expressed willingness to compensate the notice period of two months, which amounted to Rs.71,783. The respondent also furnished an undertaking authorising the Accounts Officer to inform the Head Office and Accounts Department to adjust an amount of Rs.2,09,443 which was pending in his name on account of regularisation as advised by him to the Corporate Head Office.

3. The case of the petitioners is that the respondent did not submit Form "I" to the employer claiming gratuity, nor was there any communication from the respondent to the company after his resignation. The respondent also did not personally approach the company for payment of gratuity after leaving service in the year 2015. According to the petitioners, the respondent for the first time filed an application before the Controlling Authority under Section 7(7) of the Payment of Gratuity Act in the year 2022 seeking payment of gratuity, which was clearly beyond the time prescribed under the Act and the Rules framed thereunder.

4. The petitioners filed their written statement before the Controlling Authority and contended that at the time of resignation the respondent himself had authorised the company, by his letters dated 02.02.2015 and 04.03.2015, to adjust an amount of Rs.2,09,433 either in part or in full along with Rs.71,783 towards two months' salary in accordance with the company rules against his full and final settlement. It was further pointed out that as per the company's calculation of full and final settlement, the respondent was entitled to gratuity calculated at the rate of fifteen

days' wages for every completed year of continuous service, which amounted to Rs.3,79,038. The company stated that the said amount could not be paid due to financial difficulties. The petitioners also contended that the respondent had not submitted any application to the employer in Form "I" under Rule 7 of the Payment of Gratuity (Maharashtra) Rules, 1972 within thirty days from the date when gratuity became payable. It was also their case that the respondent did not file any application seeking condonation of delay under the relevant rules.

5. In support of his claim, the respondent filed his affidavit in lieu of examination in chief. During cross examination, the respondent admitted that he was part of the management cadre and that his basic salary was Rs.36,500. He also admitted that he had not issued any letter to the company after his resignation seeking payment of gratuity and that the petitioner company had not refused to pay the gratuity amount. On behalf of the petitioners, an affidavit in lieu of examination in chief was filed by Mr. Rajesh Deherkar, Finance Controller and Company Secretary of the petitioner company. The said witness stated that employees in the management cadre were not entitled to any special allowance for the purpose of gratuity. According to him, the expression "special allowance" used by the company was only a descriptive term referring to a combination of various allowances and incentive schemes adopted by the company, and it had no relation to terminology used under other statutory enactments. He further stated that any similarity in nomenclature with terms used under other enactments was purely coincidental. The witness was cross

examined at length, however no material could be brought on record to discredit his testimony. When the respondent approached the Controlling Authority claiming gratuity, the petitioners deposited the admitted amount before the authority while expressly reserving their right to challenge the issue relating to condonation of delay as well as the maintainability of the application filed by the respondent after considerable delay.

6. The petitioners also filed detailed written arguments before the Controlling Authority reiterating the factual and legal position and placing on record the reasons for non payment or forfeiture of gratuity claimed by the respondent. It was specifically contended that the respondent had approached the authority after a gap of about six years and had not filed any application seeking condonation of delay. The petitioners further contended that gratuity under the Act is payable only on the basis of basic wages and dearness allowance and that the respondent was not paid any dearness allowance.

7. The learned Controlling Authority, by judgment dated 09.11.2023, partly allowed the application filed by the respondent and directed the petitioners to pay an amount of Rs.9,13,950 towards gratuity. The authority also directed the petitioners to pay simple interest at the rate of 10 percent per annum on Rs.97,822 from 02.03.2015 to 30.10.2023 and further simple interest at the rate of 10 percent per annum on Rs.8,16,128 from 31.05.2016 until full realisation. The authority further directed that the amount already deposited by the petitioners should be adjusted against the total amount of Rs.9,13,950.

8. Aggrieved by the said decision, the petitioners preferred an appeal under Section 7(7) of the Payment of Gratuity Act, 1972 challenging the judgment dated 09.11.2023 passed by the Controlling Authority in Application (PGA) No.173 of 2022. The principal ground raised in the appeal was that the Controlling Authority ought not to have adjudicated the main application for payment of gratuity in the absence of any application for condonation of delay as contemplated under Rule 10A of the Payment of Gratuity (Maharashtra) Rules, 1972. The petitioners also contended that the special allowance could not be taken into account while calculating gratuity in view of the definition of wages under Section 2(s) of the Payment of Gratuity Act, 1972.

9. The respondent also preferred an appeal challenging the same judgment on the ground that gratuity ought to have been calculated on the basis of twenty six days' wages instead of fifteen days' wages. The learned Appellate Authority, by its common judgment dated 19.10.2024, dismissed both the appeals.

10. Mr. Bapat, learned Senior Advocate appearing on behalf of the employer, submitted that the claim of the employee was confined only to the last drawn basic pay and dearness allowance. According to him, the claim of the employee never included special allowance. He pointed out that even in the statement annexed to the application filed by the employee under the relevant rules, the wages last drawn were shown only as basic wages and dearness allowance. He submitted that the employer was always ready and willing to pay the amount of gratuity in accordance with law.

**11.** Inviting attention to Section 2(s) of the Payment of Gratuity Act, 1972, he submitted that the definition of wages includes all emoluments earned by an employee while on duty or on leave in accordance with the terms of employment and which are paid or payable in cash, including dearness allowance, but excluding bonus, commission, house rent allowance, overtime wages and any other allowance. According to him, once the statute itself excludes other allowances from the definition of wages, the special allowance claimed by the employee cannot be included for the purpose of calculating gratuity.

**12.** He further invited attention to Section 7(3A) of the Act and submitted that although sub section (3) requires the employer to pay gratuity within thirty days from the date it becomes payable, sub section (3A) provides that if the amount is not paid within the prescribed period, the employer becomes liable to pay simple interest from the date the gratuity becomes payable until the date of actual payment. However, according to him, the liability to pay interest would arise only when the employer wrongfully withholds the payment without raising any dispute under Section 7(4) of the Act. In the present case, the respondent himself admitted during cross examination that the petitioner company had never refused to pay gratuity. In such circumstances, according to him, the authority could not have directed payment of interest.

**13.** Learned Senior Counsel also invited attention to Rule 10 of the Payment of Gratuity (Maharashtra) Rules, 1972 and particularly to the proviso appended to the said rule. He submitted that under Rule 7 an employee is required to file an application

before the competent authority within thirty days from the date when gratuity becomes payable. The second proviso to Rule 10 provides that where the employer fails to issue the notice contemplated under sub section (2) of Section 7 read with sub rule (5) of Rule 8, the limitation prescribed for filing the application would not apply. However, even in such circumstances the employee is expected to approach the authority within a reasonable time.

**14.** According to him, although the petitioner had not issued a notice under Section 7(2) of the Act, the respondent approached the authority after a long lapse of time and therefore cannot claim interest on the amount. He further submitted that in the application filed by the employee there is no pleading that the special allowance was in reality a disguised form of dearness allowance. He also pointed out that in the affidavit filed before the competent authority the employer had specifically stated that the employee was entitled to dearness allowance and this assertion was not challenged during cross examination. Even in his examination in chief, the employee stated that he was entitled to claim dearness allowance. In these circumstances, according to him, the employee cannot now be permitted to contend that the special allowance was nothing but dearness allowance.

**15.** Per contra, Mr. Pendse, learned Advocate appearing for the employee in all the petitions, submitted that the employee's claim is founded on the company policy which provides for payment of gratuity calculated on the basis of twenty six days' wages and not fifteen days' wages. He pointed out that in paragraph 2 of the

application filed before the competent authority it is specifically stated that as per the company policy employees who have completed ten years of continuous service are entitled to gratuity at the rate of fifteen days' wages for every completed year of service, whereas employees who have completed more than fifteen years of service are entitled to gratuity calculated on the basis of twenty six days' wages.

16. He submitted that documentary material in the form of salary slips was produced before the Appellate Authority but the same was not properly considered. He further submitted that before the Appellate Authority a document showing restructuring of perks of the petitioner company with effect from 1 April 2004 was placed on record. The said document contained a column indicating that in cases where the employee had completed more than fifteen years of service, gratuity was to be calculated on the basis of twenty six days' wages. According to him, this document related to other employees of the company and clearly reflected the policy followed by the petitioner.

17. He further submitted that in respect of employees occupying managerial positions, dearness allowance was paid in the form of special allowance. According to him, the petitioner did not raise any dispute regarding payment of gratuity and therefore was liable to pay interest under the provisions of the Act. He submitted that the authorities under the Act committed an error in restricting the employee's claim to fifteen days' wages when the company policy itself provided for calculation of gratuity on the basis of twenty six days' wages. According to him, this Court should modify the

impugned judgment and direct the petitioner to pay the difference of eleven days' wages per year towards gratuity. He therefore submitted that the petitions filed by the employer deserve to be dismissed and the petitions filed by the employee deserve to be allowed by granting gratuity calculated on the basis of twenty six days' wages per year.

### **Analysis and reasons**

#### **Limitation and procedural compliance under Section 7 and Rule 10:**

**18.** Section 7(1) of the Payment of Gratuity Act lays down the general rule regarding initiation of a claim for gratuity. The provision states that a person who becomes eligible for gratuity is required to send a written application to the employer seeking payment of such gratuity. The application has to be made in the form prescribed under the Rules and within the time contemplated under the statutory scheme. The purpose of this requirement is largely procedural. It enables the employer to formally examine the claim and determine the amount payable. However, the statute does not place the entire burden on the employee alone. The Act creates a scheme in which both the employee and the employer are assigned certain duties once gratuity becomes payable.

**19.** The detailed procedure governing such claims is contained in Rule 7 and Rule 10 of the Payment of Gratuity (Maharashtra) Rules, 1972. Rule 7 deals with the application which may be made by the employee to the employer in the prescribed form for payment of gratuity. Rule 10 then provides the mechanism by which the employee can approach the Controlling Authority in the

event the employer does not properly deal with the claim. These provisions show that the scheme of the Act is not merely dependent upon the filing of an application by the employee. It also casts a clear obligation upon the employer to act once gratuity becomes payable.

**20.** This obligation of the employer flows from Section 7(2) of the Act. The section clearly states that as soon as gratuity becomes payable, the employer is required to determine the amount of gratuity and give notice in writing to the person entitled to receive it. A copy of such notice must also be sent to the Controlling Authority specifying the amount determined. Significantly, the statute provides that this duty exists whether or not an application under Section 7(1) has been made. In other words, the employer cannot remain passive and wait indefinitely for the employee to make an application. The Act expects the employer to determine the gratuity and communicate it without delay.

**21.** In the present case, the objection raised by the petitioners is that the respondent did not submit Form “I” within the time prescribed under the Rules and that the application before the Controlling Authority was filed after several years. On that basis the petitioners contended that the claim ought not to have been entertained. This argument at first glance appears attractive. However, when the statutory scheme is examined closely and the material on record is considered, the argument cannot be accepted.

**22.** The record placed before the Court does not indicate that the petitioners ever complied with the requirement of Section 7(2). There is no material showing that the employer determined the gratuity amount after the respondent's resignation and issued the statutory notice to the respondent and to the Controlling Authority. In fact, the case of the petitioners throughout has been that the respondent never submitted Form "I" and therefore the employer was not required to process the claim. This approach misses the clear language of Section 7(2) which obligates the employer to determine gratuity even in the absence of an application.

**23.** At this stage it becomes necessary to refer to the second proviso to Rule 10 of the Maharashtra Rules. The proviso specifically states that no limitation shall apply for filing an application before the Controlling Authority where the employer has failed to give the notice required under Section 7(2) read with Rule 8. The object behind this proviso recognises that if the employer neglects the duty of determining gratuity, the employee should not lose the right to claim the amount merely because some time has passed. Otherwise the employer could simply remain silent and later defeat the claim by raising the plea of limitation.

**24.** When the facts of the present case are examined in the light of this statutory scheme, the position becomes clear. The petitioners have strongly relied upon the delay and the absence of Form "I". At the same time, they have not shown that they performed the statutory obligation of issuing the notice required under Section 7(2). Once this position emerges from the record, the second proviso to Rule 10 directly comes into operation. The

proviso is intended precisely for such situations where the employer has failed to perform the statutory duty cast upon it.

25. Therefore, the employer cannot be permitted to defeat the claim by taking advantage of delay when the delay itself has been contributed to by the employer's inaction. The statutory scheme does not allow such a result. The law relating to gratuity is a beneficial piece of legislation meant to secure a terminal benefit to employees after years of service. The procedural provisions must therefore be interpreted in a manner which advances the purpose of the Act rather than defeats it. For these reasons, the objection raised by the petitioners on the ground of limitation cannot be accepted. The respondent's approach to the Controlling Authority, though made after some time, cannot be treated as barred in view of the employer's failure to issue the notice contemplated under Section 7(2).

**Deposit of admitted amount and liability to interest:**

26. Section 7(4)(a) of the Payment of Gratuity Act provides for the course to be followed when a dispute arises regarding gratuity. The provision places a clear obligation upon the employer. If there is any disagreement regarding the amount payable or the entitlement of the employee, the employer must deposit with the Controlling Authority the amount which it admits to be payable. The intention of the legislature is apparent. Even when the parties are disputing certain aspects of the claim, the employee should not be deprived of the portion of gratuity which is admittedly due. Therefore, the statute requires the employer to deposit that

admitted amount before the authority so that the employee's statutory benefit is not unnecessarily withheld.

27. In the present matter the employer has followed this requirement to a certain extent. When the proceedings were pending before the Controlling Authority, the employer deposited the amount which it admitted to be payable. At the same time the employer reserved its right to contest the remaining claim raised by the employee. Such a course is permissible under the scheme of the Act because the employer is entitled to raise a dispute regarding the balance amount while complying with the statutory requirement of depositing the admitted portion.

28. At this stage it becomes necessary to consider the provisions contained in Section 7(3) and Section 7(3A) of the Act. Section 7(3) states that once gratuity becomes payable, the employer must arrange to pay the amount within thirty days. This provision emphasises the legislative intention that gratuity should be paid promptly. Gratuity is a terminal benefit earned by the employee for the service rendered over the years. Therefore, the law expects the employer to discharge this obligation without unnecessary delay.

29. Section 7(3A) deals with the consequence of failure to comply with this requirement. It provides that if the employer does not pay the gratuity within the period of thirty days, the employer becomes liable to pay simple interest on the delayed amount. The interest is payable from the date on which the gratuity became payable until the date on which it is actually paid. The object of this provision is compensatory in nature. It is meant to compensate

the employee for the delay in receiving a statutory benefit which was otherwise payable to him.

**30.** The proviso to Section 7(3A) creates a limited exception. It states that interest will not be payable if the delay in payment is due to the fault of the employee and if the employer has obtained written permission from the Controlling Authority for making delayed payment on that ground. Thus, two conditions are required to be satisfied before the employer can avoid liability to pay interest. First, the delay must be attributable to the employee. Second, the employer must have obtained written permission from the Controlling Authority explaining the reason for delay.

**31.** When the facts of the present case are examined in this background, certain aspects are not in dispute. The employer did not completely deny the liability to pay gratuity. Instead, it deposited the amount which it admitted to be payable before the Controlling Authority. This conduct shows that the employer recognised the statutory liability to pay gratuity to the employee. At the same time the employer disputed the remaining portion of the claim and contested the proceedings. However, it is equally clear that the employer did not obtain any written permission from the Controlling Authority for delaying payment beyond the statutory period of thirty days. No material has been placed on record to show that such permission was sought or granted before the expiry of the statutory period. As a result, the employer cannot rely upon the exception provided in the proviso to Section 7(3A).

**32.** Another relevant circumstance is that the employee was required to wait for the balance amount of gratuity until the dispute was adjudicated by the authority. The delay in receiving the unpaid portion cannot be ignored. Interest under Section 7(3A) operates as compensation for such delay. Whenever an amount which is legally payable under the statute remains unpaid and no sufficient justification is shown, the employee becomes entitled to interest on that amount. At the same time, the fact that the employer deposited the admitted amount cannot be overlooked. Once the admitted amount was deposited before the authority, the employee was not deprived of that portion thereafter. Therefore, the employer's liability to pay interest must be considered in a balanced manner. The deposit made by the employer reduces its responsibility to the extent of the amount already deposited.

**33.** For this reason interest on the amount which was admitted and deposited by the employer cannot continue to run from the date of deposit. Once that amount was placed before the Controlling Authority, the employer had fulfilled its obligation in respect of that part of the claim. Therefore, directing payment of interest on the deposited amount even after the date of deposit would not be justified.

**34.** However, the position is different with respect to the remaining amount which was not deposited and which ultimately came to be determined by the Controlling Authority. The employee was deprived of that portion during the entire period of dispute. Since the employer did not obtain written permission under the

proviso to Section 7(3A), the statutory consequence must follow. The employee would therefore be entitled to interest on that unpaid portion from the date specified in the order of the Controlling Authority until the date on which the amount is actually paid.

**35.** The Controlling Authority has already directed payment of interest at the rates and for the periods mentioned in its order. That direction substantially reflects the statutory requirement, though a limited modification is necessary in view of the deposit made by the employer. Accordingly, it is appropriate to clarify that interest shall not be payable on the amount which was admitted and deposited by the employer from the date of such deposit. Interest shall, however, continue to run on the remaining balance amount which has been ordered to be paid by the Controlling Authority.

**36.** It is also necessary to keep in mind the possibility of recalculation of gratuity after remand. If upon reconsideration the authority comes to the conclusion that the component described as special allowance forms part of wages and that the employee is entitled to higher gratuity, the enhanced amount will also carry interest in accordance with Section 7(3A). Such interest shall be calculated from the date on which the gratuity originally became payable until the date of actual payment. While doing so, the authority shall give proper credit for the amount already deposited by the employer so that there is no duplication in payment.

**Inclusion of special allowance as part of “wages” under Section 2(s):**

37. Section 2(s) of the Payment of Gratuity Act defines the expression “wages” for the limited purpose of calculating gratuity. The provision states that wages include all emoluments earned by an employee while he is on duty or while he is on leave in accordance with the terms of employment, provided such amounts are paid or payable in cash. The section also makes it clear that dearness allowance forms part of wages. At the same time, the legislature has consciously excluded certain payments from the definition. These exclusions include bonus, commission, house rent allowance, overtime wages and any other allowance. Therefore, while interpreting this provision the Court must examine the true nature of the payment and not merely the label attached to it. In other words, what is required to be seen is whether a payment which is described by a particular name is, in reality, dearness allowance or whether it is an independent allowance which the statute intends to exclude. If the allowance is in substance dearness allowance, it will form part of wages for calculating gratuity. On the other hand, if it is an allowance of a different character, it cannot be included merely because it forms part of the salary structure.

38. In the present case the employer has taken a clear stand that the component described as “special allowance” in the salary structure is not dearness allowance. According to the employer, the said allowance is only a consolidated component representing different incentives and benefits given by the company. The

management witness, who was examined before the Controlling Authority, stated that the expression “special allowance” is used internally in the company to denote adjustment of several allowances and incentive schemes. He also stated that this allowance has no connection with dearness allowance as understood in other labour statutes. The witness further explained that the similarity in nomenclature should not lead to a presumption that the allowance is equivalent to dearness allowance.

**39.** This witness was subjected to cross examination. During the course of cross examination certain admissions were obtained from the respondent employee. The respondent admitted that his last drawn basic salary was Rs.36,500. He also admitted that immediately after his resignation he had not written any letter to the company demanding gratuity. These admissions do not directly decide the nature of the special allowance, but they form part of the factual background of the dispute.

**40.** Apart from oral evidence, certain documents were also relied upon by the parties. Salary slips of the respondent were placed on record before the authorities. In addition to that, the respondent relied upon a document which was described as a restructuring of perks of the company with effect from 1 April 2004. According to the respondent, this document indicates that for employees who have completed more than fifteen years of service, gratuity may be calculated on the basis of twenty six days. However, the said document appears to have been produced in photocopy form. The authorities below did not examine the original document nor did

they record any clear finding about its authenticity or applicability.

41. A careful reading of the judgment of the Appellate Authority shows that the authority has not decided the essential question. It has not examined whether the component described as special allowance is in reality a form of dearness allowance. It has also not evaluated the evidentiary value of the photocopied documents relied upon by the employee. When documents are produced in photocopy form, the authority is required to examine whether they can be relied upon as secondary evidence and whether their contents are proved. That exercise has not been carried out in the present case.

42. In matters of this nature the character of a particular salary component cannot be determined merely by referring to the nomenclature used in the salary slip. It depends on several factual aspects. These include the purpose for which the payment is made, the manner in which it is calculated, whether it is linked to cost of living, whether it is paid uniformly to employees, and whether the terms of employment describe it as compensation for rise in living expenses. These aspects can only be examined properly by the fact finding authority after considering the original documents and the surrounding circumstances.

43. On the present record there remains a clear factual uncertainty. The material placed before this Court does not conclusively establish whether the special allowance paid to the respondent is truly dearness allowance in disguise or whether it is an independent allowance which stands excluded under Section

2(s). The authorities below have also not examined the original records or given specific findings regarding the photostat copies of the salary slips and restructuring documents. Because of this omission the issue remains unresolved.

44. In such circumstances it would not be appropriate for this Court, while exercising writ jurisdiction, to undertake a fresh examination of disputed facts. The proper course is to require the competent fact finding authority to examine the matter in detail. That authority is in a better position to evaluate the documents, record evidence if necessary, and arrive at a proper finding on the nature of the allowance.

45. For these reasons the issue requires reconsideration by the Appellate Authority. The matter therefore deserves to be remanded for a limited purpose. The authority shall examine whether the special allowance paid to officers like the respondent is in substance dearness allowance forming part of wages under Section 2(s), or whether it is an independent allowance excluded by the statute. While undertaking this exercise the authority shall also consider the authenticity and evidentiary value of the photocopied documents relied upon by the parties.

46. In view of the reasons recorded and the detailed discussion made in the preceding paragraphs, this Court now proceeds to pass the following order.

47. The writ petitions are partly allowed in the limited manner stated. The common judgment of the Appellate Authority dated 19.10.2024 and the Controlling Authority's judgment dated

09.11.2023 are affirmed except as modified in this judgment.

48. The matter is remitted to the Appellate Authority for fresh consideration only on the question whether the photocopied documents and salary records establish entitlement to gratuity at the rate of 26 days for officers like the respondent; and whether special allowance is, in substance, dearness allowance for the purpose of Section 2(s).

49. The Appellate Authority shall effect adjustment of amounts already deposited. If on remand enhanced gratuity is found payable, interest shall be computed on the enhanced portion from the date it became payable until actual payment; interest shall not be payable on amounts already deposited from the date of deposit.

50. The Appellate Authority shall also take into consideration the submission made on behalf of the employer that one of the respondents, Mr. Gupte, had given an undertaking authorising the Accounts Officer of the Company to advise the Head Office and Accounts Department to adjust an amount of Rs.2,09,443/- which was pending in his name due to certain regularisation issues earlier communicated by him to the Corporate Head Office. If such amount is found to be payable by the employee to the company and is supported by proper records, the authority shall consider the same while finalising the computation and settlement of gratuity.

51. Parties shall appear before the Appellate Authority on the 23<sup>rd</sup> March 2026.

**52.** The Appellate Authority shall comply with the directions given above and decide the remanded point within eight weeks from receipt of this order.

**53.** No order as to costs.

**(AMIT BORKAR, J.)**