
(2025) 12 BOM CK 1687

In the Bombay High Court, Kolhapur Bench

Case No : Writ Petition No.5489 Of 2019

Maharashtra State Co-operative Marketing Federation Ltd

APPELLANT

Vs

Subhash Tukaram Nikam

RESPONDENT

Date of Decision : 01-12-2025

Acts Referred:

Payment of Gratuity Act, 1971 — Section 7(7)

Citation : (2025) 12 BOM CK 1687

Hon'ble Judges : S. G. Chapalgaonkar, J

Bench : Single Bench

Advocate : Narendra Bandiwadekar, Sagar Mane, Ashwini Bandiwadekar, Manoj A. Patil

Final Decision : Dismissed

Judgement

S. G. Chapalgaonkar, J

1. The Petitioner impugns order dated 19th February 2018 passed by Appellate Authority under Payment of Gratuity Act, 1971 (For short, 'the Act') below PGA Application No.2 of 2012.

2. Respondent had filed Miscellaneous PGA Application No.2 of 2012 before Controlling Authority under the Act, seeking directions against Petitioner to pay him amount of gratuity, i.e., Rs.5,47,000/-alongwith interest @ 20% p.a. from the date of his retirement till actual payment. The Controlling Authority allowed application vide order dated 9th February 2015 and directed Petitioner to pay amountof Rs.5,47,000/- alongwith interest @ 9% p.a. with effect from 31st March 2010 till actual payment. Petitioner filed appeal before Appellate Authority assailing order passed by Controlling Authority. The appeal was filed alongwith Miscellaneous Application praying to condone delay. Appellate Authority condoned delay vide order dated 5th April 2018. Thereafter, Petitioner filed application dated 9th October 2018 before Appellate Authority seeking directions to accept demand draft of Rs.5,47,000/-. The Appellate Authority rejected said

application vide impugned order dated 19th October 2018, observing that in view of provision of Section 7(7) of the Act, application is not maintainable.

3. Mr. Bandiwadekar, learned Senior Advocate appearing for Petitioner would submit that impugned order sans reasons and liable to be quashed and set aside. He would further submit that appeal was filed under Section 7 of the Act alongwith Miscellaneous Application (PGA) No.2 of 2015 seeking condonation of delay. The delay was condoned vide order dated 5th April 2018. Thereafter, demand draft was tendered. According to him, mandate under 2nd proviso to Sub-section (7) of Section 7 of the Act requires deposit of gratuity amount as ordered by Authority before admission of appeal and not at the time of filing of appeal. Therefore, there was no reason to reject application seeking direction to accept demand draft of amount and record compliance.

4. Per contra, Mr. Manoj Patil, learned Advocate appearing for Respondent relying upon observations of Division Bench of this Court in case of Pharma Base India Pvt. Ltd., Mumbai v. State of Maharashtra & Anr.1 and observations of Single Bench of this Court in case of Changunabai Sambhaji Gaware v. Kapur Visheshadnya & Anr.2

would submit that second proviso to Sub-section (7) of Section 7 of the Act mandates that no appeal shall be admitted unless at the time of preferring an appeal, the appellant either produces a certificate of Controlling Authority to the effect that Appellant has deposited with him an amount equal to amount of gratuity required to be deposited under Sub-section (4) or deposit with the Appellate Authority such amount. He would submit that Petitioner seeks to tender the amount after expiry of more than three years of order passed by Controlling Authority. Therefore, Appellate Authority had rightly refused to entertain prayer of Petitioner.

5. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that Respondent-employee had instituted proceeding under Section 7 of the Act before Controlling Authority. On 9th February 2015, Controlling Authority directed Petitioner to pay amount of Rs.5,47,000/- alongwith interest to Respondent. The Petitioner filed appeal under Sub-section (7) of Section 7 of the Act, which contemplates limitation period of 60 days for filing appeal, which is extendable by further 60 days. The second proviso to Sub-section (7) of Section 7 of the Act mandates pre-deposit of amount of gratuity as directed by Authority or produce certificate of such deposit at the time of presentation of appeal. In the instant case, Authority passed an order dated 9th February 2015. Certified copy of order has been received by Petitioner on 24th February 2015. The Petitioner preferred appeal on 11th June 2015. The Appellate Authority condoned delay on 5th April 2018. However, demand draft dated 5th October 2018 had been tendered along with application dated 9th October 2018. Evidently, amount, as contemplated under 2nd Act was not tendered Authority proviso to Sub-section (7) of Section 7 of the within 120 days of passing of order by Authority.

6. The Division Bench of this Court in case of Pharma Base India Pvt. Ltd. (supra), relying upon observations made by Single Judge of Allahabad High Court in paragraph Nos.14 and 19 observed as under:

"14. The Petitioners second submission namely the production of certificate from the controlling authority or deposit of the amount of gratuity as contemplated under proviso of Section 7 (7) required to be complied with at the time of admission of the Appeal and not at the time of institution of Appeal also devoid of merit, in view of the specific provisions of 2nd Proviso of Section 7(7) that the abovesaid Certificate is to be produced or deposit is to be made at the time of "preferring the Appeal".

19. The learned Single Judge of Allahabad High Court in M/s. Sahakari Ganna Vikas Samiti Ltd. (Supra) held that non compliance of condition with regard to production of certificate and deposit does not result in dismissal of Appeal and Appeal is only consigned. With respect to the learned Single Judge, we are of the opinion that the law pronounced is not correct position of law and we respectfully disagree with the same, for the reasons stated earlier. Under any circumstances the payment or deposit of an amount equally to the amount of gratuity cannot be postponed beyond the period of 120 days and the Appellate Authority has no jurisdiction to entertain the Appeal if such deposit is not made within the period of 120 days, from the date of receipt of the copy of the order."

7. In light of aforesaid exposition of law, once Petitioner failed to make deposit of amount as ordered by Authority within 120 days of date of order, he would lose right of admission of appeal. Argument that amount ordered by Authority can be deposited before admission of appeal cannot be countenanced. Law requires that such deposit is made within 120 days, at time of presentation of appeal and cannot be postponed till decision on application for delay condonation by Appellate Authority.

8. In result, Writ Petition stands dismissed.