
(2025) 04 BOM CK 0309

In the Bombay High Court, Nagpur Bench

Case No : Writ Petition Nos. 3758, 3759, 3760, 3761, 3762, 3763, 3764 Of 2024

Zilla Parishad Washim Thr. Chief Executive Officer And
Another

APPELLANT

Vs

Controlling Authority And Judge, Labour Court Akola And
Another

RESPONDENT

Date of Decision : 23-04-2025

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2(a), 2(e), 2(s), 4(5), 5, 7, 7(2), 14

Citation : (2025) 04 BOM CK 0309

Hon'ble Judges : M.S. Jawalkar, J

Bench : Single Bench

Advocate : Amol Deshpande, N. D. Sonare, S. G. Zinjarde

Final Decision : Disposed Of

Judgement

M.S. Jawalkar, J

1. RULE. Rule made returnable forthwith.

2. By consent and on request by the parties, all the matters are taken up for final hearing at the stage of admission. As common question involved in all above writ petitions, they are taken up together to decide the same by common judgment. The Writ Petition No.3758/2024 is taken up as lead case for consideration of facts and other law points.

3. Petitioner No.1 is Zilla Parishad, Washim through Chief Executive Officer and Petitioner No.2 is District Health Officer, Zilla Parishad, Washim. Respondent No.2 was employee of the Petitioner and served with Zilla Parishad, Washim as 'Health Worker'. On 31.01.2022, Respondent No.2 stood retired on superannuation. After retirement, the Petitioners have released all retiral benefits payable to Respondent No.2 on 18.07.2022. It is contended by the learned Counsel for the Petitioners that the Applicant/Respondent No.2 thereafter filed an Application dated 24.04.2023 under the provisions of Payment of Gratuity Act, 1972 (for

short the "PG Act"), for grant of gratuity along with interest thereon before the Respondent No.1/Controlling Authority. Notices were issued by the Controlling Authority/Respondent No.1 to the Petitioners herein. In response to it, the Petitioners appeared and filed their reply. The Petitioners have denied the claim of the Respondent No.2 on the ground that the Applicant/Respondent No.2 being an employee of the Zilla Parishad, the Provisions of Maharashtra Civil Services (Pension) Rules, 1982 (for short the "MCS Rules") as well as provisions of the Maharashtra Zilla Parishad District Services Rules, 1968 are applicable. It is submitted that the learned Controlling Authority/ Labour Court overlooking the Provisions of MCS Rules as well as Maharashtra Zilla Parishad District Services Rules, 1968 and objection raised by the Petitioners, allowed the Application by impugned order dated 13.03.2024. By the said order the Authority has directed the Petitioners to pay amount of gratuity to the tune of Rs.6,37,348/- along with interest @ 10% per annum. Being aggrieved by the impugned order passed by the learned Controlling Authority, present writ petition is filed.

4. Learned Counsel for the Petitioners submitted that the Controlling Authority under the Payment of Gratuity Act have no jurisdiction to deal with the application when the Applicant/Respondent No.2 is not come within the definition of employee under the PG Act. The provisions of PG Act are not applicable in view of provisions of Maharashtra Zilla Parishad District Services Rules 1968.

5. Learned Counsel for the Petitioners relied on the following citations :

(i) Beed District Central Cooperative Bank Ltd., Vs. State of Maharashtra and others, reported in (2006) 8 SCC 514,

(ii) Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and another, reported in (1998) 7 SCC 221.

6. Per contra, learned Counsel for Respondent No.2 submitted that the Zilla Parishad challenging the order passed by the Controlling Authority i.e. Respondent No.1 on the basis that PG Act is not applicable to the Petitioner establishment i.e. Zilla Parishad in view of the fact that they have got their own service Laws/Rules, which provide for payment of pension and gratuity. If the definition of employee under Clause (e) of Section 2 of the PG Act is perused, the exception that has been carved out in the said definition is in respect of the employees of the Central Government and State Government, who are governed by any other act or by any rules providing for payment of gratuity. It is further contended that the Zilla Parishad does not fall within the definition of Central Government and State Government. It is the body of "Local Self Governance" and, therefore, neither constitutes Central Government or State Government. It is further contended that in view of the overriding effect of Section 14 of the PG Act, the Service Rules of the Zilla Parishad does not have any applicability in respect of payment of gratuity. The Zilla Parishad even has not applied for exemption from applicability of PG Act under Section 5 to the State Government. The PG Act is a special beneficial legislation for the payment of gratuity, it would

be applicable to the Zilla Parishad.

7. Learned Counsel for the Respondent No.2 relied on the following citations :

(i) Municipal Corporation of Delhi Vs. Dharam Prakash Sharma & Anr., reported in AIR 1999 SC 293,

(ii) Nagar Ayukt Nagar Nigam, Kanpur Vs. Sri Mujib Ullah Khan & Anr., Civil Appeal No.2628/2017, decided on 02nd April, 2019,

(iii) Writ Petition No.4145/2017, Chief Executive Officer,

Zilla Parishad, yavatmal Vs. Tulshiram Nathmal Toshniwal & Anr., decided on 29.07.2019 by this Court and

(iv) Chief Executive Officer, Zilla Parishad, Beed Vs. Assistant Labour Commissioner and Controlling Authority & Anr., reported in 2014(3) Mh.L.J. 639.

8. I have heard both the parties at length. Perused the impugned order and documents placed on record and considered the citations relied on by both the parties.

9. It appears that Respondent No.2 appointed in the year 1986 and continuously was in service for 36 years. At the time of retirement, she was Health Worker and the Petitioners are her pay master. Respondent No.2 was regular employee, she is covered under Section 2(e) i.e. the definition of employee under the PG Act. The exception in the said definition is a person who are employee of Central Government and State Government and is governed by any other Act or by any rules providing for payment of gratuity are excluded.

10. Learned Counsel for the Petitioners relied on Beed District Central Cooperative Bank Ltd. (supra), however, it pertains to Section 4(5) of the PG Act saving the right of employee to receive better terms of gratuity under a scheme of the employer. It is held that such right is optional and belongs to individual workman and not all the workmen. Section 4(5) provides that, "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". Therefore, it is held that workmen cannot opt for both the terms. In the said matter before the Hon'ble Apex Court, a retired employee claim the benefit of scheme as also the ceiling limit fixed under the Act. Section 4(5) of the PG Act does not contemplate that the workman would be at liberty to opt for better terms of the contract, while keeping the option open in respect of a part of the statute. While reserving his right to opt for the beneficial provisions of the statute or the agreement, he has to opt for either of them and not the best of the terms of the statute as well as those of the contract. He cannot have both.

11. Learned Counsel for the Petitioners also relied on Writ Petition No.4145/2017 decided on 29.07.2019(supra), passed by this Court by placing reliance on the judgment in the case of Municipal Corporation of Delhi (supra), confirmed the order passed by the Controlling Authority and the Appellate Authority in favour of

employee. Learned Counsel for the Petitioners also relied on Municipal Corporation of Delhi (supra), however, the said judgment appears to be in favour of Respondent No.2. The learned Counsel for the Petitioners submitted that in the said judgment, the Hon'ble Apex Court also held that the employees cannot claim gratuity under the Pension Rules. However, it is in clear terms the Hon'ble Apex Court held that the employees of Municipal Corporation would be entitled to the payment of gratuity under the Act notwithstanding the fact that the provisions of the Pension Rules have been made applicable to them for the purpose of determining the pension. Thus, for the purpose for gratuity only Payment of Gratuity Act would be applicable to the employees who opted for.

12. The learned Counsel for the Respondent No.2 submitted that the Petitioners are covered under the definition of Section 2(a) of the PG Act as employer. Learned Counsel for the Respondent No.2 relied on Municipal Corporation of Delhi (supra), wherein the Hon'ble Apex Court held that :

"Mere fact that the gratuity is provided for under the Pension Rules will not disentitle an employee from getting the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act, if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. Appellant municipality has not taken any steps to invoke the power of the Central Government under Section 5 of the Payment of Gratuity Act. Therefore the employees of the MCD would be entitled to the payment of gratuity under the Act notwithstanding the fact that the provisions of the Pension Rules have been made applicable to them for the purpose of determining the pension. However, the employees cannot claim gratuity available under the Pension Rules as well".

The Hon'ble Apex Court further held that :

"We have examined carefully the provisions of the Pension Rules as well as the provisions of the Payment of Gratuity Act. The Payment of Gratuity Act being a special provision for payment of gratuity, unless there is any provision therein which excludes its applicability to an employee who is otherwise governed by the provisions of the Pension Rules, it is not possible for us to hold that the respondent is not entitled to the gratuity under the Payment of Gratuity Act. The only provision which was pointed out is the definition of "employee" in Section 2(e) which excludes the employees of the Central Government and State Governments receiving pension and gratuity under the Pension Rules but not an employee of the MCD. The MCD employee, therefore, would be entitled to the payment of gratuity under the Payment of Gratuity Act."

13. Learned Counsel for the Respondent No.2 also relied on Chief Executive

Officer, Zilla Parishad, Beed (supra) raising objection that Section 7 provides for appeal, however, to avoid deposit of amount payable as per the order of Controlling Authority, the present writ petition is filed. However, there is no substance in this contention as by the order of this Court dated 15.07.2024 while granting ad interim relief, the Petitioners were directed to deposit of Rs.6,37,348/- within a period of three weeks. Accordingly the amount was already deposited.

14. Learned Counsel for the Respondent No.2 also placed reliance on Nagar Ayukt Nagar Nigam, Kanpur (supra), in the said matter, the Nagar Ayukt Nagar Nigam, Kanpur challenged the order dated 19.04.2007, passed by the Controlling Authority, Kanpur under the Payment of Gratuity Act, 1972 relied on the judgment passed in Municipal Corporation of Delhi (supra), wherein the Hon'ble Apex Court held that :

"We find that the notification dated 08.01.1982 was not referred to before the High Court. Such notification makes it abundantly clear that the Act is applicable to the local bodies i.e., the Municipalities. Section 14 of the Act has given an overriding effect over any other inconsistent provision in any other enactment".

15. For the sake of convenience, Section 5 and 14 of the PG Act are reproduced, which reads as under :

"5. Power to exempt. - (1) The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment, factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

(2) The appropriate. Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act, if, in the opinion of the appropriate Government, such employee or class of employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

(3) A notification issued under sub-section (1) or sub-section (2) may be issued retrospectively a date not earlier than the date of commencement of this Act, but no such notification shall be issued so as to prejudicially affect the interests of any person."

"14. Act to override other enactments, etc.- 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.”

After perusing the provisions of Section 5 of the PG Act, it is very clear that unless there is any exemption sought by the establishment from the Government and which is duly notified by the Government, the employees in such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. Section 14 of the PG Act provides that the Act shall override other enactment to the extent of any inconsistent therewith contained in any enactment other than this Act.

16. Learned Counsel for the Respondent No.2 also relied on Chief Executive Officer, Zilla Parishad, Yavatmal (supra), wherein the challenge was that the Controlling Authority as well as the Appellate Authority while calculating the amount of gratuity taken into account the dearness allowance also. Considering the definition of wages in Section 2(s) of the PG Act which includes dearness allowance, held that the Controlling Authority and Appellate Authority have not committed any error by taking into account the dearness allowance, which is receivable by the employee. This Court also decided the Writ Petition No.3844/2019, on 17.09.2019, Chief Executive Officer, Z. P. Yavatmal Vs. Mahesh Bhagwandas Dattani & Anr., relying on the judgment passed in Writ Petition No.4145/2017, Chief Executive Officer Zilla Parishad, Yavatmal Vs. Tulshiram Nathmal Toshniwal (supra), dismissed the appeal of Zilla Parishad, Yavatmal.

17. Learned Controlling Authority while passing the order duly considered the services rendered by the Respondent No.2, point of limitation and also calculated the gratuity under the PG Act and deducted the amount already paid by the establishment towards gratuity. In spite of ample opportunity, the Petitioners failed to establish that PG Act is not applicable to the Zilla Parishad, Washim. It is also not pointed out that there is any exemption claimed under Section 5 of the PG Act. So far as limitation is concerned, sub-section 2 of Section 7 of the PG Act provides that even if there is no application on the part of employee for grant of gratuity as per PG Act, the employer shall determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority. In view of the provisions that if the employer notice under Section 7(2) of the PG Act is not sent to the employee, the employee file an application before the competent authority in that case, law of limitation does not prevail as an obstruction to that application.

18. The grievance of the Petitioners that Respondent No.2 is claiming benefit under the PG Act as well as MCS Rules and provisions of Maharashtra Zilla Parishad District Services Rules. Perused the impugned order, the Controlling Authority has taken due care and deduct the amount paid earlier by the Zilla Parishad towards gratuity. As such, the order passed by the Controlling authority is just and proper and there is no error or perversity in the order passed by the Controlling Authority.

19. As such, there is no merit in all the Petitions. Hence, I pass the following order :

(i) All the Writ Petition Nos. 3758/2024, 3759/2024, 3760/2024, 3761/2024, 3762/2024, 3763/2024 and 3764/2024 stand dismissed.

(ii) In all the Writ Petitions, Respondent No.2 is allowed to withdraw the amount deposited with this Court by the Petitioner Zilla Parishad, Washim along with accrued interest thereon.

(iii) The Zilla Parishad, Washim/Petitioner also directed to deposit 10% interest as per direction of the Controlling Authority from the date of filing of application before the Controlling Authority, till deposit the amount of payment of gratuity in this Court.

All the Writ Petitions stand disposed of in the above terms. No order as to costs.

In view of disposal of all the Writ Petitions, all pending Application(s), if any, shall stand disposed of.