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**BEFORE SHRI. PRASHANT H. INGALE, CONTROLLING
 AUTHORITY UNDER PAYMENT OF GRATUITY ACT AND
 JUDGE, FIRST LABOUR COURT, MUMBAI.**

APPLICATION (PGA) NO. 656 OF 2022

(CNR No. MHLCO1001987-2022)

Shri. Sandeep Chandrakant Bhowar

Age- 35 years

Residing at-

B/405, Bhumik Dham Society,
 Ekta Nagar, Nandivli X Road,
 Dombivali (E)- 421201

...Applicant

V/s.

1. **M/s. Vichare Express & Logistics Pvt. Ltd.**
2. **Shri. Mahendra Vichare- Director**
3. **Shri. Chandrakant Vichare- Director**
4. **Shri. Avinash Shirke- Director.**

Both having office at:

407/408, Kesar Plaza, 4th floor,
 Plot No. 239, RDP-6, B/h Fish Market,
 Kandivali (W), Mumbai- 400 067.

...Opponents

**Claim : An Application for gratuity amount U/s. 4 of The
 Payment of Gratuity Act, 1972 with Rule-7, 9,
 10(1), 11 to 17 of the Maharashtra Rules 1972.**

Appearances : Shri. R. P. Gajinkar, Ld. Adv. for applicant.
 : Ld. Advocates S.I. Kazi and Ms. Sonal Rane for
 opponents.

JUDGMENT

(Delivered on 03/05/2025)

1. Shorn of facts in this present case are as follows :

Applicant urged for grant of gratuity in this application. He has contended that, he came to be appointed as Pick up Boy cum Clerk from 03/11/2023 at Mulund (M) Service Center in opponent No.1 M/s. Vichare Express and Logistics Pvt. Ltd. He became permanent. Being a permanent employee his Provident Fund contribution was deducted from his salary. His PF code Number is 006793. His last drawn salary was Rs. 11,678/- per month which includes basic plus D.A.

2. After nation wise lock down opponent re-started its operation and business activities in phase wise manner. After lock down opponent never paid salary to him from several months which compelled him to resign from the employment. His resignation is duly accepted by the management. After resignation, he had requested so may time to pay gratuity as per law but opponents failed to pay the same. Applicant and other similarly situated employee had issued legal notice on 18/07/2022 through RPAD and through Advocate.

3. He has also submitted in Form-I stating particular and claim of gratuity. Despite notice, opponent never replied though he completed 18 years of service. He was not given gratuity. Hence, he claimed gratuity amount of Rs. 1,21,270.50 with accrued interest at the rate of 10% p.a. Despite receiving Form-I, opponent failed and neglected to pay amount of gratuity. On the grounds set out in the application and long standing service, applicant claimed that he is entitled to receive gratuity amount of Rs. 1,21,270.50 along with interest and costs.

4. After valid service of notice, opponents vide Exh. C-2 resisted the claim by filing written statement but unequivocally admitted the service of applicant. Opponents have contended that claim mentioned in the application is incorrect as applicant was absent during the period from April 2020 to September-2020 and November-2021 to August 2021. Opponent company was completely shut down due to the continuous nation wise lock down which started from 21/03/2020.

5. Opponent company re-started its operation from 02/09/2020. In spite of starting of the company's operation, applicant did not report on duty and continue to remain absent. In the particular they have disputed the amount of gratuity of Rs. 1,21,270.50 claimed by the applicant but it comes to Rs. 1,07,797/-. Due to the presentation of the insolvency proceedings and its few clauses, there is no business in the hands of the opponent company. Therefore, there is a delay in paying the dues of applicant. Hence, urged accordingly.

6. Having regard to the rival pleadings, material facts and after giving thoughtful consideration, following issues were framed by my Ld. Predecessor at Exh. O-3. Same are re-produced here with my findings supported with reasons as follows.

ISSUES**FINDINGS**

- 1) Whether applicant proves that he : **In the affirmative.**
is entitled to the gratuity amount
of Rs. 1,21,270.50 from the
opponents?
- 2) Whether applicant proves that he **In the affirmative.**
is entitled for the interest on the
amount of gratuity from the
opponents?
- 3) What order ? : **As per final order**

REASONS**As to issues No. 1 and 2-**

7. To substantiate the claim , applicant testified at Exh. U-6. He has reiterated the material set out in the original application. Heard Ld. Advocate Shri. Gajinkar for the applicant at length. None for opponents when repeatedly called. In the line of evidence Ld. Advocate for the applicant submitted that tenure and permanency is not at all denied. Applicant Shri. Sandeep Bhowar was in the employment as Pick up Boy cum Clerk at Mulund (M)Service Center in opponent No.1 M/s. Vichare Express and Logistics Pvt. Ltd. w.e.f. 03/11/2003. He acquired status of permanency. He is having PF code No. 006793. His last drawn salary was Rs. 11,678/- which includes basic plus D.A. Despite rendering long service, opponent also in the written statement admitted his service but contended that he was absent from April 2020 to September- 2020 and November 2021 to August 2021.

8. After careful perusal of the salary slip of March-2020 placed on record with list Exh.U-2 name is clearly reflected as Vichare Express and Logistics Pvt. Ltd. and paid salary. Designation of applicant was given as Pick up Boy cum Clerk . Acceptance of resignation letter dtd. 17/08/2021 is placed on record. Legal notice dtd. 18/07/2022 and Form-I . From the salary slip it is clearly apparent that PF contribution is deducted from his salary which is reflected in the salary slip. His resignation was accepted by the opponent company. Evidence adduced by the applicant goes uncontroverted and unchallenged. Opponent failed to cross examine on material aspect.

9. Considering oral and documentary evidence, material before the court, certainly this Court held that applicant was working with the opponent as Pick up Boy cum Clerk from 03/11/2003. Numbers of years of service is not disputed but only company claimed that he was absent when the operation were started. In view of section 7 of the Payment of Gratuity Act, 1972 determination of amount of gratuity and section 7(3)(a) if the gratuity is not paid within period specified it become payable simple interest at the rate of Rs. 10% p.a. in chargeable. Last drawn wages divided by 26 into number of service into 15 days. As per Form-I Gratuity gratuity amount came to Rs. 1,21,270.50. Therefore on this unpaid amount of gratuity, applicant simultaneously entitled for the statutory interest on account of delayed payment of gratuity in consonance with sub clause 3(a) of clause 7 of The Payment of Gratuity Act, 1972. Hence, I answer issues No. 1 and 2 are in the affirmative.

As to Issue No. 3 -

10. In the light of above findings, applicant is entitled for gratuity amount of Rs. 1,21,270.50 along with statutory interest at the rate of Rs. 10% p.a. from the date of resignation i.e. 17/08/2021 till realization of entire amount. Hence, I answer issue No.3 in the result following order.

ORDER

- 1) Application is partly allowed.
- 2) Applicant is entitled for gratuity amount of Rs. 1,21,270.50 (Rupees One Lac Twenty One Thousand Two Hundred Seventy and Fifty paise only) along with statutory interest at the rate of Rs. 10% p.a. from the date of resignation i.e. 17/08/2021 till realization of entire amount.
- 3) The opponents are hereby directed to pay the gratuity amount of Rs. 1,21,270.50 (Rupees One Lac Twenty One Thousand Two Hundred Seventy and Fifty paise only) along with statutory interest at the rate of Rs. 10% p.a. from the date of resignation i.e. 17/08/2021 till realization of entire amount to applicant.
- 4) Parties to bear their own costs.

(Prashant H. Ingale)

Place : Mumbai.

Date- 03/05/2025

Controlling Authority Under
Payment of Gratuity Act & Judge,
First Labour Court, Mumbai.

SSA

Arguments completed on : 24/04/2025

Judgment dictated on : 03/05/2025

Judgment typed on : 05/05/2025

Judgment checked & signed on : 05/05/2025