MHIC010014892022

Presented on : 22-07-2022
Decided on : 07-07-2025
Duration : 02 Y- 11 M- 15 D
Exhibit : O-1

BEFORE THE PRESIDENT, INDUSTRIAL COURT, MAHARASHTRA CUM THE APPELLATE AUTHORITY, MUMBAI

APPEAL (PGA) NO. 914 OF 2022
IN
APPLICATION (PGA) NO. 260 OF 2021

Appellant : **The BEST Undertaking,**
Through General Manager,
Address : BEST Bhavan,
Mumbai - 400 001.

VERSUS

Respondent : **Shri. Kisan Laxman Khose,**
Address : Plot No.529,Room No.C-5,
Kamalkunj CHS Ltd., Charkop,
Sector-5, Kandivali(West),
Mumbai-400 067.

CORAM :
H.H.J. V. P. PATKAR

APPEARANCES :
Shri. G.R. Naik, Learned Advocate for the Appellant.
Shri. S.S. Nalawade, Learned UR for the Respondent.

SUBJECT : **APPEAL UNDER SECTION 7(7) OF THE PAYMENT OF GRATUITY ACT, 1972 READ WITH RULE 18 OF THE PAYMENT OF GRATUITY(MAHARASHTRA) RULES, 1972.**

JUDGMENT
(Delivered on 07.07.2025)

1. This appeal is directed against the impugned judgment and order dated 28.03.2022 passed by Learned 9th Labour Court, Mumbai cum the Controlling Authority, under the Payment of Gratuity Act, 1972 in Application(PGA)No. 260/2021, to the extent of awarded rate of interest on the gratuity amount for the period of delayed payment of it.

2. Brief facts leading to the present appeal, in nutshell, are that, the respondent-employee had filed the application under Section 4(1) of the Payment of Gratuity Act, 1972 (in short, "***the Act***") read with Rule 10 of the Payment of Gratuity (Maharashtra) Rules, 1972 (in short, "***the Rules***") against the appellant-employer and its Electric Supply and Transport Department before the Labour Court, Mumbai cum the Controlling Authority, under the Act. It was assigned to the 9th Labour Court, Mumbai cum the Controlling Authority to dispose of the same.

3. The respondent submitted in the application that the appellant runs the BEST Undertaking at Mumbai. It is under the control of the local authority Mumbai Municipal Corporation. The respondent was serving as a "Sr. Driver (P)" in BEST Undertaking of the appellant for the period from 28.10.1986 to 31.05.2019. He did 33 years service with the appellant and superannuated with effect from 01.06.2019.

4. Respondent submitted that there is a provision of the Act

that the employer shall pay the gratuity to the employees. There is a special gratuity scheme for the employees of the appellant. There is an agreement between the appellant and the recognized Union of the employees regarding the gratuity. He superannuated from the services of the appellant. He completed service more than 21 years. Accordingly, as per his last drawn salary in May-2019 and the provision of the gratuity and gratuity circular of the appellant, etc., he is entitled to get the gratuity amount of Rs.15,24,979/- for the period from 28.10.1986 to 31.05.2019 from the appellant. He, before 30 days of his retirement, immediately applied in prescribed form to the appellant to pay the gratuity amount. However, the appellant did not pay the said amount within the period specified.

5. The respondent submitted that there is provision of the Act that the employer shall pay the gratuity amount to the employee within the period specified from the date of retirement and if not paid, then the employer is liable to pay simple interest on the gratuity amount for the period of delayed payment of the gratuity from the date it becomes payable till actual realization of the amount. The appellant should have paid the gratuity amount within 30 days from the date of his retirement means on or before 30.06.2019 because he retired on 01.06.2019. The appellant did not pay the gratuity amount within the period specified even though he made demand thereof. The appellant is avoiding the payment of gratuity and making delay to pay it. Therefore, he is entitled to get the gratuity amount and simple interest on it for the period from 01.06.2019 till actual realization of the amount from the appellant.

6. The respondent submitted that the appellant did not pay the gratuity amount till 31.01.2021. Accordingly, he on 01.02.2021, filed the application before the Labour Court, Mumbai cum the Controlling Authority. He prayed that to give directions to the appellant to pay the gratuity amount of Rs.15,24,979/- with simple interest @ 10% p.a. from the date it becomes payable from 01.06.2019 till its actual realization due to the delayed payment of the gratuity and also give direction to pay interest @18% p.a on interest amount of the gratuity amount. Thus, the said application may kindly be allowed, as prayed.

7. The appellant appeared in the Court of the Controlling Authority and filed its written statement Exh.C-2, thereby resisted the claim of the respondent. The appellant denied all the adverse allegations made against it in the application by the respondent. The appellant submitted that the respondent was serving with the appellant for the period from 28.10.1986 to 31.05.2019 as a “Sr. Driver (P)” in BEST Undertaking of the appellant. He superannuated from the service of the appellant with effect from 01.06.2019. The respondent is entitled to get the gratuity amount of Rs.15,24,976/- from the appellant as per the provision of the Act, special gratuity scheme, and gratuity circular of the appellant. The appellant agreed to pay the said amount to the respondent. The fund is not available with the appellant due to financial crisis. After the fund is available, the appellant will pay the gratuity amount. Based on this reason, there is no fault on part of the appellant to avoid payment of the gratuity. Accordingly, the respondent is not entitled to get interest @ 10% p.a. on the gratuity amount due to the delayed payment of it

and no need to pay interest @18% p.a. on the interest amount of the gratuity amount.

8. The appellant submitted that in view of the gratuity rules, special gratuity scheme, gratuity circular of the appellant and agreement between the appellant and recognised Union of the employees regarding the gratuity, the appellant pay more the gratuity amount to the employees than fixed by the Act. The appellant pay more the gratuity amount than fixed by the Act to the respondent. Not only this, but also the appellant is in financial crisis and is under heavy loss in BEST Undertaking so it is difficult for the appellant to pay the payment to the employees and runs the said BEST Undertaking. Therefore, given this fact and situation there is no need to grant simple interest @ 10% p.a. on the gratuity amount for the alleged period of delayed payment of it and also interest @18% p.a. on the interest amount of gratuity amount. If the Controlling Authority come to the conclusion that interest is to be granted on the gratuity amount for the alleged delayed period of payment, then interest may not be granted more than 6% p.a. Thus, the application of the respondent may kindly be rejected.

9. In view of rival pleadings of both the sides, the 9th Labour Court, Mumbai cum the Controlling Authority framed Issues Exh.O-3. The respondent and appellant did not adduce evidence. The respondent and appellant not relied on the documentary evidence. According to both the parties, their pleadings on oath respectively is sufficient to decide the matter on merits. Accordingly, the Controlling Authority took the matter for decision.

10. The Controlling Authority heard both the sides. Besides, gone through provisions of the Act and Rules and pleadings and arguments of both the sides. Thereafter formed opinion and held that it is admitted to the appellant that the appellant was employer and the respondent was employee of the appellant. The respondent did service for 33 years from 28.10.1986 to 31.05.2019 as a "Sr. Driver (P)" in BEST Undertaking of the appellant and superannuated from the service of the appellant with effect from 01.06.2019.

11. The Controlling Authority held that it is admitted to the appellant that given the gratuity rules, special gratuity scheme, and gratuity circular of the appellant and agreement between the appellant and recognized Union of the employees, the respondent is entitled to get the gratuity amount of Rs.15,24,976/- from the appellant, who completed service more than 21 years in the BEST Undertaking of the appellant. The respondent filed purshis Exhibit U-6 and admitted calculated and offered gratuity amount by the appellant. The appellant will pay the said amount to the respondent after fund is available. Therefore, the respondent has proved that he is entitled to get the said gratuity amount of Rs. 15,24,976/- from the appellant and the appellant is liable to pay the same to the respondent. The dispute about the quantum of gratuity amount and the said amount is due against the appellant is decided. Therefore, now there is dispute between the parties regarding simple interest on the gratuity amount for the delayed payment of it and interest on interest amount of the gratuity amount and this dispute is to be decided.

12. The Controlling Authority held that in view of provision of the Act, the employer has to pay the gratuity amount to the employee within 30 days from the date of retirement of the employee or from the date it becomes payable. If the employer had not paid the gratuity amount within 30 days from the date of retirement of the employee or from the date it becomes payable, then the employer is bound to pay simple interest on the gratuity amount to the employee from the date it becomes payable till actual realization of the payment due to the delayed payment of gratuity.

13. The Controlling Authority held that the respondent superannuated from the service with effect from 01.06.2019. But from 01.06.2019, the appellant did not pay the gratuity amount to the respondent within one month from the date of his retirement and the appellant is avoiding payment of gratuity. Thus, it can be said that the appellant did not pay the gratuity amount to the respondent within 30 days from the date of his retirement. The appellant on the ground of non-availability of fund is avoiding the payment. Hence, given the provision of the Act and in Notification dated 01.10.1987 of the Central Government, it is specified that simple interest @ 10% p.a. on the gratuity amount is to be awarded to the employee due to the delayed payment of it, from the side of employer and Section 7(3-A) of the Act says that simple interest not exceeding the rate notified by the Central Government is to be awarded on the gratuity amount to the employee due to the delayed payment of it from the side of employer. Based on this provision, the Controlling Authority has given discretion to grant simple interest @ from 1 % to 10% p.a on the gratuity amount due to the delayed

payment of it.

14. The Controlling Authority held that the appellant is avoiding payment on the ground that fund is not available. Neither the appellant nor the respondent has produced any evidence showing the current rate of interest of Central Government prevailing in the market. Further more the respondent failed to show that current rate of interest specified by Central Government is 10% p.a. Interest between 8.7 to 8.5% p.a. is on long term deposit as per the provision of Central Government. The higher authorities have granted interest upto 8.5% p.a. The appellant pay the more gratuity than fixed by the Act. Therefore, taking into consideration the quantum of gratuity amount which is more than that fixed by the Act and discretion regarding to grant interest which is from 1% to 10% p.a as well as rate of interest on long-term deposit, the simple interest @ 7% p.a is sufficient to meet the ends of justice in the present matter. Thus, the appellant is liable to pay simple interest @7% p.a. on the gratuity amount of Rs.15,24,976/-. Accordingly, the respondent has proved that, he is entitled to get simple interest @ 7% p.a. on the gratuity amount from the appellant from 01.06.2019 till actual realization of the payment. Already simple interest is granted on the gratuity amount for the alleged delayed period of payment of gratuity. Therefore, there is no need to grant interest on interest amount of the gratuity.

15. The Controlling Authority has recorded the above-mentioned findings and reasonings and answered the issues accordingly and delivered the impugned judgment and passed the

impugned order that the appellant is directed to pay gratuity amount of Rs.15,24,976/- with simple-interest @7% p.a from 01.06.2019 till actual realization of the payment to the respondent and shall pay cost Rs.7000/- of the proceeding to the respondent, by partly allowing the application of the respondent. After filing the application passing the impugned judgment and order, the appellant on 09.08.2021 paid the gratuity amount to the respondent. Accordingly, the appellant felt aggrieved with the said impugned judgment and order and has filed the present appeal to the extent of awarded rate of interest on the gratuity amount for the delayed payment of it for the period from 01.06.2019 to 09.08.2021.

16. I heard both sides. I have gone through the Record and Proceedings, pleadings, and arguments of both sides including cited case laws. Given the matter, the following points arise for my determination and I have recorded my findings thereon and reasons therefore are as under :

S.No.	Points	Findings
1)	Whether respondent-employee entitled to get simple interest on the gratuity amount for the alleged period of delayed payment of it from the appellant ? If yes, what is the rate of interest ?	Yes @ 7% p.a.
2)	Whether the impugned judgment and order passed by the Controlling Authority regarding the awarded rate of simple interest on the gratuity amount for the alleged period of delayed payment need to be interfered with by the Appellate Authority ?	No.

3)	What order ?	As per the final order.

REASONS
As to Points No.1 to 3

17. The evidence through pleadings of both the sides on above points is common and they are related to each other, therefore they are taken up together for decision.

18. Advocate for the appellant vehemently argued that the appellant was in financial crisis and paid more the gratuity amount than fixed by the Act to the respondent given the gratuity rules, special gratuity scheme, and gratuity circular of the appellant and agreement between the appellant and recognized Union of the employees. The fund was not available. As soon as the fund was available, the appellant paid the gratuity amount. Therefore, there is no fault on the part of the appellant to make a belated payment of the gratuity. Given this fact and situation, there is no need to grant simple interest on the gratuity amount for the alleged period of delayed payment to the respondent.

19. He further submitted that given evidence that came on record by way of pleadings in the reply of the appellant presented before the Controlling Authority, provisions of the Act and Rules, the grounds mentioned in the appeal memo, ratio laid down in cited case laws by the appellant and above argument, the impugned judgment and order of the Controlling Authority cannot be sustained in the eyes of law regarding the granted rate of interest on the

gratuity amount for the alleged period of delayed payment of it to the respondent. Thus, the said impugned judgment and order may kindly be quashed and set aside and the application of the respondent to the extent of demand of interest on the gratuity amount for the alleged period of delayed payment of it may kindly be rejected by allowing the appeal of the appellant.

20. Advocate for the appellant besides the above argument, sincerely submitted that, if the Appellate Authority concludes that it is a fit case to grant simple interest on the gratuity amount for the alleged period of a delayed payment of it to the respondent, then simple interest @ 6% p.a. may be granted in favour of the respondent taking into consideration the ratio laid down in the judgments cited by the appellant.

21. UR for the respondent very earnestly submitted that the Controlling Authority has granted the rate of simple interest @ 7% p.a. on the gratuity amount to the respondent for the alleged period of delayed payment of it because as per Notification dated 01.10.1987 of the Central Government, the Controlling Authority can grant interest upto 10% p.a. The Hon'ble Supreme Court and Hon'ble Bombay High Court have ruled that interest @10% p.a is to be granted on the gratuity amount for the delayed payment of it and it appears from the said judgments which are cited by him through Respondent. However, the Controlling Authority has granted interest @7% p.a. and granted less percentage than the percentage, as ruled by the Hon'ble Supreme Court and Hon'ble Bombay High Court. Therefore, the granted said rate of interest is not exceeding than the

interest rate mentioned in the said notification. Hence, there is no need to interfere in the rate of interest granted by the Controlling Authority on the gratuity amount for the alleged delayed payment of it. He urged that either the appeal of the appellant be dismissed or the respondent may be granted interest @10% p.a on the gratuity amount for the delayed payment of it based on the ratio laid down in the judgments cited by him.

22. I have mentioned above, the facts of the case of both sides and arguments, findings, and reasonings recorded by the Controlling Authority for passing the impugned judgment and order, more particularly regarding the granted rate of simple interest on the gratuity amount for the alleged period of delayed payment of it to the respondent. This Court is the Appellate Authority. It is the last fact and law-finding Court. Considering this well-settled law, I being the Presiding Officer of the Appellate Authority have to discuss evidence that came on record, facts, and circumstances of the case of both sides including argument, provisions of the Act, and Rules, law laid down in the case laws and Notifications of the Central Government to consider that as to whether the findings and reasonings recorded by the Controlling Authority for passing the impugned judgment and order regarding the granted rate of simple interest on the gratuity amount for the alleged period of a delayed payment of it to the respondent, is correct and proper and what is decision of the appeal. Let me discuss how to adjudicate the matter in four corners of the law and answer the framed points for the decision of the appeal.

23. First of all, I have to discuss Notifications from the Central Government on the point that simple interest is to be awarded on the gratuity amount for the delayed payment.

24. The Central Government has issued Notification No. S.O.874(E) dated 01.10.1987 under Section 7(3-A) of the Act. The Central Government hereby specifies 10% p.a. as the rate of simple interest payable for the time-being by the employer to his employee in cases where the gratuity is not paid within the specified period. This Notification came into force on 01.10.1987. This Notification is specific and clear for the rate of simple interest on the gratuity amount for the delayed payment of it. It applies to the matter of interest on the gratuity amount. Now it is in force. This Notification is issued under Section 7(3-A) of the Act and this Section says that interest rate not exceeding the rate notified by the Central Government is to be granted on the gratuity amount due to delayed payment of it. Therefore, in view of this Notification and provision of Section 7 (3-A) of the Act, simple interest upto @ 10% p.a. is to be awarded on the gratuity amount for the delayed payment of it.

25. In the present case, the appellant made the delayed payment of the gratuity to respondent and for the same, there was fault of the appellant. The appellant avoided payment on the ground that fund is not available. This ground is not just and proper. Hence, I consider the said Notification to grant the rate of simple interest. Discretion is given by Section 7(3-A) of the Act that the Controlling Authority can grant simple interest from 1% to 10% p.a on the gratuity amount for the delayed payment of it and the said

notification specified last limit of 10% interest p.a. Section 7(3-A) of the Act says that rate of interest shall not be exceeding than the rate notified by the Central Government which is notified as 10% p.a. by the said notification. The appellant paid more gratuity to the respondent than fixed by the Act. Accordingly, the respondent has got more gratuity amount as per special gratuity scheme, agreement between the appellant and the recognized Union of the employees regarding the gratuity and gratuity circular of the appellant. Hence, simple interest @7% p.a. is sufficient on the gratuity amount for the alleged delayed payment of it, which rate is not less than the interest rate of long-term deposit and covered in the rate of interest which is specified in the said notification in the range of from 1% to 10% p.a. and covered in the provision of Section 7(3-A) of the Act. Accordingly, I am of the view that simple interest @ 7% p.a. on the gratuity amount is to be granted to the respondent for the alleged period of delayed payment of the gratuity based on the said notification and Section 7(3-A) of the Act.

27. Now I have to discuss the cited case-laws by both sides on the point that the rate of simple interest is to be awarded on the gratuity amount for the delayed payment of it.

28. Advocate for the appellant has relied on the judgment in the case of **G.B.Pant University of Agricultural and Technology V/s. Damodar Mathpal delivered on 18.11.2021 by Hon'ble Apex Court in Petition(S) for Special Leave to Appeal(C) No(s).1803/2018**, wherein Hon'ble Apex Court has held that the High Court has been rather considerate to the petitioner in reducing the rate of interest

awarded to the private respondents from 10% to 6% p.a. Hon'ble Uttarkhand High Court has reduced the rate of interest from 10% to 6% p.a. and so no case for interference is made out.

29. He has further relied on the judgment in the case of **Babul Ranjan Singha V/s. Tripura Road Transport Corporation reported in 2013 II CLR 373**, wherein Hon'ble Gauhati High Court has held that the employer is liable to pay the gratuity amount with interest @ 6% p.a. to the employee from his retirement till the date of payment of the gratuity due to the delayed payment of gratuity.

30. UR for the respondent has relied on the judgments in the case of 1) **Maniben Maganbhai Bhariya V/s. District Development Officer, Dahod reported in 2022 Live Law (SC)408** and 2) Reportable Judgment in the case of **Jagdish Prasad Saini V/s. State of Rajasthan delivered on 26.09.2022 by Hon'ble Apex Court in Civil Appeal No. - of 2022 Special Leave Petition(CIVIL)No. 16813 of 2019**, wherein Hon'ble Apex Court has held that the employee is entitled to get simple interest @ 10% p.a. on the gratuity amount from the employer for the belated payment of gratuity from the date specified under Sub-Section (3-A) of Section 7 of the 1972 Act till the date of payment.

31. He has further relied on the judgment in the case of **Chairman and Managing Director, Bank of Maharashtra, Pune V/s. Shri. Kishore Shankarrao Khadatkar, Nagpur reported in 2023 I CLR 362**, wherein Hon'ble Bombay High Court has held that the employee is entitled to get simple interest @ 10% p.a. on the

gratuity amount from the employer from the gratuity becomes payable till the date of payment of the gratuity due to the delayed payment of it. He has further relied on the judgment in the case of **Brihanmumbai Electric Supply and Transport Undertaking V/s. Arjun Vasudeo Amberkar Writ Petition(L)No. 3761 of 2024 delivered on 26.03.2025**, wherein the Hon'ble Bombay High Court has held that recently the Hon'ble Supreme Court has held in its order dated 03.03.2025 passed in S.L.P. No.4468 of 2022 that interest on the delayed payment of the gratuity, has to be paid @ 10% without any excuse. The judgment of the High Court approving interest @ 6% was set aside.

32. Hon'ble Apex Court and Bombay High Court in the above-cited judgments by UR for the respondent have taken a recent view and laid down the ratio that simple interest @ 10% p.a. is to be awarded on the gratuity amount for the delayed payment of it to the employee. Which the view or ratio is latest than the view or ratio laid by Hon'ble Apex Court and Gauhati High Court in above cited judgments by Advocate for the appellant that simple interest @ 6% p.a. is to be awarded on the gratuity amount for the delayed payment of it.

33. However, the respondent, in the present case, has not filed the appeal against the granted rate of interest @7% p.a. by the Controlling Authority and not claimed simple interest @10% p.a on the gratuity amount for the period of delayed payment of it. Therefore, based on oral argument of UR for the Respondent, I cannot grant simple interest @ 10% p.a on the gratuity for the

period of delayed payment of it to the respondent in the appeal of the appellant based on the ratio laid down in the above judgments by the Hon'ble Apex Court and Bombay High Court which are cited by UR for the Respondent.

34. The Hon'ble Apex Court and Gauhati High Court has laid down the ratio in the above judgments cited by Advocate for the appellant that simple interest @6% is to be granted on the gratuity amount for the period of delayed payment of it. The Hon'ble Apex Court and Bombay High Court has laid down the ratio in the above judgments cited by UR for the respondent that simple interest @10% is to be granted on the gratuity amount for the period of delayed payment of it. The Controlling Authority has granted simple interest @7% p.a, which is less than 10% p.a which is to be granted as per the ratio laid down in the above judgments by the Hon'ble Apex Court and Bombay High Court which are cited by UR for the Respondent. Hence, there is no need to reduce interest 7% p.a to 6% p.a. which is granted by the Controlling Authority in favour of the respondent. Accordingly, simple interest @7% p.a granted by the Controlling Authority in favour of the respondent, is sufficient and not more than prescribed in the said notification of Central Government and Section 7(3-A) of the Act as well as ratio laid down by the Hon'ble Apex Court and Bombay High Court in the above-cited judgments by UR for the Respondent. Therefore, simple interest @7% p.a. on the gratuity amount is to be awarded to the respondent for the alleged period of delayed payment of gratuity.

35. Now I have to discuss the facts and circumstances of the

case of both sides and provisions of the Act and Rules on the point of simple interest is to be awarded on the gratuity amount due to the delayed payment of it.

36. Section 7 of the Act deals with the determination of the amount of gratuity. Section 7(1) of the Act says that a person who is eligible for payment of gratuity under this Act or any person authorized, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity. Section 7(2) of the Act says that as soon as gratuity becomes payable, the employer shall, whether an application referred to in Sub-Section (1) has been made or not, 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 specifying the amount of gratuity so determined.

37. Section 7(3) of the Act says that the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable to the person to whom the gratuity is payable. Section 7(3-A) of the Act says that if the amount of gratuity payable under Sub-Section (3) is not paid by the employer to the employee within the period specified in Sub-Section (3) the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest as such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may, by Notification specify: Provided that no such interest shall be payable

if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the Controlling Authority for the delayed payment on this ground.

38. Section 7(4)(a) of the Act says that if there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity or as to the person entitled to receive the gratuity, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him as gratuity. Section 7(4)(b) of the Act says that where there is a dispute with regard to any matter or matters specified in Clause (a), the employer or employee or any other person raising the dispute may make an application to the Controlling Authority for deciding the dispute.

39. Notification under Section 7(3-A) of the Act of the Central Government is that rate of interest specified in Notification No.S.O.874(E) dated 01.10.1987. In exercise of the powers conferred by Sub-Section (3-A) of Section 7 of the Act, the Central Government hereby specifies 10% p.a. as the rate of simple interest payable for the time-being by the employer to his employees in cases where the gratuity is not paid within the specified period. Section 7(3-A) of the Act says that simple interest not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify, on the gratuity amount is to be awarded for the delayed payment of it. The Central Government has issued a Notification

dated 01.10.1987 under Section 7(3-A) of the Act and specified that simple interest @ 10% p.a. payable on the gratuity amount for the delayed payment of it.

40. Section 1(3)(a) of the Act says that this Act shall apply to every factory, mine, oilfield, plantation, port and railway company; Section 1(3)(b) of the Act says that this Act shall apply to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a state, in which 10 or more persons are employed, or were employed, on any day of the preceding 12 months; Section 1(3)(c) of the Act says that this Act shall apply to such other establishments or class of establishments, in which 10 or more employees are employed, or were employed, on any day of the preceding 12 months, as the Central Government may, by Notification, specify in this behalf. Section 2(e) of the Act deals with the definition of employee means any person who is employed for wages is an employee, Section 2(f) of the Act is dealt with the definition of employer means employer in relation to any establishment and Section 2(f)(ii) of the Act says that employer means in relation to any establishment belonging to or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no persons has been so appointed, the Chief Executive Officer of the local authority. The object of the Act is to provide for a scheme for the payment of gratuity to employees engaged in establishments and for matters connected therewith or incidental thereto.

41. The case of the appellant is that the appellant is in a

financial crisis and is under heavy loss in BEST Undertaking. Furthermore, the appellant paid more of the gratuity amount to the respondent than the amount fixed by the Act. The fund was not available. After the fund was available, the gratuity amount was paid. Accordingly, there is no need to pay simple interest on the gratuity amount to the respondent for the alleged period of delayed payment of the gratuity.

42. According to me, the given reasons by the appellant not to award simple interest on the gratuity amount to the respondent due to the delayed payment of gratuity are not justifiable and satisfactory. Because as per Section 7(3-A) of the Act, the employer had not paid the amount of gratuity to the employee within 30 days from the date it becomes payable as per Section 7(3) of the Act and not obtained permission from the Controlling Authority to make the belated payment of the gratuity, then the employer is bound to pay simple interest at the rate which is mentioned in Notification dated 01.10.1987 of the Central Government for the delayed payment of the gratuity to the employee. Hence, this defense of the appellant is not considerable and it is totally against the provisions of the Act.

43. Thus, in view of Notification dated 01.10.1987 of the Central Government, rate of interest @ 10% p.a is specified by the Central Government on the gratuity amount for the alleged delayed payment of it. Further more, the provision of Section 7(3-A) of the Act, says that simple interest shall not be exceeding than the rate as 10% p.a. specified in the said notification by the Central Government is to be granted on the gratuity amount for the alleged

delayed payment of it and so simple interest from 1% to 10% p.a may be granted on the gratuity amount and this section given discretion that the Controlling Authority or the Appellate Authority can grant interest from 1% to 10% p.a on the gratuity amount for the alleged delayed payment of it. Further more, the rate of interest between 1% to 10% p.a is of the Bank on long-term deposits and rate of interest of long-term deposits is to be granted on the gratuity amount for the alleged delayed payment of it, but not more than last limit of 10% p.a specified in the said notification. The appellant paid more gratuity amount to the respondent than fixed by the Act based on the special gratuity scheme and gratuity circular of the appellant and agreement between the appellant and recognized union of the appellant regarding the gratuity. Therefore, simple interest @ 7% p.a. is sufficient and the same needs to be awarded to the respondent for the delayed payment of gratuity from the side of the appellant.

44. It is an admitted fact in view of pleadings of both sides that the respondent did service for 33 years for the period from 28.10.1986 to 31.05.2019 as a “Sr. Driver(P)” in BEST Undertaking of the appellant and superannuated from the service of the appellant with effect from 01.06.2019. It is admitted to the appellant that in view of the gratuity rules, special gratuity scheme, and gratuity circular of the appellant and agreement between the appellant and recognized Union of the employees, the respondent was entitled to get the gratuity amount of Rs.15,24,976/- from the appellant, who completed service more than 21 years in the BEST Undertaking of the appellant. The respondent was agreed to the said amount and

accordingly he filed purshis Exhibit U-6 and submitted that the said calculated and offered gratuity amount by the appellant is admitted to him.

45. It appears that the appellant on 09.08.2021 paid Rs.15,24,976/- as the gratuity amount to the respondent, who agreed that he had received the said amount from the appellant. Thus, regarding the quantum of gratuity amount, there was no dispute between the parties. However, merely the appellant alleged that the said amount of gratuity is more than the amount fixed by the Act, it cannot be said that the respondent was not entitled to get the said gratuity amount from the appellant and so he is not entitled to get simple interest on the gratuity amount for the delayed payment of it because that amount is as per special gratuity scheme of the appellant. Furthermore, the appellant paid more of the gratuity amount than fixed by the Act to the respondent and funds were not available so the appellant made belated payment of the gratuity is not the reason not to award simple interest on the gratuity amount to the respondent due to the delayed payment of the gratuity taking into consideration above discussed provisions of the Act and Rules.

46. It is pertinent to note that the respondent immediately before 30 days of his retirement who retired on 01.06.2019 applied in prescribed form to the appellant to pay the said gratuity amount in view of Rule 7 of the Rules. However, the appellant did not pay the said gratuity amount to the respondent within time. As per provision of Section 7(3) of the Act, the appellant should have paid

the gratuity amount within 30 days from the date of retirement of the respondent, who retired on 01.06.2019. However, the appellant did not pay the gratuity amount within time, which is fixed by the Act to the respondent even though the respondent applied for the same to the appellant. Therefore, the respondent, on 01.02.2021, filed the application in the Court of the Controlling Authority and thereby prayed to give direction to the appellant to pay the gratuity amount with simple interest on the gratuity amount due to delayed payment of it. Thereafter the appellant on 09.08.2021 paid the gratuity amount to the respondent, but did not pay interest on it for the period of delay payment of it. Accordingly, the appellant made the belated payment of the gratuity to the respondent and failed to pay it within the period specified. Thus, it can be said that the appellant did not pay the gratuity amount to the respondent within time and made the belated payment. Thus, delayed period for the payment of gratuity amount is from 01.06.2019 to 09.08.2021.

47. Section 7(3-A) of the Act says that, if the employer had not paid the gratuity amount within the period specified means within 30 days to the employee from the date of his retirement or gratuity becomes payable, then the employer is bound to pay simple interest on the gratuity amount for the period of delayed payment of the gratuity. The appellant made the belated payment of the gratuity to the respondent and the same appears from the evidence that came on record through pleadings of both sides. In this regard, there is no dispute between the parties. It is to be noted that the appellant had not obtained permission in writing from the Controlling Authority to make the delayed payment of the gratuity

to the respondent. Thus, there was fault on the part of the appellant not to pay the gratuity amount to the respondent within the period specified.

48. It appears that the appellant only paid the gratuity amount to the respondent and did not pay simple interest on the said amount for the delayed period from 01.06.2019 to 09.08.2021. Therefore, in view of provisions of the Act and Rules, as stated above, the appellant is bound to pay simple interest on the gratuity amount for the alleged period of delayed payment of the gratuity to the respondent. Thus, the respondent is entitled to get simple interest on the gratuity amount for the alleged period of delayed payment of the gratuity from the appellant.

49. Notification of the Central Government under Section 7(3-A) of the Act dated 01.10.1987 is that there will be 10% p.a. as the rate of simple interest payable for the time-being by the employer to his employees in cases where the gratuity is not paid within the period specified. This Notification fixed the rate of interest on the gratuity amount for the delayed payment of it. Section 7(3-A)of the Act says that simple interest rate not exceeding the rate notified by the Central Government is to be awarded on the gratuity amount due to delayed payment of it. Considering the provisions of Sections 7, 7(3), and 7(3-A) of the Act and Notification dated 01.10.1987 about the rate of interest, and the appellant did not pay the gratuity amount within the period specified to the respondent and made the belated payment of the gratuity to the respondent without obtaining permission from the Controlling

Authority and taking into consideration my above discussion regarding to grant rate of simple interest to the respondent on the gratuity amount for the alleged delayed period of it, the appellant is liable to pay simple interest @ 7% p.a. which rate of interest is not more than that specified in Notification dated 01.10.1987 and exceeding than that specified in this notification and mentioned in Section 7(3-A) of the Act, on the gratuity amount to the respondent.

50. The Act is enacted for the benefit and welfare of the employees. The object of the Act is that to provide a scheme for the payment of the gratuity to employees engaged in establishments and for matters connected therewith or incidental thereto. The appellant is the employer of the respondent. The respondent is an employee of the appellant. The appellant is the establishment. It is run by the local authority Mumbai Municipal Corporation and constituted under the Mumbai Municipal Corporation Act. It is under the control of Mumbai Municipal Corporation. More than 3000 employees are working in the establishment of the appellant. It belongs to one of the three categories specified in Section 1(3) of the Act and comes within the purview of sub-clauses (a), (b) and (c) of Section 1(3) of the Act. Thus, the appellant is the establishment and it comes within the purview of the Act. The respondent got the delayed payment of the gratuity. Section 7(3-A) of the Act has given the discretion to award a rate of simple interest out of the rate of interest 10% p.a. mentioned or quoted in Notification dated 01.10.1987 of the Central Government on the gratuity amount due to the delayed payment of it. The Controlling Authority can award simple interest from 1% to 10% p.a. (upto 10% p.a) on the gratuity amount due to the delayed

payment of it.

51. The respondent did a service for 33 years with the appellant with devotion and honesty and without blame. The respondent contributed a period of his young age in the service of the appellant. There is a provision to give the gratuity to the employee. If the employee gets a late payment of the gratuity then he cannot use it for his own relevant and important work at proper time. In such a situation he sustains mental torture and agony. The respondent got the delayed payment of gratuity. During the delayed period, the appellant used the said amount and thereby got gain. Given this, simple interest @ 7% p.a. needs to be awarded on the gratuity amount to the respondent for the period of delayed payment of the gratuity.

52. As per Section 7(3-A) of the Act, discretion is given to the Controlling Authority that the said Authority can award simple interest on the gratuity amount for the delayed payment of it from the rate of interest 1% to the 10% p.a., which rate 10% p.a is mentioned in Notification dated 01.10.1987. It is well-settled law that discretion is to be used judicially and not arbitrarily. As per Section 7(3-A) of the Act, simple interest on the delayed payment of the gratuity amount can be awarded but not exceeding the rate of interest 10% p.a. mentioned in Notification dated 01.10.1987 of the Central Government.

53. The rate of interest which is given for repayment of long term deposits is to be awarded on the gratuity amount due to

delayed payment of it as per Section 7(3-A) of the Act. The rate of interest as 10% p.a. or from 1% to 10% p.a on the gratuity amount is to be awarded due to the delayed payment of it, which rate of interest 10% p.a is mentioned in the Notification dated 01.10.1987 of the Central Government. It is noticed that the Banks give different types of interest rates on term deposits. Some Banks give higher interest rates on term deposits to senior citizens and women, as well as on term deposits, wherein the amount is deposited for a specific period.

54. It appears that the Banks give rates of interest upto 9% or 10% p.a. on term deposits by way of providing different schemes of term deposits. Generally, depositors mentioned above categories or others get interest @ 9% or 10% p.a. on deposited amount from the Banks in view of the term deposit scheme of the Banks regarding specified periods or other deposit schemes. The respondent is retired. He is a senior citizen. He got the delayed payment of the gratuity. If he would have received the gratuity amount within time and deposited the same in Fixed Deposit as per the scheme of the Bank, he might have got interest near about @7% p.a. on the said Fixed Deposit amount from the Bank. The appellant did not pay the gratuity amount within time. To get the said amount, the respondent filed this proceeding. Accordingly, the respondent getting the amount late and to get the amount he sustained mental and physical agony and paid the litigation charges. He getting the amount after filing the litigation and contesting it. Therefore, considering this fact, the fact as mentioned above, the prevailing and present rate of interest of the Banks for repayment of long-term deposits or rate of

interest in different schemes for term deposits and rate of interest as 10% p.a. which is mentioned in Notification dated 01.10.1987 and as per Section 7(3-A) of the Act, interest more than 10% p.a. specified in the said notification is not to be granted on the gratuity amount but may be granted from 1% to 10% p.a, interest @ 7% p.a. is sufficient and so interest at this rate is to be awarded on the gratuity amount due to the delayed payment of it, I am of the view that simple interest @ 7% p.a. is to be awarded to the respondent for the period of delayed payment of the gratuity amount and that rate will not be exceeded than mentioned in Notification dated 01.10.1987.

55. If the simple interest @ 7% p.a. is awarded on the gratuity amount for the period of delayed payment of the gratuity to the respondent, then in view of the above discussion, it cannot be said that the Court used the discretion arbitrarily. However, it can be said that discretion is used judicially. Thus, in light of this discussion, it can be said that the Controlling Authority used the discretion judicially to award a rate of simple interest on the delayed payment of the gratuity in favour of respondent.

56. Considering the provisions of the Act and Rules, taking into consideration the rate of interest mentioned in Notification dated 01.10.1987 of the Central Government, the ratio laid down by Hon’ble Apex Court and Gauhati High Court in the above-cited judgments by Advocate for the appellant and ratio laid down by Hon'ble Apex Court and Bombay High Court in the above-cited judgments by UR for the respondent, facts, and circumstances of the

case, prevailing rate of interest of the Banks on long term deposits and my above discussion and reasons, I am of the view that the respondent is entitled to get simple interest @ 7% p.a. on the gratuity amount for the alleged period of delayed payment of the gratuity from the appellant. Thus, given the above discussion, the findings and reasonings recorded by the Controlling Authority for awarding a rate of simple interest on the gratuity amount to the respondent for the alleged period of delayed payment of the gratuity and passing the impugned judgment and order is found correct and proper. Accordingly, there is no need to interfere in the said impugned judgment and order for which purpose it was challenged through the appellant, by this Appellate Authority. Further more there is no need to set aside the cost Rs.7000/- of the proceeding imposed on the appellant by the Controlling Authority which the appellant has to pay to respondent. Hence, I do not agree with the argument of the Advocate for the appellant. Thus, I answer the above points accordingly.

57. In view of the above discussion, there is no found merits in the appeal of the appellant and so it deserves to be dismissed. Thus, it is dismissed. Accordingly, I proceed to pass the following order :

<u>O R D E R</u>

1. The appeal is dismissed with no order as to costs.

2. The impugned judgment and order passed by the Controlling Authority is confirmed.

3. A copy of this judgment be given to the parties to the appeal.

4. A copy of this judgment be sent to the Controlling Authority immediately.

The judgment is directly dictated on the computer and pronounced in the open Court on 07.07.2025.

VIJAYAKUMAR PRALHADRAO PATKAR

Digitally signed by VIJAYAKUMAR PRALHADRAO PATKAR
Date: 2025.07.07 17:41:42 +0530

(V. P. Patkar)
President,
Industrial Court, Maharashtra, Mumbai-cum-Appellate Authority,
Under the Payment of Gratuity Act, 1972

Place : Mumbai
Date : 07.07.2025

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment / order are same, word to word, as per the original judgment / order.

Name of the Stenographer	:	S. K. Nayak, Personal Assistant
Court	:	President, Industrial Court, Maharashtra, Mumbai.
Date	:	07.07.2025
Judgment/order signed by the Presiding Officer on	:	07.07.2025
Judgment / order uploaded on	:	07.07.2025