MHIC010014932022

Presented on : 25-07-2022
Decided on : 27-07-2023
Duration : 1Y- 0M-2D
**Exhibit : O-1**

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

**APPEAL (PGA) NO. 918 OF 2022**
**IN**
**APPLICATION (PGA) NO. 472 OF 2021**

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

**VERSUS**

**Respondent :** **Vandana Deepak Lad**
Address : B/002, Ambika Tower,
Ayodhya Nagari, Manpada Road,
Dombivali (East) - 421 201.

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

**APPEARANCES :**
Shri. G.R.Naik, Learned Advocate for the Appellant.
Shri. U.A. Ambonkar, Learned Advocate 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 27.07.2023)

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 03.03.2022 passed by Learned 5th Labour Court, Mumbai cum the Controlling Authority, under the Payment of Gratuity Act, 1972 in Application(PGA)No.472/2021, thereby the application of the respondent-employee regarding the gratuity amount and simple interest on it as well as cost of the application, has been partly allowed and it is directed to the appellant-employer to pay simple interest @10% p.a. on paid gratuity amount Rs.3,00,000/- for the period from 01.10.2019 to 08.02.2021 and pay gratuity amount Rs.16,36,914/- with simple interest @ 10% p.a. for the period from 01.10.2019 till actual realization of the payment to the respondent-employee, the appellant-employer has preferred the present appeal 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 Undertaking before the Learned Labour Court, Mumbai cum the Controlling Authority, under the Act, 1972. It was assigned to the 5th 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 Supervisor (P) in BEST Undertaking of the appellant for the period from 04.07.1984 to 30.09.2019. She did 35 years and 2 months service with the appellant and superannuated with effect from 01.10.2019. Accordingly, there was and is relation between the appellant and her as employer and employee.

4. The respondent submitted that there is provision of the Act that the employer shall pay the gratuity to the employees. There is special gratuity scheme of the appellant. There is agreement between the appellant and recognised Union of the employees regarding the gratuity. She superannuated from the services of the appellant. She completed service of 21 years and more. Accordingly, as per her last drawn salary in the month of September 2019 and provision of the gratuity and gratuity circular of the appellant etc., she is entitled to get the gratuity amount Rs.19,36,914/- for the period from 04.07.1984 to 30.09.2019 from the appellant. She before 30 days of her retirement immediately applied in prescribed form to the appellant to pay the gratuity amount. However, the appellant did not pay the said amount from 01.10.2019 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 did not pay the gratuity amount with the period specified even she made demand thereof. The appellant is avoiding the payment of gratuity and making delay to pay it. Therefore, she is entitled to get the gratuity amount and simple interest on it from the appellant.

6. The respondent submitted that accordingly she on 26.03.2021 filed the application before the Learned Labour Court, Mumbai cum the Controlling Authority. She prayed that to give directions to the appellant to pay the gratuity amount of Rs.19,36,914/- and simple interest @10% p.a. on it from the date it becomes payable from 01.10.2019 till actual realization to her due to the delayed payment of it and also give direction to the appellant to pay the cost of the application. Thus, her the said application may kindly be allowed as prayed.

7. The appellant appeared in the Court of the Learned Controlling Authority and filed its written statement Exh.C-2, thereby resisted claim of the respondent. The appellant denied all the adverse allegations made against it in the application by the respondent. The appellant it is submitted that the respondent was serving with the appellant for the period from 04.07.1984 to 30.09.2019 as a Supervisor(P) in BEST Undertaking of the appellant. She superannuated from the service of the appellant with effect from 01.10.2019. The respondent is entitled to get the gratuity amount of Rs.19,36,914/- from the appellant as per

provision of the Act, special gratuity scheme and gratuity circular of the appellant. The appellant is agreed to pay the said amount to the respondent. The fund was not available with the appellant due to financial crisis. After the fund was available the appellant on 08.02.2021 paid Rs.3,00,000/- to the respondent and to pay remaining amount Rs.16,36,914/- fund is not available. After fund is available the appellant will pay the said amount to the respondent. The fund was not available and so the appellant could not pay the amount but when fund is available the appellant will pay the said amount. Therefore, there was no fault on part of the appellant to make belated payment of the gratuity. Accordingly, the respondent is not entitled to get interest on the gratuity amount due to the delayed payment of it.

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 paid more the gratuity amount than fixed by the Act to the respondent. Not only this but also the appellant is under financial crisis and is under heavy loss in BEST Undertaking and so it is difficult to the appellant to pay the payment to the employees and runs the said BEST Undertaking. Therefore, in view of this fact and situation there is no need to grant simple interest on the gratuity amount for the alleged period of delayed payment of it to the respondent. Thus, the application of the respondent may kindly be rejected.

9. In view of rival pleadings of both the sides the Learned 5th Labour Court, Mumbai cum the Controlling Authority framed Issues Exh.O-5. 1) Does the respondent prove that she is entitled to get the demanded gratuity amount from the appellant ? 2) Does the respondent prove that she is entitled to get the demanded interest on the gratuity amount and penalty Rs.10,000/- from the appellant ? and 3) What Order ?

10. The respondent and appellant did not adduce oral evidence and filed evidence closed pursis Exh.U-6 and Exh.C-3 respectively. The respondent filed documentary evidence Form I and salary slip. The appellant did not file documentary evidence. According to both the parties, their pleadings on oath respectively is sufficient to decide the matter on merits. Accordingly, the Learned Controlling Authority took the matter for decision.

11. The Learned 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 it is held that it is admitted to the appellant that the appellant is employer and the respondent is employee of the appellant. The respondent did service for 35 years and 2 months from 04.07.1984 to 30.09.2019 as a Supervisor(P) in BEST Undertaking of the appellant and superannuated from the service of the appellant with effect from 01.10.2019. 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 recognised

Union of the employees the respondent is entitled to get the gratuity amount of Rs.19,36,914/- from the appellant, who completed service more than 21 years in the BEST Undertaking of the appellant.

12. The Learned Controlling Authority held that the appellant submitted that the appellant on 08.02.2021 paid Rs.3,00,000/- and the appellant after fund is available will pay remaining amount Rs.16,36,914/- to the respondent. The respondent admitted that she received Rs.3,00,000/- and remaining amount is due against the appellant. The respondent is agreed for the gratuity amount which is offered and calculated by the appellant. Therefore, the respondent has proved that she is entitled to get the said gratuity amount Rs.19,36,914/- from the appellant and the appellant is liable to pay the same to the respondent.

13. The Learned Controlling Authority held that the appellant has paid Rs.3,00,000/- to the respondent and remaining amount Rs.16,36,914/- is due against the appellant. Accordingly, the appellant not paid entire gratuity amount within the period specified and so the respondent is demanding interest on the gratuity amount Rs.3,00,000/- for the alleged period of delayed payment of it and remaining gratuity amount Rs.16,36,914/- alongwith interest from it becomes payable till actual realization of the payment. Therefore, there is dispute between the parties regarding simple interest on the gratuity amount Rs.3,00,000/- for the period from 01.10.2019 to 08.02.2021 and remaining gratuity amount Rs.16,36,914/- and interest on it from the date it becomes

payable till actual payment as well as cost of the application or penalty on the gratuity amount.

14. The Learned Controlling Authority it is 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.

15. The Learned Controlling Authority it is held that the respondent superannuated from the service with effect from 01.10.2019. But from 01.10.2019 the appellant did not pay the gratuity amount to the respondent within 30 days from the date of her retirement. The appellant on 08.02.2021 paid the gratuity amount Rs.3,00,000/- to the respondent. Thus, it can be said that the appellant did not pay the gratuity amount to the respondent within 30 days from the date of her retirement. The appellant made belated payment of the gratuity Rs.3,00,000/- and for the same there is fault of the appellant. The appellant is not paid remaining gratuity amount Rs.16,36,914/- to the respondent within 30 days from the date of her retirement and avoiding to pay it and for the same there is fault of the appellant. Therefore, in view of provision of the Act and in Notification of the Central Government it is mentioned 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, the appellant is liable to pay simple interest @ 10% p.a. on the gratuity amount Rs.3,00,000/- from 01.10.2019 to 08.02.2021 and the appellant is liable to pay remaining gratuity amount Rs.16,36,914/- with simple interest @ 10% p.a. from 01.10.2019 till actual payment to the respondent. Thus, the respondent has proved that she is entitled to get simple interest @ 10% p.a. on the gratuity amount from the appellant for the alleged period of delayed payment of it.

16. The Learned Controlling Authority it is held that the respondent has not pointed out that under which provision she is entitled to get the penalty on the gratuity amount, therefore she is not entitled to get the penalty on the gratuity amount for the delayed payment of it. The interest is awarded to the respondent and so she is not entitled to get the cost of the application.

17. The Learned 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 as stated earlier, by partly allowing the application of the respondent. Before filing the application and after deciding it the appellant in two installments paid the agreed 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.

18. I heard both the sides. I have gone through Record and Proceedings, pleadings and argument of both the sides including cited case laws. In view of the matter, following points arise for my determination and I have recorded my findings thereon and reasons therefor are as under :

| S.N. | Points | Findings |
|---|---|---|
| 1) | Whether the respondent is entitled to get simple interest on the gratuity amount for the alleged period of delayed payment of it from the appellant ?<br>If yes, what is the rate of interest ? | Yes @ 10% p.a. |
| 2) | Whether the impugned judgment and order passed by the Learned Controlling Authority regarding the awarded rate of simple interest on the gratuity amount for the alleged period of delayed payment of it needs to be interfered, by the Appellant Authority ? | No. |
| 3) | What order ? | As per final order. |

## REASONS
### As to Points No.1 to 3

19. 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.

20. Learned Advocate for the appellant vehemently argued that the appellant is under financial crisis and paid more the gratuity amount than fixed by the Act to the respondent in view of the gratuity rules, special gratuity scheme and gratuity circular of the

appellant and agreement between the appellant and recognised Union of the employees. The fund was not available. As soon as the fund was available the appellant paid the gratuity amount. Therefore, there was no fault on part of the appellant to make belated payment of the gratuity. In view of this fact and situation, there is no need to grant simple interest on the gratuity amount for the alleged period of delayed payment of it to the respondent.

21. He further submitted that in view of evidence came on record by way of pleadings in the reply of the appellant presented before the Learned Controlling Authority, provisions of the Act and Rules, the grounds mentioned in the appeal memo, ratio laid down in the judgments cited by the appellant and above argument, the impugned judgment and order of the Learned 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.

22. Learned Advocate for the appellant besides above argument it is sincerely submitted that if the Appellant Authority come to the conclusion that it is a fit case to grant simple interest on the gratuity amount for the alleged period of 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 or simple interest at the rate more than 7.1% p.a. on the gratuity amount for the alleged period of delayed payment of it may not be granted to the respondent, taking into consideration the rate of interest mentioned in Notification dated 14.07.2022 of the Central Government.

23. Learned Advocate for the respondent very earnestly submitted that the impugned judgment and order passed by the Learned Controlling Authority is in view of provisions of the Act and Rules, evidence came on record through pleadings of both the sides and Notification dated 01.10.1987 of the Central Government and ratio laid down in the judgments cited by the respondent. The Learned Controlling Authority has granted the rate of simple interest @ 10% p.a. on the gratuity amount to the respondent for the alleged period of delayed payment of it as per Notification dated 01.10.1987 of the Central Government. That rate or quantum of interest is not exceeding than the rate of interest, which is mentioned in the said Notification and Notification is under the Act. That rate of interest is not awarded against provision of the law and so the said granted rate of interest is just and proper.

24. He further submitted that Notification dated 14.07.2022 of the Central Government is not applicable to the case of the appellant because it is not issued under the Act. In Notification dated 01.10.1987 of the Central Government it is mentioned that simple interest @ 10% p.a. is to be awarded on the gratuity due to the delayed payment of it. The Learned Controlling Authority has awarded interest on the gratuity amount to the respondent for the

alleged period of delayed payment of the gratuity as per rate of interest, which is mentioned in Notification dated 01.10.1987. Hence, the impugned judgment and order of the Learned Controlling Authority on the point of granted rate of simple interest on the gratuity amount to the respondent for the alleged period of delayed payment of it may kindly be upheld by dismissing the appeal of the appellant.

25. I have mentioned above, facts of the case of both the sides and argument, findings and reasonings recorded by the Learned 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 Appellant Authority. It is last fact and law finding Court. Considering this well settled law, I being Presiding Officer of the Appellant Authority have to discuss evidence came on record, facts and circumstances of the case of both the 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 Learned 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 delayed payment of it to the respondent, is correct and proper and what is decision of the appeal. Let me discuss to adjudicate the matter in four corners of the law and to answer the framed points for decision of the appeal.

26. First of all I would like to discuss regarding Notifications of the Central Government on the point of simple interest is to be awarded on the gratuity amount for the delayed payment of it.

27. 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 is come into force from 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 is applicable 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. Therefore, in view of this Notification simple interest @ 10% p.a. is to be awarded on the gratuity amount for the delayed payment of it. In the present case, the appellant made the delayed payment of the gratuity to the respondent and for the same is fault of the appellant. Hence, I consider this Notification to grant the rate of simple interest @ 10% p.a. on the gratuity amount to the respondent for the alleged period of delayed payment of the gratuity.

28. The Central Government, Department of Economic Affairs has issued Notification No.F.No.5(4)-B(PD)/2021 dated 14.07.2022. It is hereby notified that the deposits made under the Special Deposit Scheme for Non-Government Provident, Superannuation and Gratuity Funds, announced in the Ministry of Finance (Department of Economic Affairs) Notification No. F.16(1)-

PD/75 dated 30.06.1975, shall with effect from 01.07.2022 to 30.09.2022 bear interest at 7.1%. This rate will be in force w.e.f. 01.07.2022. It appears that this Notification is not issued under Section 7(3-A) of the Act. This Notification is not specific and clear for the rate of interest on the gratuity amount for the delayed payment of it like Notification dated 01.10.1987. Hence, this Notification is not applicable to grant simple interest on the gratuity for the delayed payment of it. Thus, I cannot consider this Notification to grant the rate of simple interest @ 7.1% p.a. on the gratuity amount to the respondent for the alleged period of delayed payment of the gratuity.

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

30. Learned 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.

31. 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.

32. Learned Advocate 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.

33. 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.

34. Hon'ble Apex Court and Bombay High Court in the

above cited judgments by Learned Advocate for the respondent has taken 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. I follow the view or ratio laid down by Hon'ble Apex Court and Bombay High Court in these judgments cited by Learned Advocate for the respondent, which the view or ratio is latest than the view or ratio laid by Hon'ble Apex Court and Hon'ble Gauhati High Court in above cited judgments by Learned Advocate for the appellant that simple interest @ 6% p.a. is to be awarded on the gratuity amount for the delayed payment of it. Thus, in view of the ratio laid down by Hon'ble Apex Court and Bombay High Court in the judgments cited by Learned Advocate for the respondent simple interest @ 10% p.a. on the gratuity amount is to be awarded to the respondent for the alleged period of delayed payment of the gratuity.

35. Now I have to discuss on the facts and circumstances of case of both the 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 is dealt with 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 authorised, 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 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 she admits to be payable by her 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 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 Payment of Gratuity Act, 1972 (39 of 1972), 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 at 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 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 is dealt with definition of employee means any person who is employed for wages is employee, Section 2(f) of the Act is dealt with definition of employer means employer is 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. Object of the Act is to provide for a scheme for the payment of gratuity to employees engaged in establishments and for matter connected therewith or incidental thereto.

41. The case of the appellant is that the appellant is under financial crisis and is under heavy loss in BEST Undertaking. Furthermore, the appellant paid more the gratuity amount to the respondent than the amount fixed by the Act. The fund was not available. After fund was available the gratuity amount paid and so there was no fault on the part of the appellant to make the belated payment of the gratuity to the respondent. 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. According to me, these 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

taking into consideration provisions of the Act and Rules discussed above. 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 defence of the appellant is not considerable and it is totally against provisions of the Act. Thus, in view Notification dated 01.10.1987 of the Central Government and provision of Section 7(3-A) of the Act simple interest @ 10% p.a. on the gratuity amount needs to be awarded to the respondent for the delayed payment of gratuity from the side of the appellant.

42. It is admitted fact in view of pleadings of both the sides that the respondent did service for 35 years and 2 months from 04.07.1984 to 30.09.2019 as a Supervisor (P) in BEST Undertaking of the appellant and superannuated from the service of the appellant with effect from 01.10.2019. 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 recognised Union of the employees the respondent is entitled to get the gratuity amount of Rs.19,36,914/- from the appellant, who completed service more than 21 years in the BEST Undertaking of the appellant. The respondent is agreed for the said amount. The appellant on 08.02.2021 paid Rs.3,00,000/- and on 13.08.2021 paid Rs. 16,36,914/- to the respondent, who agreed that she has received

the said amount from the appellant. Thus, regarding the quantum of gratuity amount there is no dispute between the parties. However, merely the appellant it is 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 taking into consideration provisions of the Act and Rules because that amount is as per special gratuity scheme of the appellant. Furthermore, the appellant paid more the gratuity amount than fixed by the Act to the respondent and fund was not available and so the appellant made belated payment of the gratuity are not reasons not to award simple interest on the gratuity amount to the respondent due to the delayed payment of the gratuity.

43. It is pertinent to note that the respondent immediately before 30 days of her retirement who retired on 01.10.2019 applied in prescribed form to the appellant to pay the said gratuity amount as per provision of Rule 7 of the Payment of Gratuity (Maharashtra) Rule, 1972. 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 was retired on 01.10.2019. 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. Thereafter, the respondent on 26.03.2021 filed application in the Court of the Learned Controlling Authority and thereby prayed to give direction to the appellant to pay the gratuity amount with simple interest etc. Prior and after that the appellant

on 08.02.2021 paid amount Rs.3,00,000/- and on 13.08.2021 paid amount Rs.16,36,914/- to the respondent. 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 Rs.3,00,000/- to the respondent from 01.10.2019 till 08.02.2021 and Rs. 16,36,914/- from 01.10.2019 till 13.08.2021. This is the delayed period respectively for the payment of gratuity amount.

44. Section 7(3-A) of the Act says that if the employer had not paid the gratuity amount within period specified means within 30 days to the employee from the date of her 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 it appears from the evidence came on record through pleadings of both the 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 is fault on the part of the appellant not to pay the gratuity amount to the respondent within the period specified. The appellant only paid the gratuity amount to the respondent and did not pay simple interest on the said amount for the delayed period. 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.

45. 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 is fixed the rate of interest on the gratuity amount for the delayed payment of it. Considering provisions of Section 7, 7(3) and 7(3-A) of the Act and Notification dated 01.10.1987 about 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, the appellant is liable to pay simple interest @ 10% p.a. which rate of interest is quoted in Notification dated 01.10.1987 of the Central Government on the gratuity amount to the respondent.

46. The Act is enacted for the benefits 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 employee of the appellant. The appellant is the establishment. It is run by the local authority Mumbai Municipal Corporation and constituted under Mumbai Municipal Corporation Act. It is under 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 discretion to award rate of simple interest out of rate of interest 10% p.a. mentioned in Notification dated 01.10.1987 of the Central Government on the gratuity amount due to the delayed payment of it. The Learned Controlling Authority can award simple interest upto 10% p.a. on the gratuity amount due to the delayed payment of it. The respondent did a service for 35 years and 2 months with the appellant with devotion and honestly and without blame. The respondent contributed period of her young age in the service of the appellant. There is provision to give the gratuity to the employee. If the employee got 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. In view of this, simple interest @ 10% p.a. needs to be awarded on the gratuity amount to the respondent for the period of delayed payment of the gratuity.

47. As per Section 7(3-A) of the Act discretion is given to the Learned 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 is

mentioned in Notification dated 01.10.1987. It is well settled law that the 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.

48. 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. on the gratuity amount is to be awarded due to the delayed payment of it, which rate of interest is mentioned in Notification dated 01.10.1987 of the Central Government. It is noticed that the Banks give different type of interest rate on term deposits. Some Banks give more interest rate on term deposits to senior citizen and women, as well as on term deposits, wherein the amount is deposited for specific period.

49. It appears that the Banks give rate 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 term deposit scheme of the Banks regarding specified period or other deposit schemes. The respondent is retired employee. She is senior citizen. She got the delayed payment of the gratuity. Therefore, considering this fact, the prevailing and present rate of interest of the Banks for repayment of long terms 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 interest @ 10% p.a. is to be awarded on the gratuity amount due to the delayed payment of it, I am of the view that simple interest @ 10% 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. If such rate of interest is awarded on the delayed payment of the gratuity to the respondent then in view of above discussion it cannot be said that the Court used the discretion arbitrarily. But it can be said that used the discretion judicially. Thus, in the light of this discussion, it can be said that the Learned Controlling Authority used the discretion judicially to award rate of simple interest on the delayed payment of the gratuity in favour of the respondent.

50. Considering 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 Hon'ble Bombay High Court in the above cited judgments by Learned Advocate 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 @ 10% p.a. on the gratuity amount for the alleged period of delayed payment of the gratuity from the appellant. Thus, in view of above discussion, the findings and reasonings recorded by the Learned Controlling Authority for awarding 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 Appellant Authority. Hence, I do not agree with the argument of Learned Advocate for the appellant. Thus, I answer the above points accordingly.

51. In view of 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 Learned 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 Learned Controlling Authority immediately.

The judgment is directly dictated on computer and pronounced in the open Court in presence of both the sides on 27.07.2023.

VIJAYKUMAR PRALHADRAO PATKAR

Digitally signed by VIJAYKUMAR PRALHADRAO PATKAR
Date: 2023.07.31 16:50:19 +0530

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

Place : Mumbai
Date : 27.07.2023

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 | : | Mrs. A.S. Gawankar, Personal Assistant |
| Court | : | President, Industrial Court, Maharashtra, Mumbai. |
| Date | : | 27.07.2023 |
| Judgment/order signed by the Presiding Officer on | : | 27.07.2023 |
| Judgment / order uploaded on | : | 31.07.2023 |