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Appeal (PGA)No. 25/2024 (O)
CNR No. MHIC01-000412-2024

**BEFORE THE APPELLATE AUTHORITY UNDER THE PAYMENT OF
GRATUITY ACT, 1972 AT MUMBAI**

APPEAL (PGA) NO. 25 OF 2024
IN
APPLICATION (PGA) NO. 156/2013

Philips Klin Services (India) Pvt. Ltd.
Having Office at 6/17-18,
Jogani Industrial Complex,
Chunabhatti,
Mumbai-400 022.

...Appellant

Versus

1) Mr. Murali Venkataramana
R/at: Flat No. 74-703, Sonchampa,
Vasant Vihar, Pokhran Road No.2,
thane (West) 400 610.

2) Life Insurance Corporation of India
AO/P&GS, Unit Vile Parle,
New India Bhavan, 1st Floor,
S. V. Road, Santacruz,
Mumbai-400 054/

...Opponents

CORAM: M. R.KUMBHAR, APPELLATE AUTHORITY.

Appearances: Shri. H. Shivdasani, Advocate for Appellant.
Shri. Satish Hegde, Advocate for Opponents.

ORDER BELOW EX.U-2
(Dated: 11.02.2025)

1) Read application filed by and on behalf of respondent employee. Perused say of appellant. Heard both the Ld. Advocates for parties.

2) By this application, respondent employee prayed to direct to deposit interest amount of Rs. 32,46,615/- on the principal amount till today and appeal be dismissed for non deposit of entire amount as directed by Hon'ble Controlling Authority.

3) Shri. Satish Hegde, Ld. Advocate for respondent employee vehemently submitted that appellant has preferred the present appeal against the Judgment and Order of the Controlling Authority dated 22.01.2024 whereby the Controlling Authority allowed the application filed by employee and directed to pay gratuity amount of Rs. 27,64,384/- with simple interest @ 10% per annum from 17.10.2012 till realization of entire amount to employee. He further submitted that based on the above order dated 22.01.2024 till 14.07.2024, appellant is liable to pay the principal amount of Rs. 27,64,384/- plus interest of Rs. 32,46,615/- totaling Rs. 60,10,999/- which includes interest as directed by Controlling Authority. He invited my attention towards the Record and Proceeding and submitted that on behalf of respondent employee sent letter dated 11.03.2024 seeking payment of the same by RPAD. However, appellant has not deposited an amount of Rs. 32,46,615/- towards interest as directed by the Controlling Authority as required under the provisions of the Act.

4) He put his strong emphasis on Section 7 (7) of Payment Gratuity Act and submitted that appellant has challenged the entire order by filing the present appeal. Therefore, it requires to deposit entire amount as directed by Controlling Authority as per Section 7

(7) of Payment of Gratuity Act. He further strongly submitted that appellant has deposited only the principal amount and failed to deposit the interest amount as directed by Controlling Authority. He invited my attention towards Section 7 (3 A) and submitted that Section contemplates that interest is a statutory interest on the gratuity payable if it is not paid by the employer. He further submitted that it is a well settled law that as per Section 7 (4)(c) of the Act, Controlling Authority shall determine the amount to be payable and direct payment of such amount and it includes interest contemplated under Section 7 (3A) of the Act. Then he added that appellant has deposited only principal amount and have contended that deposit of principal amount is only pre-requisite of filing appeal. As per Section 7 (7) of the Act read with clause no. 7 (4)(c) coupled with settled position of law clearly enumerates that principal amount along with interest as directed by Controlling Authority is liable to be deposited.

Then he submitted by inviting my attention towards appeal memo that appellant has challenged the order including the amount along with interest passed by Controlling Authority. Therefore entire amount along with interest has been challenged as such. It is the requirement that appellant has to deposit the entire amount along with interest challenged in the impugned order and prayed that to allow his application and appellant be directed to deposit amount of interest and for non-deposit of the same, appeal be dismissed.

5) He relied upon the observations in Appeal (PGA)No...../2021 arising out of Application (PGA)No. 55/2018 of Industrial Court, Thane and invited my attention towards the operative order dated 01.10.2021 which reads as under:-

- “1. The amount payable implies payable of gratuity sum as well as interest as granted by the Ld. Controlling Authority and is a pre-requisite for preferring the appeal.*
- 2. The appellant is at liberty to deposit the said amount within two weeks from today or to express his willingness to deposit the amount within the extended period of limitation within the above two weeks.*
- 3. If the amount is not deposited or such willingness is not expressed, the appeal shall stand dismissed for want of compliance of deposit of amount.*
- 4. If the amount is deposited, appeal be registered as per rules.”*

6) He further submitted that the said order is challenged before Hon'ble High Court in W. P. No. 284/2022 and 1657/2022. The Hon'ble High Court by common order dated 14.09.2022 disposed of writ petition by confirming the order of Industrial Court Thane.

7) Then he relied upon the observations of Hon'ble Andhra Pradesh High Court at Hyderabad between **Andhra Pradesh State Warehousing Corporation Vs. R. Nagarjun** reported in 1998 SCC On Line AP 261 and submitted that as observed by Hon'ble High Court

that “gratuity cannot be termed to be a gratuitous payment, it is not a gift of the employer but a right as conferred in terms of the provisions of Statute.”

8) Then he relied upon the observations of Hon'ble Karnataka High Court between **Process Pumps (Private) Ltd., Bangalore Vs. Deputy Labour Commissioner Region No. 1 Bangalore and Anr.**, reported in 2006 (2) LL. N. 227 and invited my attention towards para no. 6 and 10 which reads as under:-

*“6. The argument of the petitioner is that in the light of **Section 7(4)** what is required to be deposited is only the admitted liability. I am afraid that this argument would be destructive in character. **Section 7(4)** provides for deposit of admitted gratuity. That admitted gratuity is referable to a dispute with regard entitlement to receive gratuity of read carefully. That cannot be understood as of no deposit as sought to be argued by the petitioner. In fact the said proviso has been inserted by Act No. 24 of 1984. This very question has been considered by a catena of decisions.*

10. From these decisions what is clear to this Court is that the appellant has to deposit the balance amount in the interest of the workman as otherwise workman would be deprived of their rightful share of gratuity in such matters. Gratuity is held to be a payment for meritorious service rendered by workmen. Meritorious service has to be protected by the statute. Taking into consideration the statutory welfare object and also taking

into consideration an overall view of various Courts, I am clear in my mind that the appellant has to deposit the entire amount after deducting the amount if any already made over to the second respondent in terms of [Section 7\(4\)](#) of the Act. In the case on hand, since the petitioner has failed to do so, the Appellate Authority is justified in issuing the endorsement. However, in the interest of justice, I deem it proper to provide one more opportunity to the petitioner by way of four weeks time to deposit the amount before the Appellate Authority. If the petitioner deposits in terms of this order, then the Appellate Authority is directed to consider the case on merits despite the impugned order in accordance with law. Ordered accordingly. No costs.”

9) Then he relied upon the observations in **Metal Box India Ltd. Vs. B. R. Rangari** reported in 2007 (1) Mh. L. J. 36 and submitted that observations are useful to the case of respondent employee and prayed to pass appropriate order.

10) On the contrary, Shri. H. Shivdasani, Ld. Advocate for appellant objected the very application filed by respondent. He submitted that as per proviso to sub Section 7 of Section 7 read with sub Section 4 (a) of Payment of Gratuity Act, it is very clear that only amount of gratuity is required to be deposited and not the interest amount. Appellant has deposited the gratuity amount of Rs.

27,64,384/- with the office of the court. Therefore, application needs to be rejected and prayed to reject the application filed by respondent.

11) He relied upon the observations of Hon'ble Bombay High in the matter between **Pharma Base India P. Ltd. Mumbai Vs. State of Maharashtra** reported in 2009 (1) Mh. L J 688 and invited my attention towards the observations at para no. 19 and submitted that the observations are helpful to the case of Appelent.

12) Having heard the oral submissions of both the Ld. Advocates, I have carefully gone through the objections raised on behalf of respondent employee regarding direction to deposit interest and failure to which appeal may be dismissed. I have perused the impugned order which is challenged under Section 7 (7) of the Payment of Gratuity Act.

Admittedly, respondent employee approached to the Labour Court and claimed for determination of gratuity amount by filing Application (PGA)No. 156/2013. The Controlling Authority and the Labour Court, Mumbai by impugned judgment and order dated 22.01.2024 allowed the application and directed to pay gratuity amount of Rs. 27,64,384/- with simple interest @ 10% per annum from 17.10.2012 till realization of entire amount. Therefore, appellant being aggrieved by the impugned judgment and order preferred an appeal under Section 7 (7) of the Payment of Gratuity Act after depositing an amount of Rs. 27,64,384/- on

27.03.2024 in the Industrial Court, Mumbai. The issue or dispute regarding limitation is not raised by parties. The dispute raised regarding non deposit of interest amount and gratuity. Therefore, it is necessary to reproduce Section 7 of Payment of Gratuity Act which reads as under:-

“Section: 7 Determination of the amount of gratuity.

(1) 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.

(2) 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 gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer 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 at 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.]

(4) (a) 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.

(b) 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.]

(c)] The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.]

(d)The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer,

to the person entitled thereto.

(e)As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit -

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or] heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely :

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents,

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code, 1860 (45 of 1860).

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under subsection (4), or deposits with the appellate authority such amount.]

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.

13) From bare perusing the above proviso of Section 7 (7), it reveals that any person aggrieved by an order under sub Section (4) may, within 60 days from the date of the receipt of the order, prefer

an appeal to the appellate authority. However, the appellate authority, if it is satisfied that appellant was prevented by sufficient cause from preferring the appeal within the said period 60 days, extend period of 60 days for further period of 60 days. The second proviso of Section 7 (7) provides that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellate either produces a certificate of Controlling Authority to the effect that appellant has deposited with him an amount equal to the amount of gratuity, required to be deposited under Section 7 (4) with appellate authority or deposit with appellate authority such amount. Therefore, this proviso is must mandate on the employer's right to file an appeal. Therefore it is amply clear that appellant employer is obliged to deposit the amount or produce the certificate of the Controlling Authority as the case may be at the time of preferring the appeal. The appellant has filed Form-A, Book of Receipt regarding deposit of Rs. 27,64,384/- on 27.03.2024 the principal amount.

14) It is worthwhile to mention here that the observations relied by appellant in **Pharma Base India P. Ltd. Mumbai Vs. State of Maharashtra** (supra) at para no. 25 and 26, the Hon'ble High Court observed that which reads as under:-

25. In Standard Storewares & Tiles (Supra), the employer deposited the arrears of gratuity amount ordered to be paid by the Controlling Authority but did not remit the amount ordered to be paid towards interest on the delayed payment of gratuity. The learned Single

Judge of Kerala High Court held that the statute prescribed only the deposit of the gratuity amount and not the interest thereon. In the present case, admittedly, respondent No.2 did not deposit the amount of gratuity within a period of 120 days and therefore, ratio is not applicable to the present facts and circumstances of the case.

26. The learned Single Judge has approached the case from correct point of view and rightly confirmed the order of Appellate Authority. We do not see any reason to interfere in the impugned order, the Petition is devoid of any merits and the same is, accordingly, dismissed.

15) In Standard Storewares and Tiles Vs. Appellate Authority reported in 2004 III CLR 204 (Kerala), the employer deposited the arrears of gratuity amount ordered to be paid by the Controlling Authority but did not remit the amount ordered to be paid towards interest on the delayed payment of gratuity. Hon'ble Ld. Single Judge of Kerala High Court held that statute prescribed only deposit of gratuity amount and not interest thereon.

16) In the present case, admittedly respondent no. 2 did not deposit the amount of gratuity within a period of 120 days. Therefore, ratio is not helpful to the present facts and circumstances of the case.

17) In para no. 26, it is observed that Ld. Single Judge has approached the case from correct point of view and rightly

confirmed the order of appellate authority. We do not see any reason to interfere in the impugned order, the petition is devoid of any merits and same is accordingly dismissed.

18) In the light of observations as relied by appellant, opponent has already deposited the gratuity amount as directed to him by the Controlling Authority.

19) The objection on behalf of employee on the basis of order of Industrial Court, Thane in Application (PGA)No...../2021 arising out of Application (PGA)No. 55/2018 which was confirmed by Hon'ble High Court wherein the appellate authority held that amount payable implies payable of gratuity sum as well as interest as granted by the Controlling Authority and is a pre-requisite for preferring the appeal in which the Hon'ble Bombay High Court in Writ Petition No. 284/2022 at para no. 2, it is clearly observed, the petitioner undertakes to deposit the interest component with the Controlling Authority within a period of four weeks and at para no. 3 it is observed that *“in view of the matter, Ld. Counsel for the respondent expresses satisfaction and has no objection to the appeal being heard on merits after the deposit is made, in case the deposit of interest is made as stated above within a period of four weeks from today. Ld. Member and Appellate Authority under the Payment of Gratuity Act, Thane, has already held that amount of interest is required to be deposited along with principal amount. I am in full agreement with the observations of Appellate Authority, Thane”*. In the light of appellant by preferring the present appeal

has entirely challenged the determination of gratuity amount by the Controlling Authority followed by 10% interest. Therefore, I am also of view that principal amount along with interest is required to be deposited in the court while preferring the appeal. I find much substance in the submissions made on behalf of respondent employee and therefore, application is liable to be allowed.

20) With this, I proceed to pass the following order.

ORDER

- 1) Application at Exh. U-2 stands allowed.
- 2) Appellant is hereby directed to deposit the interest amount within a period of four weeks from the date of receipt of this order.
- 3) If amount is not deposited within stipulated time, then appeal stands dismissed for want of compliance of deposited amount.
- 4) No order as to costs.

Dated: 11.02.2025

(M. R. KUMBHAR)
Appellate Authority Under The
Payment Of Gratuity Act, 1972 &
Member, Industrial Court, Mumbai.

ams/-