



Received on :- 12.04.2019  
Registered on :- 12.04.2019  
Decided on :- 16.07.2022  
Period :- 03Y;03M;04D.

**THE COURT OF LABOUR COURT NO. II, KOLHAPUR**

**AT - KOLHAPUR**

*(Presided over by – Archana G. Behere)*

*(JO Code – MH-1873)*

**Application (P.G.A.) No. 19/2019**

**CNR No. MHLC090001582019**

**Exh. No. O-**

Bajirao Baburao Hilage

Age : 54 Years, Occupation : Retired,

R/o. A/p. Madilage Budruk, Tal. Bhudargad,

Dist. Kolhapur

... Applicant

**Versus**

Chougule Infrastructure Pvt. Ltd.,

Office – 4/16, Elite Gardens Aundh,

Pune – 411 007

Through Executive Director

... Opponent

**APPEARANCES : -**

Shri. A. P. Chougule, Ld. Adv. for Applicant.

Shri. P. R. Rane, Ld. Adv. for Opponent.

**: J U D G M E N T :**

(Delivered on this 16<sup>th</sup> day of July, 2022)

Present application is filed for deciding the dispute regarding payment of gratuity.

2. According to applicant, he has worked with opponent as mechanical foreman since 01/01/1998. He has resigned from service on 4/11/2018. He has performed continuous service for 14 years during 01/01/1998 to 31/10/2012 with opponent. In spite of resignation dt.

31/01/2012 applicant has continuously worked with opponent for further 6 years i.e. during 01/02/2012 to 04/11/2018. Thus, applicant has performed continuous service for 20 years. In spite thereof opponent has not paid him gratuity. At the time of resignation, the consolidated salary of applicant was Rs. 20,000/-. From time to time applicant has demanded gratuity amount. But opponent adopted dilatory tactics and avoided payment of gratuity. Opponent has failed to pay gratuity amount within stipulated period. Applicant has sent I Form notice dt. 02/02/2019 through registered post. Even then, opponent failed to pay gratuity, therefore, applicant is constrained to file present application.

3. After being duly served with notice, opponent appeared in the matter. However, in spite of sufficient opportunity given, opponent failed to file his written statement/say. Therefore, matter proceeded against opponent without his say.

4. From the perusal of record following points arise for determination, to which findings are recorded alongwith reasons given below :-

<u>S.N.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether applicant is entitle for gratuity amount from opponent ? If yes, what is the quantum and interest/penalty,if any ?	Yes  As per final order
2)	What order?	As per final order

**-: REASONS :-**

**AS TO POINT NOS. 1 & 2 :-**

5. In support of his contentions, applicant filed his affidavit of examination-in-chief at Exh.U-7 and closed his evidence vide pursis at Exh.

U-8. Applicant has relied upon following documents :-

- (a) Xerox copy of applicant's passbook of savings account with Bank of Baroda for the period of 05/02/2004 to 25/08/2008
- (b) Xerox copy of applicant's passbook of savings account with Bank of Baroda for the period of 26/08/2008 to 23/02/2011
- (c) Xerox copy of applicant's passbook of savings account with Bank of Baroda for the period of 04/03/2011 to 23/05/2012
- (d) Xerox copy of applicant's passbook of savings account with Bank of Baroda for the period of 15/08/2013 to 29/06/2015
- (e) Xerox copy of notice in Form 'T'

6. As stated earlier, opponent though has appeared in present matter, has not challenged applicant's demand by filing say. So also opponent has not cross-examined applicant. Therefore, contentions in application as well as statement on oath of applicant, remained unchallenged.

7. From the thorough perusal of abovementioned xerox copies of bank pass books, it is clear that there are various entries to the effect that from time to time amount is credited in applicant's account from Chougule Infrastructure towards salary. Some of the relevant entries are summarised as follows :-

Date	Details	Amount
05/02/2004	By Transfe Chougale	2,882/-
21/04/2005	By Transfe FR Chowgule Inf	10,025/-
01/10/2005	By Transfe Sal Chowgule	8,949/-
21/07/2006	Salary June 06 Chowgule	4,110/-
17/10/2006	Salary Chowgule Infrastructure	9,000/-
15/12/2006	Sal Chowgule Infrastructure	5,157/-
15/03/2007	Salary Chowgule Infrastructure	5,668/-
12/06/2007	Chougule Infra Sal Apri May	17,268/-

06/02/2009	Salary Dec. 08 & Jan. 09 Chowgule Infrastructure	16,038/-
08/08/2009	Chowgule Infrastructures P Ltd Sal Jul 09	11,961/-
17/09/2009	Salary Chowgule Infrastructure	9,784/-
26/09/2009	Chowgule Infra Medical Exps	320/-
20/10/2010	Chowgule Infrastructure P Ltd Salary	6,257/-
06/11/2010	Chowgule Infrastructure Pvt Ltd Salary	13,362/-
24/12/2010	Chowgule Infrastructure Pvt Ltd Salary	12,417/-
08/01/2011	Chowgule Infrastructure Pvt Ltd Salary	10,653/-
17/02/2011	Chowgule Infrastructure P L Salary	12,391/-
16/03/2011	Chowgule Infrastructure P L Salary	10,330/-
23/04/2011	Chowgule Infrastructure P L Salary	

8. It must be noted that above mentioned entries are selected randomly which clearly proves that salary is credited in the account of applicant from opponent. It also must be noted that on the covering page of those pass books applicant's address is mentioned as the same as that of opponent.

9. Thus, from the perusal of those pass books it is crystal clear that at least since February, 2004 applicant was serving with opponent and opponent used to pay him salary. However, applicant has not produced any documentary evidence to prove his employment since prior to 2004 and more specifically since 01/01/1998. So also applicant has not produced any documentary evidence to prove his employment with opponent since July, 2015. From the perusal of entire pass book entries, it is clear that applicant was in continuous service with opponent since February, 2004 upto June,

2015. Thus, it is clear that applicant has performed continuous service for 11 years with opponent. Those entries alongwith opponent's failure to challenge applicant's contentions, are sufficient to held that there was employer-employee relationship between opponent and applicant and that applicant has continuously worked with opponent for more than 5 years so as to entitle him to claim gratuity from opponent. Not a single reason appears to disbelieve statement on oath of applicant and documentary evidence produced by applicant.

10. According to applicant, his last consolidated salary was Rs. 20,000/-. However, from the perusal of pass book entries it is clear that lastly on 06/06/2015 an amount of Rs. 16,720/- was credited to the applicant's account towards salary for May, 2015. Therefore, it appears safe to held that last drawn monthly salary of applicant was Rs. 16,720/- and employer-employee tie between opponent and applicant came to an end since July, 2015. Section 4(2) speaks about calculation of gratuity amount. It provides that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned. Applying this ratio present applicant has completed 11 years of service. For computing gratuity, number of working days in a month is considered 26 days. The last drawn basic pay is divided by 26. The amount so obtained is multiplied by 15 to compute the amount of gratuity per year. Therefore, applicant is entitled to receive gratuity of Rs. 1,06,107/-.

11. Section 7(3) of the Act compels employer to pay gratuity amount within 30 days from the date when the said amount becomes payable. As per Sec. 4, the amount of gratuity is payable on the date of his resignation/retirement. In present matter from above discussion it is clear that, the employer-employee tie between opponent and applicant came to

an end since July, 2015, opponent was under obligation to pay the amount of gratuity within 30 days i.e. upto 31/07/2015. As opponent did not pay gratuity amount within 30 days, it has to pay simple interest on the gratuity amount to the applicant. Section 7(3A) of the Act speaks about rate of interest to be notified by the Central Government. Accordingly, the Central Government as per notification No. S.O. 874(E) dated 01/10/1987 have specified 10% p.a. as the rate of simple interest payable by the employer. Accordingly, applicant is entitled to receive 10% p.a. simple interest on the amount of gratuity from the date it becomes due i.e. since 31/07/2015. Therefore, following order is passed :-

**: O R D E R :**

1. Application is partly allowed.
2. Opponent is hereby directed to pay the gratuity amount of Rs. 1,06,107/- (Rs. One Lac Six Thousand One hundred Seven only) to applicant, within two month from today, alongwith interest @ 10% p.a. since 31/07/2015 till its full realization.
3. No order as to the costs.

Kolhapur

Date :- 16.07.2022

( A. G. Behere )

Controlling Authority under P. G. Act  
& Judge,  
Labour Court No. II, Kolhapur

Argued on :- 16.07.2022  
Judgment Dictated on :- 16.07.2022  
Judgment transcribed on :- 16.07.2022  
Judgment checked & signed on :- 16.07.2022