


MHLC340000962023 	Presented on	:	07.04.2023
	Registered on	:	10.04.2023
	Decided on	:	09.03.2026
	Duration	:	Y M D

**BEFORE THE CONTROLLING AUTHORITY UNDER THE PAYMENT
OF GRATUITY ACT AND JUDGE LABOUR COURT CHANDRAPUR.**
(Presided over by A. D. Tidke)

**P.G.A Case No. 48/2023
Exh. O-03.**

Shri Wahab Gaffar Yasini,
Aged about- 58 years, Occu- Nil.
R/o. Aryan Apartment No.03,
Shivaji Ward, Ballarpur.
Distt- Chandrapur.

..... Applicant

V E R S U S

Maharashtra State Road
Transport Corporation.
Through its Divisional Controller.
M.S.R.T.C., Division Office,
Gadchiroli.

..... Non-applicant.

Appearance:

Shri. M. M. Wankhade Ld. Adv. for the applicant.
Shri U. V. Deshpande, Ku. V. R. Deshmukh Ld. Advs.
for the non-applicant.

Claim: Application for grant of gratuity amount under section 7
and 4 of the Payment of Gratuity Act, 1972.

J U D G M E N T

(Delivered on this 09th Day of March, 2026)

This is an application under the provisions of section 7(4) of the Payment of Gratuity Act, 1972 for seeking direction against the non-applicant corporation to release gratuity amount of rupees 8,23,356/- along with interest @ 10% p.a. from the date of termination i.e. 31.12.2023 or after expiry of 30 days from the date of retirement till actual realization of amount.

APPLICANT'S CASE.

02. The applicant was appointed as a driver with the non-applicant corporation on and from 16.10.1989 at Gadchiroli division, and since then he was in continuous service of the non-applicant corporation. The non applicant establishment is a corporation under the control and supervision of State of Maharashtra and all Acts are applicable to them including Payment of Gratuity Act, 1972. Thereafter, the applicant has been taken on temporary time scale on 27.10.1990 and by order dated 26.10.1995 his services has been regularized and absorbed him on time scale. The applicant came to be retired from service with effect from 31.12.2022 on the post of Assistant Traffic Inspector. The applicant has rendered total 33 years of service with the non-applicant. Without assigning any reason the non-applicant did not pay amount of gratuity to the applicant.

03. By amendment the applicant has submitted that, as the Circular No. 22/2024 came into existence on and from

12.09.2024, as per said circular the applicant is entitled for the enhancement of Rs. 6500/- in basic pay w.e.f. 01.04.2020. So, after adding that amount of Rs. 6500/- in basic pay then basic would be Rs. 33,923/-. As such, last basic pay of the applicant was Rs. 33,923/- and same will be considered while calculating the amount of gratuity. Hence, the applicant is entitled for gratuity amount of Rs. 8,23,356/-.

04. Further submitted that, as per the provisions of the Payment of Gratuity Act, 1971, it is the duty of the employer to calculate gratuity amount and to pay the same to its employee immediately after his retirement, and if there is any dispute, the employer should deposit the same in the office of Controlling Authority under the Payment of Gratuity Act. There was no order passed by the non-applicant corporation denying the amount of gratuity to the applicant. The non applicant corporation has neither paid amount of gratuity to the applicant directly nor deposit the same in the office of Controlling Authority under the Payment of Gratuity Act till date, and therefore, the applicant is entitled for interest @ 10% p.a. on the said gratuity amount from the date of his retirement till its actual realization.

05. Further submitted that, after retirement of applicant from service, he attended the office of non-applicant corporation frequently and requested for amount of gratuity but the same was denied without assigning any reason. Therefore, the applicant

submitted an application under Form-I of Gratuity Act to the non-applicant on 14.03.2023, which was duly served on the same date. The non applicant did not reply the said application. On these grounds, the applicant has prayed for allowing the application as prayed, with Costs of Rs. 5000/- upon the non-applicant.

Non applicants' Case:

06. The non applicant corporation has resisted the application of applicant by filing reply at Exh. C-05 and denied all adverse allegations made against them. It is contended that the application as framed and filed by the applicant is itself not tenable in the eyes of law or on facts. The applicant was appointed as a driver at Gadchiroli depot and retired from service.

07. Further contended that, the applicant has misinterpreted the Circular dated 30.05.2017 and state that as per said circular, an employee who has worked for 180 days in a year is entitled for payment of gratuity of that year and asking difference of amount on the basis of the same. In fact, circular dated 30.05.2017 clearly stated that the amount of gratuity should be paid as per the provisions of the Payment of Gratuity Act, 1971. It is further submitted that, Circular bearing No. 07/2016 dated 09.03.2017 of MSRTC clearly stated that, that employee who was working on daily wages or in time scale category, who has not completed 240 days work in a year is not entitled for gratuity amount. The said circular is yet not cancelled or modified and there is nothing

mentioned in the application in that regard. As per Circular dated 30.05.2017, if the documents regarding daily wages working of the employee are not available, then while calculating the days of working in a year, 180 days prior to the date of absorption in temporary scale will be taken into consideration and after adding days of temporary time scale in it, if it reaches 240 days as per rules, then only he is entitled for gratuity amount. The demand of the applicant that as per circular dated 30.05.2017 payment of gratuity should be made if he has completed 180 days work in a year is totally wrong and illegal one. The non applicant corporation did not pay gratuity on the basis of 180 days work in a year to any of its employee. Thus, question of paying gratuity amount to the applicant does not arise. The application is devoid of merits and is liable to be rejected with costs. Under these circumstances, the non-applicant corporation has prayed for rejection of the application.

08. Considering rival submission of the parties, my the then Ld. Predecessor has framed issues at exhibit 0-02 which are reproduced below as it is. I have recorded my findings against each of those issues for the reasons given hereinafter.

Sr. No.	ISSUES	FINDINGS
01.	Whether the applicant proves that the non-applicant has arbitrarily or illegally withheld the remaining amount of gratuity Rs. 8,23,356/- with interest @ 10% p.a. payable to him as alleged	Partly affirmative.

02.	What order?	As per final order.
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: EVIDENCE :

09. In order to substantiate his claim, the applicant has filed affidavit in lieu of examination in chief at Exh. U-09 and closed his evidence through pursis Exh. U-13. The applicant has relied upon documents i.e. copy of Divisional Establishment Order No. 648/2022 dated 01.12.2022 (Exh. U-10), copy of salary slip of applicant for the month of December, 2022 (Exh. U-11, copy of Form-I dated 14.03.2023 submitted by the applicant to the non-applicant (Exh. U-12), copy of circular No. 22/2024 dated 12.09.2024 issued by the non-applicant corporation (Exh.U-13). Besides, the non-applicant has examined Sau. Shubhangi Undirwade at Exh. C-06 and closed their evidence through pursis Exh. C-07.

: REASONS :

10. Heard Ld. Advocate for the applicant and the Ld. Advocate for the non-applicant. Perused record and proceeding of the case. The applicant has prayed for gratuity amount of Rs. 8,23,356/- but during the pendency of the matter, gratuity amount of Rs. 445200/- has been paid to the applicant. Considering this fact, the applicant has now to show that he is entitled to recover difference of gratuity sum of Rs. 420231/- from the non-applicant corporation and the interest component as prayed. The non-applicant has denied the difference of gratuity amount as well as interest. The Ld. Advocate for the non-applicant vehemently

argued that that the though circular no. 22/2024 was issued by the corporation but no fixation of salary has taken place as per the said circular, therefore, the applicant is not entitled to claim difference of gratuity amount. In the light of submissions of the parties, the applicant's entitlement to claim difference amount of gratuity as well as interest has to be decided.

11. The applicant in his affidavit in lieu of examination-in-chief has reproduced contents of the application. The applicant is cross examined at length by the Ld. Advocate for the non-applicant. During cross-examination of the applicant, he has admitted that he has not produced on record any documents so as to show that for how many days he was present on duties during the year 1994 to 2005. Further admitted by the applicant that he has received gratuity sum of Rs. 445200/- but he has not made any complaint in respect of the same to the respondent corporation. During cross examination of the applicant, circular of the corporation bearing No. 22/2024 has been accepted evidence at exhibit U-13. So far claim of the applicant is concern, nothing adverse has been brought on record in cross-examination of the applicant.

12. The non-applicant has also relied upon the testimony of Smt. Shubhangi Najukarao Undirwade witness no.1 for the non-applicant. Smt. Undirwade in her affidavit in lieu of examination-in-chief has supported to the submission of the non-applicant. So far cross examination of the non-applicant's witness is concerned,

she has clearly admitted that service tenure of the applicant is 33 years and he has been paid sum of Rs. 445200/-. It is further admitted that the amount of gratuity has been paid to the applicant by presuming that his service tenure was 21 years. During further cross examination the non-applicants witness admitted that no gratuity during dismissal period of the applicant is given to him. However, further admission makes it clear that though the applicant was dismissed from service but he was reinstated in service with continuity of service as per order passed by the Labour Court.

13. It is not disputed that the applicant has joined the service of the non-applicant as a driver on 16.10.1989 and he got retired from services on 31.10.2022. It is also specific submission of the applicant that he has served with the non-applicant for 33 years from the date of joining to till the date of retirement. So far grant of gratuity is concern, it is required that an employee has to serve continuously for the period of 5 year. It is further pertinent to note that in order to claim gratuity in a year, it is must that an employee shall be in continuous service for the period of 240 days. Considering cross-examination of Smt. Shubhangi, it appears that since the applicant was under dismissal for 12 years, no gratuity for the said period has been granted to him.

14. Even though the applicant was under dismissal for the

period of 12 years, it is admitted by Smt. Shubhangi that he was reinstated as per the order of Labour Court with continuity of service. No documents in respect of dismissal order as well as reinstatement order passed by the Labour Court are filed on record. However, admission of the non-applicant is sufficient to say that no gratuity has been paid during dismissal period of 12 years. Further, the fact that the applicant was reinstated by the order of Labour Court with continuity in service make it clear that the applicant would also be entitled for gratuity for 12 years of dismissal period.

15. The applicant has proved on record retirement order of the applicant dated 01.12.2022 (Exh.U-10) which reveals that the applicant was going to retire on 31.12.2022 as a result of attaining the age of superannuation. Further, last payment slip of the applicant is proved on record at exhibit U-11 which shows that the last basic pay of the applicant was Rs.27423/- and dearness allowance was Rs. 9324/-. The applicant also produced on record Form -I dated 14.03.2023 (Exh.U-12) which goes to show that the applicant had filed an application before the respondent corporation for claiming gratuity amount. The applicant also produced circular no. 22/2024 dated 12.09.2024 (Exh.U-13) issued by the Corporation which reveals that hike of Rs. 6500/- in the basic salary was granted to class III and IV employee of the non-applicant corporation with effect from 01.04.2020.

16. Considering the date of joining and the date of retirement from service of the applicant, it appears that he has served for the period of 33 years. It is also clear from the evidence that the gratuity for the period of 12 years during which the applicant was under dismissal was not paid to him. When the order of reinstatement of the applicant was passed with continuity in service, the applicant is very much entitled for the gratuity for the period during which he was under dismissal. The applicant has made specific contentions that he has served for 33 years but there is nothing on record on behalf of the respondent to show that for a particular year the applicant was not in continuous service of 240 days. As such, it becomes clear that the service of the applicant for the purpose of gratuity has to be considered 33 years continuous service from the date of joining to till the date of retirement.

17. While determining the amount of gratuity, the last basic pay and the amount of dearness allowance has to be taken in to consideration. The last basic and dearness allowance of the applicant was Rs. 36757/-. However, after the retirement of the applicant, a circular no. 22/2024 was issued by the respondent corporation and basic salary of the Class III and Class IV employees was increased by Rs. 6500/-. No disputed that such circular is applicable to the applicant, therefore, considering hike in the salary, the basic salary and dearness allowance of the applicant comes at rupees 43247/-. Thus, considering continuous service 33

years for the purpose of gratuity, the equation to calculate gratuity would be Rs. 43247/- / 26 X 15 = 24950/- X 33 = 8,23,356/- Thus, the applicant appears to be entitled for gratuity amount of Rs. 8,23,356/-. However, the applicant is already paid amount of Rs. 4,45,200/- on 28.02.2025. As such, if the amount paid to the applicant is deducted from the amount of gratuity of Rs. 8,23,356/- payable to the applicant, then it becomes clear that the applicant is entitled for claiming difference of gratuity of sum of Rs 3,78,156/-.

18. The question of interest arises in the matter. As per legal provisions employer are liable to pay amount gratuity to the applicant within one month from the date of retirement. If the employer failed to pay the amount gratuity, then the employer is liable to pay interest at the rate of 10 % per annum. The applicant retired on 31.12.2022, therefore, the applicant would be entitled for interest with effect from 01.02.2023. While granting interest, it also needs to be adhered that the hike in the salary was granted as per circular no. 22/2024 which was issued on 12.09.2024. Therefore, while imposing interest, it is required that the interest at the rate of 10 % is to be imposed on the sum of 699796/- from 01.02.2023 to till the date 12.09.2024 on which circular no. 22/2024 was issued. Thereafter, the applicant salary was increased, therefore, the applicant would be entitled for interest at the rate of 10 % per annum on gratuity sum of Rs. 8,23,356/- from 13.09.2024 to till 28.02.2025 when the sum of Rs. 445200/- was

paid to the applicant. Thereafter, from 28.02.2025 to till the realization of the whole difference amount of Rs. 3,78,156/-, the applicant is entitled for interest at the same rate as above. Hence, I answered issue no. 1 as partly affirmative and pass following order with reference to issue no.2.

ORDER

01. Application is partly allowed in following terms.
02. The non applicant is directed to pay difference of gratuity amount of Rs. 3,78,156/- (Rupees Three Lakh Seventy-Eight Thousand One Hundred Fifty Six Only) to the applicant along with simple interest @ 10 % per annum from 28.02.2025 to till realization of the above said sum.
03. The Non applicant is also directed to pay interest at the rate 10% per annum to the applicant on the sum of Rs. 699796/- from 01.02.2023 to till 12.09.2024 and further interest of 10 % per annum on the sum of Rs. 823356/- from 13.09.2024 to till 28.02.2025.
04. Both parties are directed to bear their own Costs.

Date: 09.03.2026
Place: Chandrapur

(A.D.Tidke)
Controlling Authority under
The Payment of Gratuity Act,
Judge, Labour Court Chandrapur.

Argued on	:	09.03.2026
Direct Typed on	:	09.03.2026
Pronounced on	:	09.03.2026
Checked and signed on	:	10.03.2026