


MHLC340001162021 	Presented on	:	14.10.2021
	Registered on	:	14.10.2021
	Decided on	:	20.03.2026
	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. 29/2021
Exh. O-03.**

Shri. Nyayamurti S/o. Govind Nikhade,
Age: 59 Years, Occ: Retired
R/o. Ambadas Ward, Rajura,
Tah: Rajura, Dist: Chandrapur.

..... Applicant

V E R S U S

01. Shasakiya Ardha Shasakiya
Sevakanchi Seva Sahkari Path
Sanstha Maryadit, Rajura.
Through It's President.
02. Shasakiya Ardha Shasakiya
Sevakanchi Seva Sahkari Path
Sanstha Maryadit, Rajura.
Through It's Manager,
Both R/o. Deshpande Wadi,
Ward No. 9, Rajura, Tah: Rajura,
Dist: Chandrapur.

..... Non-applicants

Appearance:

Shri. J. M. Patil Ld. Adv. for the applicant.

Shri. M.R.Devalkar Ld. Adv. for the non-applicants.

Claim: Application for grant of gratuity amount under section 4
(1) of the Payment of Gratuity Act, 1972.

J U D G M E N T

(Delivered on this 18th Day of March, 2026)

This is an application for seeking direction against the non-applicant to pay sum of Rs. 424200/- with interest at rate of 12% per annum from the due date i.e 31.05.2020.

The applicant's case in short as under:

02. The applicant was appointed on the post of Chaukidar. He joined the services with the non-applicant on 17.11.1998 and served till 30.09.2004. The applicant was promoted on the post of clerk and was posted at Korpana Branch on 01.10.2004. That during his employment on the post of clerk, the services of the applicant have been terminated illegally on the false allegation of alleged defalcation in view of resolution no.08. dated 27.07.2013 as per subject no. 8.

03. It is further submitted that the termination order was challenged by the complainant by filing complaint ULP No. 118/2023 before the Labour Court, Chandrapur in which an

application for interim relief was filed and the same was rejected by Labour Court. The applicant has preferred revision ULP No. 03/2014 against the said order which was decided on 30.01.2015 and thereby termination order dated 04.08.2013 stayed till decision of the complaint ULP No. 118/2013 and thereby direction was issued for reinstatement of the applicant during pendency of the said complaint in view of the said order. The applicant submitted joining report on 05.02.2015 and accordingly he was allowed to join duty on 05.02.2015 in the employment with non-applicant no.1. That the non-applicant no.2 being Manager of the said society are also responsible and answerable to the employees working in the society including it's head office Rajura and Branch Office Korpana and non-applicant no.2 being immediate controlling officer over such employees including the applicant.

04. It is further submitted that the applicant was out of employment for the period 04.08.2013 to 05.03.2015. That during the pendency of the aforesaid case, he was reinstated with continuity in service but the benefit of continuity in service was not provided to the applicant. The non-applicants have deliberately avoided to release benefit of the continuity of service to the non-applicant. In the meanwhile, audit of the non-applicant Sanstha was conducted. The non-applicant managed the auditor and illegally shown Rs. 50,000/- outstanding against the applicant. That the aforesaid act on part of the non-applicants is nothing but victimization by adopting colorable exercise of employer right only

to harass the applicant. Thus, alleged dues shown outstanding against the applicant need to be canceled.

05. It is further submitted that though the applicant was allowed to join duty at Head Office as per order of the Hon'ble Member Industrial Court but no any work for his former post was allotted to the applicant. During the said period, the non-applicants harassed the applicant unnecessarily. The applicant through his Ld. Advocate had issued notice to the non-applicants on 17.09.2015 and 28.12.2015 which was duly received by them. As a result of notices given, non-applicants by order dated 20.10.2015 directed the applicant to join at Korpana Branch at 4.30 p.m.

06. It is further submitted that in view of the aforesaid notice dt. 17.09.2015 the applicant has narrated about illegalities committed by them and harassment given to the applicant because of the litigation filed the applicant. The non- applicants by some or the other way tried to harass the applicant and family members of the applicant are also suffered by such act. The applicant also made request about releasing the proper legitimate benefits by way of his request letter dated 22.02.2019 but the non-applicants did not pay any heed to his request.

07. It is further submitted that, during pendency of Comp. (ULP) No. 118/2013, the non-applicant no.1 issued a letter dated 28.05.2020 and thereby informed the applicant for his retirement

by way of superannuation from 31.05.2020 and accordingly, he was retired from service on 31.05.2020 from afternoon. His charge was given to one Suresh Farkhade- Incharge Branch Manager of Korpana Branch by their order dated 31.05.2020. At the time of retirement of applicant, it was obligatory on the part of non-applicants to pay all his retirement dues along with gratuity but the non-applicants have not paid the same. Hence, the applicant made request to the non-applicants to pay gratuity amount and all retirement dues to him by letters dated 19.07.2020 and 14.08.2020. But there was no response to that effect from the non-applicants. The applicant made complaint of non-applicants to SC-ST Commission of Maharashtra State, Pune and other authorities and said proceedings are pending there.

08. It is further submitted that, the non-applicants no. 01 and 02 hold monthly meeting on 19.03.2020 under the Chairmanship of Mr. Annarao Zade and under subject No-09 resolution No.09 was passed and decided to release and pay gratuity amount of applicant by so called deduction as alleged therein. The non-applicants no. 01 and 02 are never empowered to deduct any single paisa from the amount of gratuity payable to the applicant and thus, so called resolution about the deduction of so-called amount is itself illegal and bad in the eyes of law even though nothing was paid yet to the applicant.

09. It is further submitted that, the applicant was in the employment of non-applicants from 17.11.1998 till 31.05.2020. Thus, he has completed more than 21 years of service with the non-applicants. Hence, the non-applicants were required to pay gratuity for 21 years of service to the applicant. The non applicants have wrongly shown last drawn salary of the applicant Rs. 31,912/-. The non applicants were never properly narrated the annual increment of the applicant in his monthly salary since his illegal termination and the same was not included in his monthly salary and was never calculated properly as his gross monthly salary. Thus, the non-applicants have shown less monthly salary of the applicant, for which the applicant was reserve his right for claiming to that effect separately.

10. It is further submitted that, the non-applicants have considered Rs. 31,912/- as monthly salary of applicant, it was less as it was not calculated properly. 50% of Rs. 31,912/- comes to Rs. 15,956/- and on multiplying by 21 years' service, an amount of Rs. 3,35,076/- was became due towards gratuity, which was yet not paid to the applicant. The last drawn salary of the applicant for the month of May, 2020 was of Rs. 40,400/- as per the benefits of 7th Pay Commission which are made applicable by the non-applicants to their employees including the applicant from 01.01.2016 and thus, amount of gratuity of Rs. 4,24,200/- is required to be paid to him by the non-applicants on his retirement. The said amount of gratuity was required to be paid to the

applicant within a month from the date of his retirement i.e. till 30.06.2020 but the same was unnecessarily and illegally prolonged. Thus, said amount is required to be paid along with interest @ 12% p.a. since due till its actual realization. The applicant frequently approached to the non-applicants with request to pay gratuity amount but the non-applicants did not pay any heed to his request, and hence, he sent legal notice dated 19.12.2020 through his advocate to the non-applicants. Though the notice was duly served upon the non-applicants they did not reply it nor it was compiled yet. The applicant again applied on 04.02.2021 to the non-applicants and requested them for releasing his monetary benefits but nothing yet paid to him.

11. It is further submitted that after his retirement he approached to the non-applicants with request to pay him retirement benefits along with gratuity from time to time but the non-applicants have not paid the same to him. Hence, there is continuous and recurring cause of action. Therefore, application filed by the applicant is within limitation. On these grounds, the applicant has prayed for allowing the application as prayed for.

Non applicants' case in short as under:

12. The non applicants have filed their written statement at Exh. C-04 and denied all adverse allegations made against them. It is submitted that the application is altogether false and fabricated. The applicant has not come with clean hands before this Court. The applicant has suppressed material and important facts from

this Court. The applicant has joined service with the non-applicants as a Peon and thereafter he was promoted to the post of Clerk. During his service, he had misappropriated the amount of non-applicant Bank. There were clear allegations in the audit report, reaudit report and enquiry report. The applicant had misappropriated the amount of Rs. 4,38,973.50/- therefore, the auditor has filed police complaint against the applicant and others before Police Station, Korpana and crime under sections 420, 409, 465, 468, 471 and 34 of Indian Penal Code was registered against them on 30.10.2013.

13. It is further submitted that, the Criminal Case R.C.C. No. 374/2018 is pending against the applicant. Now, the non-applicants have to recover the misappropriated amount of Rs. 4,38,973=50 from the applicant, therefore, the amount of gratuity has not been disbursed to the applicant. The allegations leveled against the non-applicants are false. The non applicants have not received notice dated 19.12.2020 from the applicant. The action taken by the non-applicant no. 01 against the applicant is correct and proper. The applicant has filed Comp. (ULP) No. 118/2013 before the Labour Court, Chandrapur which is still pending; therefore, the applicant has no right to file such type of application. With these contentions, the non-applicants have prayed for rejection of the application.

14. 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.	Does the applicant prove that non applicants have illegally withheld the payment of gratuity amounting to Rs. 4,24,200/- ?	In the affirmative but sum of gratuity is 489461/-.
02	Whether applicant is entitled for claiming the amount of gratuity along with interest as claimed?	Partly affirmative
02.	What order?	As per final order.

: REASONS :

AS TO POINT NOS. 1 AND 2:

15. In order to prove his case, the applicant Nyayamurti G. Nikhade has examined himself at Exh. U-08 and closed his evidence through pursis Exh. U-25. The Ld. Adv. for the applicant has relied upon the documents i.e. copy of retirement order dated 28.05.2020 issued to the applicant (Exh. U-11), copy of relieving order dated 31.05.2020 (Exh. U-12), copy of representation dated 23.06.2020 submitted by the applicant to the non-applicants (Exh. U-13), copy of representation dated 19.07.2020 submitted by the applicant to the non-applicants (Exh. U-14), copy of representation dated 14.08.2020 submitted by the applicant to the non-applicants (Exh. U-15), copy of representation dated 31.08.2020 submitted by the applicant to the non-applicants (Exh. U-16), copy of

representation dated 15.10.2020 submitted by the applicant to the non-applicants (Exh. U-17), copy of representation dated 03.02.2021 submitted by the applicant to the non-applicants (Exh. U-18), copy of legal notice sent by the applicant through his Adv. Jaypal Patil dated 19.12.2020 (Exh. U-19), copy of minutes of meeting dated 18.10.2020 (Exh. U-20), copies of statement of pay and allowances of the applicant (Exh. U-21 and U-22), copy of dividend paid to the applicant (Exh. U-23), copy of representation dated 14.12.2024 submitted by the applicant to the non-applicants (Exh. U-24). On the other hand, the non-applicants have examined Sanjay Chide at Exh. C-09 and closed their evidence through pursis Exh. C-19. The Ld. Adv. for the non-applicants placed reliance upon the documents i.e. copy of F.I.R. (Exh. C-15), copy of re-audit report (Exh. C-16), copy of enquiry report (Exh. C-17 and C-18).

16. Heard Ld. Adv. Shri J. M. Patil for the applicant and Ld. Adv. Shri M. R. Dewalkar for the non-applicants and perused the record. The Ld. Adv. for the applicant argued that the amount of gratuity is arbitrarily withheld by the non-applicant. It is further submitted that considering service tenure of the applicant from the date of joining i.e. 17.11.1998 to till the date of retirement i.e. 31.05.2020, he has completed continuous service of 21 years therefore, the applicant is entitled to recover amount of Rs. 4,24,200/-.

17. It is further argued by the Ld. Adv. for the applicant that the plea of misappropriation of amount is taken by the non-applicants but gratuity cannot be withheld for the same. If any recovery is there, non applicants can follow independent proceedings for recovery of the same. The Ld. Advocate for the non-applicant argued that criminal prosecution is pending against the accused and the non-applicants have legally withheld gratuity amount of the applicant. In the light of aforesaid submissions made by the parties oral and documentary evidence available on record needs to be taken into consideration.

18. The applicant in his affidavit in lieu of examination in chief at Exh. U-08 has reproduced the contents of the application. The applicant is cross examined by the Ld. Adv. for the non-applicants in detail. In his cross examination, the applicant has admitted that the allegations of misappropriation of amount of Rs.4,71,399/- were made against him, and criminal prosecution to that effect is also initiated against him on the basis of First Information Report lodged by the auditor.

19. The non applicants have also relied upon testimony of one Sanjay Ramdas Chide filed at Exh. C-09. The witness for the non-applicants is also cross examined by the Ld. Adv. for the applicant in detail. It is clearly admitted by the non-applicants witness that the applicant was in continuous service from 17.11.1998 to till 31.05.2020. It is also admitted by the said witness that the applicant had filed application at Exh. U-13 to U-18 for demanding

amount of gratuity.

20. If the claim of applicant for continuous service of 21 years is considered, it appears that the applicant has produced on record retirement order of the applicant at Exh. U-11 which goes to show that the applicant was superannuated on 31.05.2020 from afternoon. Furthermore, order at Exh. U-12 passed by the non-applicants reveals that the applicant was relieved from 31.05.2020. The applications at Exh. U-13 to U-15 also goes to show that the applicant had made demand of gratuity amount and other retiral benefits.

21. The non applicants have produced on record true copy of F.I.R. dated 30.10.2023 at Exh. C-15, copy of reaudit report for 01.04.2011 to 31.03.2012 at Exh. C-16, copy of enquiry report conducted as per Section 83 of the Maharashtra Co-operative Societies Act, 1960 by the District Registrar and copy of enquiry report in respect of enquiry conducted by the enquiry officer dated 09.01.2017. The applicant has also admitted in his cross examination that the allegations for misappropriation of amount of Rs. 4,71,399/- are made against him.

22. Considering the evidence available on record, it appears that the allegations of misappropriation are made and prosecution to that effect has been initiated which is pending before the criminal court. It is further seen from the record that the non-applicant society in its monthly meeting dated 18.10.2020 (Exh. U-

20) have decided to release the benefits of 7th Pay Commission to the employees of the non-applicant society from 01.01.2016 to till 31.12.2020.

23. The Ld. Adv. for the non-applicant has argued that the amount of gratuity has been withheld due to pending criminal prosecution and for the recovery of misappropriated amount. However, the non-applicants have not produced on record copy of any order by which the amount of gratuity has been withheld by the non-applicants. Now, the question is whether the non-applicants can withhold an amount of gratuity for the reason of recovery in view of criminal prosecution pending against the applicant. The Ld. Adv. for the non-applicants referred the provisions of Section 4 subsection 6 of the Payment of Gratuity Act and submitted that gratuity of an employee can be withheld.

24. The provisions of sub section 6 of section 4 lays down that the gratuity payable to an employee can be forfeited under three circumstances as laid down in clause (a) and (b). If the services of an employee who has been terminated for any act willful omission or negligence causing loss or damage to the property of the employer, then the gratuity shall be forfeited to the extent of damage or loss caused. Further, in case of riotous or disorderly conduct or any other act of violence as well as any offence of moral turpitude committed by the employee during the course of employment, his gratuity can be wholly or partially forfeited if his

services have been terminated. It is seen from the evidence on record that applicant has retired from service after attaining age of superannuation. This fact shows that the services of the employee has not been terminated, therefore, the provisions of sub section will not attract in the present case.

25. The criminal prosecution is pending against the accused, but it may take years together for the disposal of the said matter. Then question may arise, whether it is permissible for the non-applicant to withheld payment of gratuity till the decision of the said matter. The non-applicant had option to conduct inquiry and by following procedure to fix the liability of the applicant and to recover the same in terms of sub section 6 of section 4 of P.G.Act. However, the record before this Court makes it clear that such procedure is not followed. It was also must for the non-applicants to pass positive order to withheld the amount of gratuity. It is true that allegations of misappropriation are made against the applicant and criminal prosecution arising out of the said allegation is also pending but for the said reason it will not permissible to withheld gratuity amount for unending period that too without passing order of putting on hold on the said amount. In absence of order passed by the employer to withhold gratuity amount, it cannot be said that the non-applicant can withheld such amount of gratuity. If any order is passed by the criminal Court against the applicant in future for recovery of the alleged misappropriated amount, the non-applicant can follow recourse of

law for recovery of the same. However, it is not just and proper to withheld amount without passing order to that effect or without conducting enquiry in to the allegations of misappropriation at the instance of employer. As such, the act of the non-applicants withholding gratuity amount without following procedure and without passing order to that effect is not justified in the eyes of law. As such, the applicant is entitled for gratuity amount.

26. So far calculation of gratuity amount is concern, the applicant served for 21 years and his last pay was 40400/- as there is not dispute regarding last pay. Thus, considering the last pay of the applicant equation would $40400 / 26 \times 15 \times 21 = 4,89,461/-$. Therefore, the applicant is entitled to get gratuity of Rs. 4,89,461. So far interest on the gratuity amount is concern, the applicant has claimed interest at the rate of 12 % but the applicant would be entitled to get interest at the rate of 10 % per annum as per rate fixed by the Central Government on long term deposits from 01/07/2020 to till realization of the whole amount. Hence, following order is passed.

O R D E R

01. The application is partly allowed.
02. Non applicants are directed to pay sum of Rs. 4,89,461/- (Rs. Four Lakhs Eighty Nine Thousand Four Hundred Sixty One Only) to the applicant

with interest at the rate 10 % per annum from the date i.e 01.07.2020 to till realization of the whole amount.

03 Both parties to bear their own Costs.

Date: 20.03.2026
Place: Chandrapur

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

Argued on	:	20.03.2026
Direct Typed on	:	20.03.2026
Pronounced on	:	20.03.2026
Checked and signed on	:	23.03.2026