MHIC010014242022

Presented on : 28-09-2022
Registered on : 10-10-2022
Decided on : 15-03-2023
Duration : 0Y- 5M-18D
Exhibit : O-1

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

APPEAL (PGA) NO. 876 OF 2022
IN
APPLICATION (PGA) NO. 886 OF 2021

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

VERSUS

Respondent : **Michael Sebastian Rego,**
Address : Sunrise CHS, Room No.3,
Edward Chawl, Near St. Roque Kolovery
Village, Kalina, Santacruz(E) – 400 098.

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

APPEARANCES :
Shri.G.R.Naik, Learned Advocate for the Appellant.
Shri.R.P.Gajinkar, 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 15.03.2023)

1. Being aggrieved and dissatisfied with the impugned judgment and order passed on 08.04.2022 in Application(PGA) No.886/2021 by the Learned 10th Labour Court, Mumbai cum the Controlling Authority, under the Payment of Gratuity Act, 1972, thereby the application under Section 4(1) of the Payment of Gratuity Act, 1972 read with Rule 10 of the Payment of Gratuity (Maharashtra) Rules, 1972 of the respondent-employee has been partly allowed and it is directed to the appellant-employer to pay simple interest @ 10% p.a. on the gratuity amount of Rs.17,53,844/- for the period from 02.06.2019 to 07.08.2021 to the respondent-employee, the appellant-employer has preferred the present appeal.

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 before the Learned 10th Labour Court, Mumbai cum the Controlling Authority, under the Act, 1972.

3. The respondent submitted in the application that he was serving as a Senior Mechanic in Engineering Department, BEST Undertaking of the appellant for the period from 01.08.1981 to 01.06.2019. He did 38 years service with the appellant and

superannuated with effect from 01.06.2019. Accordingly, there was and is relation between them as employer and employee. There is provision of the law that the employer shall pay the gratuity amount to the employees after they superannuated. Apart from this, there is special gratuity scheme of the appellant and agreement between the appellant and recognised Union of the employees that the appellant will pay the gratuity amount to the employees, after they superannuated.

4. The respondent submitted that accordingly he was entitled to get the gratuity amount of Rs.17,53,844/- from his employer, the appellant. The appellant should have paid the gratuity amount to him within 30 days from the date it becomes payable or from the date of his retirement in view of provision of the law. But the appellant did not pay the gratuity amount to him within period specified even though he applied in prescribed form to the appellant thereof. However, the appellant on 07.08.2021 paid the said gratuity amount. Thus, the appellant the delayed payment of the gratuity. There is provision of the law that if the delayed payment of the gratuity amount then the employer is bound to pay simple interest on the gratuity amount for the period of delayed payment of the gratuity. The appellant only paid the gratuity amount to him and not paid interest on that amount for the period of delayed payment of the gratuity. Therefore, he is entitled to get simple interest on the gratuity amount from the date it becomes payable till actual realization of it from the appellant.

5. The respondent submitted that the appellant did not pay

simple interest on the gratuity amount for the period of delayed payment of the gratuity and so he compelled to file the application before the Learned 10th Labour Court, Mumbai cum the Controlling Authority. Accordingly, he filed the application and prayed that to give directions to the appellant to pay simple interest @18% p.a. on the amount of gratuity for the delayed period from 02.06.2019 to 07.08.2021 to him. Furthermore, to give directions to the appellant to pay penalty due to the delayed payment of the gratuity and also give a cost of the application to him. Thus, his the said application may kindly be allowed as prayed.

6. 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 38 years as Senior Mechanic in Engineering Department in BEST Undertaking of the appellant. He superannuated from the service of the appellant with effect from 01.06.2019. The appellant as per the rules and special gratuity scheme of the appellant on 07.08.2021 paid the gratuity amount of Rs.17,53,844/- to the respondent.

7. The appellant submitted that there are the gratuity rules of the appellant. There is special gratuity scheme of the appellant. Furthermore, there is agreement between the appellant and recognised Union of the employees regarding the gratuity. The appellant pay more the gratuity amount to the employees than the

amount fixed by the Act in view of special gratuity scheme of the appellant, the gratuity rules of the appellant and the agreement between the appellant and recognised Union of the employees. The appellant paid more the gratuity amount than fixed by the Act to the respondent. Therefore, there is no need to pay interest on the gratuity amount to the respondent due to the delayed payment of the gratuity. Similarly, there is no need to pay penalty due to the delayed payment of the gratuity and cost of the application to the respondent.

8. The appellant submitted that, the appellant is under financial crisis and is under heavy loss in BEST Undertaking. Accordingly, it is difficult to the appellant to pay the payment to the employees and runs the said BEST Undertaking. In view of this situation the appellant cannot pay interest to the respondent as claimed on the gratuity amount for the alleged period by him as well as the appellant cannot pay penalty as claimed by the respondent due to the delayed payment of the gratuity and cost of the application to the respondent.

9. The appellant submitted that the appellant paid the gratuity amount to the respondent as per the gratuity rules and special gratuity scheme of the appellant and agreement between the appellant and recognised Union of the employees. In view of provision of special gratuity scheme of the appellant, the application of the respondent before the Learned Controlling Authority is not maintainable. The demand of the respondent is against provisions of the Act and Rules. By that provision of special gratuity scheme of

the appellant, provisions of the Act and Rules are not applicable to the respondent. Therefore, the application of the respondent is not maintainable before the Learned Controlling Authority and this Authority has not empowered and jurisdiction to entertain and try it. Thus, the application of the respondent may kindly be rejected.

10. In view of rival pleadings of both the sides the Learned Controlling Authority framed Issues Exh.O-3. 1) Whether the respondent is entitled to get simple interest for the alleged period of delayed payment of the gratuity and penalty on the gratuity amount from the appellant due to the appellant made the belated payment of the gratuity to the respondent as well as the respondent is entitled to get a cost of the application from the appellant ? and 2) What Order ?

11. The appellant and the respondent jointly filed pursis Exh.CU-1 and thereby submitted that they do not want to adduce oral evidence. The respondent filed documentary evidence alongwith list of documents Exh.U-2, as well as the appellant filed documentary evidence alongwith list of documents Exh.C-3. Thus, both the parties did not adduce oral evidence and relied on the documentary evidence only. According to them, the documentary evidence is sufficient to decide the matter on merits and in the documentary evidence and their pleadings on oath respectively, their case is covered.

12. The Learned Controlling Authority heard both the sides. Besides, gone through the documentary evidence placed on record

by both the sides including their pleadings and arguments, as well as cited case laws if any. Thereafter formed opinion and it is held that in view of the documentary evidence of both the sides it is admitted fact that the respondent was serving as a Senior Mechanic in Engineering Department in BEST Undertaking of the appellant. The respondent did a service with the appellant for 38 years for the period from 01.08.1981 to 01.06.2019. The respondent superannuated from the service of the appellant with effect from 01.06.2019.

13. The Learned Controlling Authority it is held that there is provision of the law that the employer shall pay the gratuity amount to the employees, after they superannuated. Furthermore, it is admitted fact that there is agreement between the appellant and recognised Union of the employees about the gratuity amount that the employees are entitled to get the gratuity amount from the appellant. There are the gratuity rules of the appellant. There is special gratuity scheme of the appellant. The respondent did a service with the appellant and superannuated. Accordingly, the respondent was entitled to get the gratuity amount from the appellant after superannuated. The appellant as per the agreement, the gratuity rules, special gratuity scheme of the appellant and provisions of the Act and Rules, on 07.08.2021 paid Rs.17,53,844/- as the gratuity amount to the respondent, which amount is agreed to both the sides and it is calculated as per special gratuity scheme.

14. The Learned Controlling Authority it is held that there is no dispute about the quantum of the gratuity amount between the

parties, but dispute is about to pay simple interest for the period of delayed payment of the gratuity amount. The respondent superannuated with effect from 01.06.2019 from the service of the appellant. The appellant on 07.08.2021 paid the gratuity amount to the respondent. From this fact it appears that from 02.06.2019 to 07.08.2021 the appellant did not pay the gratuity amount to the respondent. 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 01.06.2019. However, the appellant did not pay the gratuity amount within time which is fixed by the Act to the respondent. Accordingly, the appellant made the belated payment of the gratuity to the respondent.

15. The Learned Controlling Authority it is held that Section 7(3-A) of the Act says that if the employer had not paid the gratuity amount within specified period means within 30 days to the employee from the date of his 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 amount. The appellant made the belated payment of the gratuity to the respondent and it appears from the evidence came on record. The appellant had not obtained permission in writing from the Controlling Authority to make the delayed payment of the gratuity amount to the respondent. Therefore, in view of provisions of the Act and Rules the appellant is bound to pay simple interest on the gratuity amount for the period of delayed payment of the gratuity. But the appellant paid the gratuity amount only and did not pay

interest on the gratuity amount for the delayed period from 02.06.2019 till 07.08.2021 to the respondent even though the appellant made the belated payment of the gratuity to the respondent. Thus, the respondent is entitled to get simple interest for the period of delayed payment of the gratuity amount from the appellant.

16. The Learned Controlling Authority it is held that 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 specified period. This Notification is fixed the rate of interest upto 10% p.a. 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 of the Central Government about rate of interest, and the appellant did not paid the gratuity amount within the specified period to the respondent and made the belated payment of the gratuity to the respondent, the appellant is liable to pay simple interest @ 10% p.a. on the gratuity amount Rs.17,53,844/- for the period from 02.06.2019 to 07.08.2021 to the respondent.

17. The Learned Controlling Authority it is held that in the Judgment in the case of **V. Vijaykumar Vs. Managing Director, TSRTC, Writ Petition No. 11669 of 2021**, wherein Hon'ble Madras High Court has held that the Central Government in Notification dated 01.10.1987 under Section 7(3-A) of the Act suggests interest

@ 10% per annum on the gratuity amount but that rate of interest 10% p.a. is higher side. The Court taking into consideration prevailing rate of interest of the Bank and present situation can award less rate of interest than 10%. p.a. The Learned Controlling Authority after going through the ratio laid down in this Judgment it is opined that the Act is enacted for the benefits and welfare of the employees. The respondent got the delayed payment of the gratuity. Section (3-A) of the Act has given discretion to award rate of interest out of quantum of rate of interest mentioned in the above referred Notification of the Central Government. Therefore, considering the ratio laid down in this Judgment and the discretion given to the Controlling Authority by the Act, according to him, the respondent got the delayed payment of the gratuity and the appellant used the said gratuity amount of the respondent for the alleged period, 10% rate of interest per annum is just and proper to award the respondent on the gratuity amount for the period of delayed payment of the gratuity.

18. The Learned Controlling Authority it is held that considering provisions of the Act and Rules, taking into consideration the rate of interest mentioned in Notification of the Central Government as referred above and the respondent got the delayed payment of the gratuity, who is entitled to get interest @ 10% p.a. on the said gratuity amount for the alleged period from the appellant and the appellant is liable to pay the interest at the such rate on the gratuity amount for the alleged period to the respondent. The Learned Controlling Authority it is further opined that the respondent is not entitled to get interest @ 18% p.a. on the said

gratuity amount for the alleged period from the appellant because the Controlling Authority cannot grant interest at the rate more than 10% p.a. on the gratuity amount in view of Notification dated 01.10.1987 of the Central Government. Thus, the demand of the respondent to award 18% interest on the gratuity amount for the delayed payment of it, is refused.

19. The Learned Controlling Authority it is held that considering provisions of the Act and Rules and the matter is pertaining to the gratuity, provision of special gratuity scheme of the appellant is immaterial about the jurisdiction and maintainability etc. And so, the application of the respondent is maintainable before the Controlling Authority and the Controlling Authority has empowered and jurisdiction to entertain and try it. The Learned Controlling Authority has recorded the above mentioned findings and reasonings and answered the issue accordingly and delivered the impugned judgment and passed the impugned order as stated earlier by allowing partly the application of the respondent. Accordingly, the appellant felt aggrieved with the said impugned judgment and order and has filed the present appeal.

20. The appellant has given grounds in the appeal memo thereby assailed to the impugned judgment and order of the Learned Controlling Authority regarding granted the alleged quantum of rate of interest on the gratuity amount in favour of the respondent for the alleged period of delayed payment of the gratuity. The appellant has mentioned its case in the appeal memo as that of pleading, which was made in the written statement before the Learned

Controlling Authority. The appellant submitted that in view of the case of the appellant, evidence came on record, provisions of the Act and Rule and the ratio laid down in the judgments cited by the appellant the impugned judgment and order of the Learned Controlling Authority cannot be sustained in the eyes of law. Hence, the said impugned judgment and order may kindly be quashed and set aside and the application of the respondent may kindly be rejected by allowing the appeal of the appellant.

21. The respondent appeared in the appeal and made submission as that of pleadings in the application before the Learned Controlling Authority. The respondent submitted that the impugned judgment and order of the Learned Controlling Authority is correct and proper in view of evidence came on record, provisions of the law, the Act and Rules, Notification dated 01.10.1987 of the Central Government and the ratio laid down in the judgments cited by the respondent. Thus, the impugned judgment and order of the Learned Controlling Authority may kindly be confirmed by dismissing the appeal of the appellant.

22. I heard both the sides. I have gone through Record and Proceedings, argument of both the sides, including the impugned judgment and order passed by the Learned Controlling Authority and documentary evidence placed on record by 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 application of the respondent is maintainable before the Learned Controlling Authority and the said Authority has empowered and jurisdiction to entertain and try the said application ?	Yes.
2)	Whether the respondent is entitled to get simple interest on the gratuity amount for the alleged period of delayed payment of the gratuity amount from the appellant ? If yes, what is the rate of interest ?	Yes @ 10% p.a.
3)	Whether the impugned judgment and order passed by the Learned Controlling Authority needs to be interfered by the Appellant Authority ?	No.
4)	What order ?	As per final order.

REASONS

As to Points No.1 to 4

23. The evidence on above points is common and they are related to each other, therefore they are taken up together for decision.

24. Learned Advocate for the appellant vehemently argued that in view of provision of special gratuity scheme of the appellant, the gratuity rules of the appellant and agreement between the appellant and recognised Union of the employees, the application of the respondent before the Learned Controlling Authority is not maintainable and the said Authority has not empowered and jurisdiction to entertain and try it. Thus, on the basis of this ground

the application of the respondent may kindly be rejected. Learned Advocate for the respondent submitted that considering purpose and object of the Act, the application of the respondent is maintainable before the Learned Controlling Authority and the said Authority has empowered and jurisdiction to entertain and try the said application.

25. 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 a 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.

26. It is pertinent to note that the appellant runs the

establishment-BEST Undertaking. It is public Undertaking of the local authority Municipal Corporation, Mumbai constituted under the Mumbai Municipal Corporation Act, 1888. The appellant is employer of the respondent and the respondent is employee of the appellant. The appellant's BEST Undertaking is the establishment under the control of the local authority, Mumbai Municipal Corporation. The appellant is the establishment. 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.

27. Considering provisions of Sections 1 and 2 of the Act, as discussed above, object and purpose of the Act which is to provide for a scheme for the payment of gratuity to employees engaged in establishment and for matters connected therewith or incidental thereto and my above discussion about the facts, I am of the view that the appellant is the establishment and employer of the respondent. The appellant comes in one of the three categories specified in Section 1(3) of the Act. Accordingly, provisions of the Act are applicable to the case of the respondent. Thus, the application of the respondent under provisions of the Act is maintainable before the Learned Controlling Authority and the said Authority has empowered and jurisdiction to entertain and try it. Even though there are the gratuity rules and special gratuity scheme of the appellant therein may have agreed that the employee shall not knock the door of the Court of the Controlling Authority against the appellant–employer to demand the gratuity amount and interest

on it etc. from the appellant. In view of above discussion the findings and reasonings of the Learned Controlling Authority that the Authority has empowered and jurisdiction to entertain and try the application of the respondent and the application of the respondent is maintainable before the Authority, is found correct and proper. Hence, I do not agree with the argument of Learned Advocate of the appellant.

28. Learned Advocate for the appellant very earnestly 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 of the appellant, special gratuity scheme of the appellant and agreement between the appellant and recognised Union of the employees. In view of this, there is no need to grant simple interest on the gratuity amount for the alleged period of delayed payment of the gratuity amount to the respondent even though the appellant made the delayed payment of the gratuity to the respondent. Furthermore, in view of evidence came on record, provisions of the Act and Rules, the grounds mentioned in the appeal memo and pleadings in the reply of the appellant and above argument, the impugned judgment and order of the Learned Controlling Authority cannot be sustained in the eyes of law. Thus, it may kindly be quashed and set aside and the application of the respondent may kindly be rejected by allowing the appeal of the appellant.

29. Learned Advocate for the appellant besides above submissions 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 the gratuity amount to the respondent then interest @ 6% p.a. on the gratuity amount for the said alleged period may be granted in favour of the respondent taking into consideration the ratio laid down in the judgments cited by the appellant or interest at the rate more than 7.1% p.a. on the gratuity amount for the said alleged period may not be granted in favour of the respondent, taking into consideration Notification dated 14.07.2022 of the Central Government.

30. Learned Advocate for the respondent vehemently submitted that the impugned judgment and order passed by the Learned Controlling Authority is in view of provisions of the law, the Act and Rules, evidence came on record and Notification dated 01.10.1987 of the Central Government. The Learned Controlling Authority has granted quantum of interest @ 10% p.a. on the gratuity amount for the period of delayed payment of the gratuity amount to the respondent as per Notification dated 01.10.1987 of the Central Government. That quantum of interest is not exceeding, which is mentioned in the said Notification and Notification is under provision of the Act. That quantum of interest is not awarded against provision of the law and so the said granted quantum of interest is just and proper. Notification dated 14.07.2022 of the Central Government is not applicable to the case of the appellant because it is made under the Special Deposit Scheme for Non Government Provident, superannuation and gratuity funds. It is not issued under Section 7(3-A) of the Act. Notification dated

01.10.1987 of the Central Government is applicable to the case in the hand, which is issued under Section 7(3-A) of the Act. Hence, the impugned judgment and order of the Learned Controlling Authority may kindly be upheld by dismissing the appeal of the appellant.

31. 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, evidence brought on record by both the sides, provisions of the law, the Act and Rules and Notifications of the Central Government. By which it is made clear what is case of both the sides and how the Learned Controlling Authority awarded interest @ 10% p.a. on the gratuity amount for the period of delayed payment of the gratuity to the respondent and passed the impugned judgment and order. 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 and provisions of the law to consider that as to whether the findings and reasonings recorded by the Learned Controlling Authority for passing the impugned judgment and order, is correct and proper and what is decision of the appeal.

32. Section 7 of the Act is dealt with determination of the amount of gratuity. 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 a 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. This is provision of the law to pay the gratuity amount and simple interest on the gratuity amount due to the employer made belated payment of the gratuity to the employee.

33. Learned Advocate for the appellant has relied on Notification of the Central Government dated 14.07.2022 of Department of Economic Affairs F.No.5(4)-B(PD)/2021, which is that 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. This is Notification of the Central Government about deposit amount under the Special Deposit Scheme for Non Government Provident, superannuation and gratuity funds and also about rate of interest on these kinds of amount.

34. Learned Advocate for the appellant has relied on Notification of the Central Government dated 30.06.1975 of Department of Economic Affairs F.No.16(1)-PD/75, which is that the Government of India have introduced a Special Deposit Scheme for the benefit of Non Government Provident, superannuation and gratuity funds. The scheme shall come into force from 01.07.1975. The interest will be allowed on the summations of the monthly balances of the deposits @ 10% p.a. By this Notification the Central Government is made clear about rate of interest on amount under the Special Deposit Scheme for Non Government Provident, superannuation and gratuity funds. Above both Notifications of the Central Government are about deposit amount under the Special Deposit Scheme for Non Government Provident, superannuation and gratuity funds and also about rate of interest on these kinds of amount. According to Learned Advocate for the appellant, this rate of interest @ 10% p.a. as per Notification dated 30.06.1975 reduced into 7.1% p.a. as per Notification dated 14.07.2022 regarding rate of interest on the belated payment of the gratuity and so interest rate 7.1 % p.a. may be awarded to the respondent on the gratuity amount for the period of delayed payment of the gratuity.

35. Learned Advocate for the respondent has relied on the Notification No.S.O.874(E) dated 01.10.1987 of the Central Government under Section 7(3-A) of the Act, which is about rate of interest specified. It is that 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. This Notification is come into force from 01.10.1987. By way of this Notification the Central Government it is made clear about simple rate of interest on the belated payment of the gratuity and it is issued under Section 7(3-A) of the Act. It is applicable to award interest, on the belated payment of the gratuity to the employees and in view of this Notification simple interest rate upto @ 10% p.a. is to be awarded on the belated payment of the gratuity.

36. In view of Sections 7, 7(3) and 7(3-A) of the Act, it is made clear that if any amount of the gratuity, which is payable under Section 7 is not paid by the employer to the employee within the specified period, means within 30 days from the date of retirement of the employee or it becomes payable to the employee under Sub-Section(3), the employer is liable to pay interest on the gratuity amount 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, which rate of interest mentioned in Notification dated 01.10.1987 of the Central Government but on those delayed payment, where the employer has obtained permission in writing from the Controlling Authority for the delayed payment, in that case, no such interest shall be payable to the employee. If the employer was not obtained such permission in writing from the Controlling Authority, and therefore Sub-Section (3-A) and its term would be squarely applicable to pay the simple

interest on the gratuity amount when the delayed payment of it.

37. If the employer did not pay the amount of gratuity to the employee within 30 days from the date it becomes payable to the employee to whom the gratuity is payable as per Section 7(3) of the Act, then the employer as per Section 7(3-A) of the Act shall pay simple interest not exceeding @ 10% p.a. on the gratuity amount as per Notification dated 01.10.1987 of the Central Government. However, if the employer has obtained permission in writing from the Controlling Authority for the delayed payment then there is no need to pay the interest on the gratuity amount due to the delayed payment.

38. If the delay is in the payment due to the fault of the employee, then the employer no needs to pay interest on the gratuity amount. As per Section 7(3-A) of the Act there is given discretion to the Controlling Authority that the rate of interest on the delayed payment of the gratuity amount is to be awarded not exceeding the rate @ 10% p.a. as notified by the Central Government in Notification dated 01.10.1987. Considering the provision of discretion, which mentioned in Sub-Section (3-A) of the Act the Controlling Authority can grant interest from the rate as the rate of 1% to 10% on the delayed payment of the gratuity, if the delayed payment is due to the fault of the employer, but cannot grant interest more than 10% p.a., which rate of interest mentioned in Notification dated 01.10.1987 of the Central Government. This rate of interest is for repayment of long term deposits and interest at the such rate is to be awarded on the delayed payment of the

gratuity. I have mentioned above provisions of the Act and Rules, as well as Notifications of the Central Government.

39. In this matter there is limited issue about the alleged quantum of interest regarding the delayed payment of the gratuity. However, the matter is to be decided in view of provisions of the law by giving findings and reasonings to give justice to the parties. To make complete justice and adjudicate the matter in four corners of the law, I have to discuss the facts of the case and evidence came on record and answer the framed Points for decision of the appeal.

40. Notification No.S.O.874(E) dated 01.10.1987 of the Central Government is issued under Section 7(3) of the Act. It is for the rate of interest as 10% p.a. on the delayed payment of the gratuity. This Notification is specific for the rate of 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 to pay the rate of interest on the delayed payment of the gratuity. Notification No.F.No.5(4)-B(PD)/2021 dated 14.07.2022 of the Central Government of Department of Economic Affairs is specific for the rate of interest regarding the deposits made under the Special Deposit Scheme for Non Government Provident, superannuation and gratuity funds. It is in force from 01.07.2022. It is not issued under Section 7(3-A) of the Act. Meaning of both the above Notifications is cleared about the rate of interest. It does mean as per Notification dated 01.10.1987 rate of interest applicable on the delayed payment of the gratuity and as per Notification dated 14.07.2022 rate of interest applicable on Special Deposit Scheme for

Non Government Provident, superannuation and gratuity funds. Furthermore, both the Notifications are found different and are under different provisions.

41. Considering Notifications dated 01.10.1987 and 14.07.2022 of the Central Government it can be said that both Notifications are under different provisions and for different purposes about rate of interest on different kinds of amount. Notification dated 01.10.1987 of the Central Government is applicable to the rate of interest on the delayed payment of gratuity and Notification dated 14.07.2022 of the Central Government is applicable to the rate of interest on Special Deposit Scheme for Non Government Provident, superannuation and gratuity funds. Accordingly, Notification dated 01.10.1987 is applicable in the case in the hand and Notification dated 14.07.2022 is not applicable in the case in the hand. Thus, I do not agree with the argument of Learned Advocate for the appellant that Notification dated 14.07.2022 is applicable in the present case. In view of above discussed nature and purpose of Notifications of the Central Government, interest at the rate which is mentioned in Notification dated 14.07.2022 cannot be awarded on the delayed payment of the gratuity to the respondent. Thus, the taken buttress of Notification dated 14.07.2022 by the appellant is not helpful to its case.

42. I do agree with the argument of Learned Advocate of the respondent that Notification dated 01.10.1987 is applicable in the present case. Therefore, interest at the rate which is mentioned in Notification dated 01.10.1987 is to be awarded on the delayed

payment of the gratuity to the respondent. Hence, in view of above discussion I am not inclined to award interest @ 7.1% p.a. on the gratuity amount to the respondent for the alleged period of delayed payment of the gratuity. However, I apply Notification dated 01.10.1987 to award rate of interest on the gratuity amount to the respondent for the period of delayed payment of the gratuity.

43. 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. However, according to me in this Judgment Hon'ble Apex Court has not laid down the specific ratio that the employee is only entitled to get interest @ 6% p.a. on the delayed payment of the gratuity. Hon'ble Uttarkhand High Court has reduced the rate of interest awarded from 10% to 6% p.a. and so Hon'ble Apex Court has held that no case for interference is made out. Thus, this case law is not helpful to the case of the appellant.

44. He has further relied on the judgment in the case of **S.D. Dwivedi(Dr.) V/s. State of Chhattisgarh reported in 2018 II CLR 240,** wherein Hon'ble Chhattisgarh High Court has held that the employer is liable to pay the gratuity amount with interest @ 8% p.a. from the date of entitlement till the date of actual payment due to the delayed payment of the gratuity.

45. 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 the gratuity.

46. Learned Advocate for the respondent has relied on the judgment in the case of **H. Gangahanume Gowda V/s. Karnataka Agro Industries Corporation Ltd. reported in (2003) 3 SCC 40,** wherein Hon'ble Apex Court has held that the employee is entitled to get interest @ 10% p.a. on the gratuity amount from the employer for the belated payment of the gratuity from the date it became payable till the date of payment of the gratuity amount.

47. He has further relied on the judgment in the case of **Maniben Maganbhai Bhariya V/s. District Development Officer, Dahod reported in 2022 Live Law (SC) 408,** 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.

48. He has further relied on the judgment in the case of **Kerala State Cashew V/s. N. Asokan delivered on 27.07.2009 by Hon'ble Apex Court in Civil Appeal No. 5118/2009 SPL(C)15635**

of 2008, wherein Hon'ble Apex Court has held that on a plain reading of provision of Section 7(3-A) of the Act it is absolutely clear that if any amount of gratuity, which is payable under Section 7 is not paid to the employee by the employer within the period specified in Sub-Section (3), the employer is liable to pay interest 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 terms deposits but on those delayed payment, where the employer has obtained permission in writing from the Controlling Authority for the delayed payment, in that case no such interest shall be payable to the employee. If the employer was not obtained such permission in writing from the Controlling Authority to pay the belated payment of the gratuity, and therefore provisions of Sub-Section (3-A) and its term would be squarely applicable. Therefore, the employer is liable to pay interest on the belated payment of the gratuity amount at the rate specified in Section 7(3-A) of the Act to the employee.

49. He has further relied on the 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 interest @ 10% p.a. on the gratuity amount from the employer for the belated payment of gratuity from the date of his entitlement till the date of payment.

50. 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 interest @ 10% p.a. on the gratuity amount from the employer for the belated payment of gratuity from the date of his entitlement till the date of payment.

51. Learned Advocate for the appellant has relied on above mentioned 3 judgments; one is of Hon'ble Apex Court and 2 are of Hon'ble High Courts, one is of Chhattisgarh High Court and another is of Gauhati High Court, wherein it has held that the employee is entitled to get simple interest @ 6% or 8% p.a. on the gratuity amount from the employer for the belated payment of the gratuity.

52. Learned Advocate for the respondent has relied on above mentioned 5 judgments; 4 are of Hon'ble Apex and 1 is of Hon'ble Bombay High Court, wherein it 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.

53. It is specifically to be noted that in view of above 4 judgments of Hon'ble Apex Court cited by Learned Advocate for the respondent, Hon'ble Apex Court has in majority laid down the ratio or took the view that the employee is entitled to get simple interest @ 10% p.a. on the gratuity amount from the employer for the belated payment of the gratuity and such ratio has laid down by

Hon'ble Bombay High Court in above 1 judgment cited by Learned Advocate for the respondent.

54. Considering the ratio laid down by Hon'ble Apex Court in above 4 judgments and the ratio laid down by Hon'ble Bombay High Court in above 1 judgment cited by Learned Advocate for the respondent, the ratio laid down by Hon'ble Apex Court in above 1 judgment and the ratio laid down by Hon'ble High Court of Chhattisgarh and Gauhati in above 2 judgments cited by Learned Advocate for the appellant, the ratio laid down in these 3 judgments cited by Learned Advocate for the appellant no need to take into consideration, to apply to the case of the appellant because Hon'ble Apex Court in above 4 judgments and Hon'ble Bombay in above 1 judgment cited by Learned Advocate for the respondent in majority has laid down the ratio that 10% interest per annum on the gratuity amount for the delayed payment of the gratuity is to be awarded.

55. Furthermore, view taken by Hon'ble Apex Court in the judgment in the case of **Maniben Maganbhai Bhariya V/s. District Development Officer, Dahod** (supra), **Jagdish Prasad Saini V/s. State of Rajasthan** (supra) and view taken by Hon'ble Bombay High Court in the judgment in the case of **Chairman and Managing Director, Bank of Maharashtra, Pune V/s. Shri. Kishore Shankarrao Khadatkar, Nagpur** (supra) is recent view than the view taken by Hon'ble Apex Court in the judgment in the case of **G.B.Pant University of Agricultural and Technology V/s. Damodar Mathpal** (supra) and view taken by Hon'ble Chhattisgarh High Court in the judgment in the case of **S.D. Dwivedi(Dr.) V/s.**

State of Chhattisgarh and view taken by Hon'ble Gauhati High Court in the judgment in the case of **Babul Ranjan Singha V/s. Tripura Road Transport Corporation.** Thus I follow latest view of Hon'ble Apex Court and Bombay High Court.

56. In view of above discussion on the cited case laws by both the sides I follow the ratio laid down or view taken in above 4 judgments of Hon'ble Apex Court and in 1 judgment of Hon'ble Bombay High Court cited by Learned Advocate for the respondent. Thus, simple interest @ 10% p.a. is to be awarded on the gratuity amount for the alleged period of delayed payment of the gratuity to the respondent.

57. It is specifically to be noted that the appellant had not obtained permission in writing from the Controlling Authority for the belated payment of the gratuity to the respondent. Therefore, interest @ 10% p.a. is to be awarded on the gratuity amount to the respondent from the appellant for the alleged period of delayed payment of the gratuity amount.

58. Learned Advocate for the appellant has relied on the judgment in the case of **Manager, Ashoka Cotsyn V/s. Bharatbhai Arvindlal Shah reported in 2015 II CLR 203**, wherein Hon'ble Gujarat High Court has held that the employer is liable to pay interest @ 8% p.a. on the amount of retrenchment compensation to the employee, but the employer is not liable to pay interest on the gratuity amount when the employee had refused to accept it when offered and thereby delay in payment of the gratuity is due to the

fault by the employee. It is pertinent to note that the case in the hand it is not case of the appellant that the respondent refused to accept the gratuity amount when it was offered to the respondent by the appellant. This judgment is on the point of interest on the amount of retrenchment compensation.

59. Learned Advocate for the respondent has relied on the judgment in the case of **Mahatma Phule Krishi Vidyapeeth Rahuri V/s. Ahmednagar Zilla Shet Mazoor Union reported in 2016 II CLR 294,** wherein Hon'ble Bombay High Court has held that in view of Rule 129-B of the Maharashtra Civil Services (Pension) Rules, 1982, workmen are entitled to interest @ 10% p.a. for the period payment of pension was delayed. This judgment is on the point of interest on payment of pension was delayed.

60. In the above judgment cited by Learned Advocate for the appellant, Hon'ble Gujarat High Court has laid down the ratio that the employer is liable to pay interest @ 8% p.a. on the amount of retrenchment compensation to the employee. In the above Judgment cited by Learned Advocate for the respondent, Hon'ble Bombay High Court has laid down the ratio that in view of Rule 129-B of the Maharashtra Civil Services (Pension) Rules, 1982, workmen are entitled to interest @ 10% p.a. for the period payment of pension was delayed. These judgments are on the point of interest to pay the amount of service benefits. The present matter is about the amount of service benefits means the gratuity was not paid to the respondent within the specified period by the appellant. The taken view by Hon'ble Bombay High Court is later than taken view by

Hon'ble Gujarat High Court. Therefore, I follow the ratio laid down by Hon'ble Bombay High Court in the above cited judgments by he Learned Advocate for the respondent and in view of that ratio, there is required to award interest @ 10% p.a. on the gratuity amount to the respondent due to the appellant made the belated payment of the gratuity.

61. 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. Accordingly, the appellant cannot pay interest to the respondent as claimed on the gratuity amount for the alleged period by him. According to me, the appellant is under financial crisis and is under heavy loss in BEST Undertaking and paid more the gratuity amount to the respondent than the amount fixed by the Act cannot be justifiable reason not to award interest on the gratuity amount for the alleged period of delayed payment of the gratuity amount to the respondent. Because as per Section 7(3) of the Act the employer had not paid the amount of gratuity to the employee within 30 days from the date it becomes payable 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 against provisions of the law.

62. It is admitted fact in view of the documentary evidence came on record from both the sides that the respondent was serving as a Senior Mechanic in Engineering Department, BEST Undertaking of the appellant for the period from 01.08.1981 to 01.06.2019. He did 38 years service with the appellant and superannuated with effect from 01.06.2019. The appellant on 07.08.2021 paid the gratuity amount to the respondent as per special gratuity scheme of the appellant. Therefore, from 02.06.2019 to 07.08.2021 the appellant did not pay the gratuity amount to the respondent. Thus, the appellant the delayed payment of the gratuity to the respondent. 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 01.06.2019. However, the appellant did not pay the gratuity amount within time which is fixed by the Act to the respondent. Accordingly, the appellant made the belated payment of the gratuity to the respondent. The respondent applied in prescribed form to the appellant to pay gratuity amount to him, even though the appellant failed to pay the gratuity amount to the respondent within the period specified.

63. Section 7(3-A) of the Act says that if the employer had not paid the gratuity amount within specified period means within 30 days to the employee from the date of his 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 amount. The appellant made the belated payment of the gratuity to the respondent and it appears from the evidence came on record and pleadings of both the sides. The appellant had not

obtained permission in writing from the Controlling Authority to make the delayed payment of the gratuity amount to the respondent. Therefore, in view of provisions of the Act and Rules the appellant is bound to pay simple interest on the gratuity amount for the delayed period. But the appellant paid the gratuity amount only and did not pay interest on the gratuity amount for the delayed period from 02.06.2019 till 07.08.2021 to the respondent even though the appellant made the belated payment of the gratuity to the respondent. Thus, in view of above discussed provisions of the Act and Rules and facts and circumstances of the case, the respondent is entitled to get simple interest for the period of delayed payment of the gratuity amount from the appellant.

64. 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 specified period. 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 about rate of interest, and the appellant did not paid the gratuity amount within this specified period to the respondent and made the belated payment of the gratuity to the respondent without obtaining permission from the Controlling Authority. Accordingly, the appellant is liable to pay simple interest @ 10% p.a. on the gratuity amount Rs.17,53,844/- for the period from 02.06.2019 to 07.08.2021 to the respondent.

65. The Act is enacted for the benefits and welfare of the employees. The respondent got the delayed payment of the gratuity. Section (3-A) of the Act has given discretion to award rate of interest out of quantum of rate of interest mentioned in Notification dated 01.10.1987 of the Central Government. The respondent did a service for 38 years with the appellant with devotion and honestly and without blame. The respondent contributed period of his 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 sustained mental torture and agony. The respondent got the delayed payment of the gratuity. During this period the appellant used the said amount and thereby got gain. In view of this, 10% rate of interest needs to be awarded on the gratuity amount to the respondent for the period of delayed payment of the gratuity.

66. As per Section 7(3-A) of the Act discretion is given to the Learned Controlling Authority that the said Authority can award interest on the gratuity amount 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 (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.

67. The quantum of rate of interest on the delayed payment

of the gratuity amount is to be awarded, which quantum of rate of interest is to be given for repayment of long term deposits. 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.

68. It appears that the Banks give rate of interest upto 10% on term deposits by way of providing different schemes of term deposits. Generally depositors mentioned above categories or others get interest @ 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. He is senior citizen. He 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, I am of the view that 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 interest on the delayed payment of the gratuity in favour of the respondent.

69. 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, I am of the view that the respondent is entitled to get interest @ 10% p.a. on the gratuity amount for the alleged period of delayed payment of the gratuity from the appellant and the appellant is liable to pay the interest at the such rate on the gratuity amount for the alleged period of delayed payment of the gratuity amount to the respondent. Thus, in view of above discussion, the findings and reasonings recorded by the Learned Controlling Authority for awarding rate of interest on the gratuity amount to the respondent for the alleged period of delayed payment of 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 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.

70. 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 :

O R D E R

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 shall be given to the parties to the appeal.

4. A copy of this judgment shall be sent to the Learned Controlling Authority alongwith R & P.

The judgment is directly dictated on computer and pronounced in the open Court in presence of both the sides on 15.03.2023.

Sd/-

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

Place : Mumbai
Date : 15.03.2023

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	:	15.03.2023
Judgment/order signed by the Presiding Officer on	:	15.03.2023
Judgment / order uploaded on	:	15.03.2023