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**BEFORE SMT. A. C. RAUT, APPELLATE AUTHORITY UNDER
THE PAYMENT OF GRATUITY ACT, 1972 & MEMBER,
INDUSTRIAL COURT, MAHARASHTRA, MUMBAI**

APPEAL (PGA) No.- 890 of 2022
(CNR No. MHIC01 001446 2022)

Mr. I. Velskumar,
C-2, 704, Someshwar Society,
Kambadevi Nagar, 90 Feet Road,
Dharavi, Mumbai - 400 017.
Mb. 9987306922

... **Appellant**
(Ori. Applicant)

- Versus -

Ms. Varsha Mangaram Advani,
Owner/Proprietor,
M/s. Lido Auto Service,
103, A-Block, Prakash Nagar,
Mogal Lane, Matunga, Mahim,
Mumbai - 400 016.

... **Respondent**
(Ori. Opponent)

**In the matter of Appeal u/Sec. 7 (7) of The
Payment of Gratuity Act & Rule 18 of The
Payment of Gratuity (Maharashtra) Rules, 1972.**

Coram :- Smt. A. C. Raut, Member

Appearances :- Adv. Shri. Dinesh B. Rai, for Appellant.
Adv. Shri. S. B. Manikhedkar, for Respondent.

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

(Delivered on :- 11th August, 2026)

1. The Appellant has instituted the present Appeal under Section 7(7) of the Payment of Gratuity Act, 1972 ("the PG Act"), assailing the Order below Exh. C-2 dated 08.07.2022 passed by the Learned Fifth Labour Court, Mumbai, in Application (PGA) No. 398 of 2022. The parties shall hereinafter be referred to by the nomenclature assigned to them before the Learned Labour Court for the sake of convenience.

The Facts of the present case are as under :-

2. The Applicant joined the services of the Opponent in the year 1979 as a Cashier. His services came to an end upon the closure of the Opponent's establishment. Since the Opponent's establishment was covered under the provisions of the Payment of Gratuity Act, 1972 and employed more than ten workmen, the Applicant submitted Form-I dated 22.04.2022 and thereafter filed an application before the Controlling Authority on 19.04.2022. The Opponent appeared and filed its written statement. However, without adjudicating the gratuity claim on merits, the Controlling Authority decided the Opponent's application below Exhibit C-2 by order dated 08.07.2022 and held that, in view of the observations made by the Industrial Court, the provisions of the Payment of Gratuity Act were not applicable to the Opponent's establishment. Accordingly, the

Controlling Authority held that the application filed by the Applicant was not maintainable and disposed of the same on the ground of maintainability. The Controlling Authority decided the matter in a casual and mechanical manner without adjudicating the substantive claim.

3. The Opponent was running its establishment, namely Lido Services, in two shifts and employed more than ten workmen. The Applicant issued a legal notice dated 01.07.2016, calling upon the Opponent to pay his legal dues. However, the Opponent failed to comply with the said notice. Consequently, the Applicant filed Complaint (ULP) No. 232 of 2016 under Items 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971. In the said complaint, the Opponent filed its written statement contending that no employer-employee relationship existed between the Applicant and the Opponent and, therefore, the complaint was not maintainable.

4. That the Industrial Court, while deciding the said complaint, made observations regarding the Applicant's gratuity claim under Items 9 and 10 of Schedule IV, despite having no jurisdiction to adjudicate such a claim. The Industrial Court neither framed any specific issue concerning the gratuity claim nor adjudicated the same. The Payment of Gratuity Act, 1972 is a self-contained Code. Under Section 3 thereof, the Controlling

Authority is vested with the exclusive power and jurisdiction to entertain and decide claims relating to gratuity. Further, Section 14 of the Payment of Gratuity Act gives the Act an overriding effect over all other enactments. Since no specific issue regarding gratuity was framed by the Industrial Court, the parties had no opportunity to address or lead evidence on the said issue. Moreover, the Industrial Court lacked the jurisdiction to adjudicate gratuity claims. Therefore, the observations made by the Industrial Court in paragraph 23 of its judgment dated 23.12.2021, insofar as they relate to gratuity, are without jurisdiction, beyond the scope of the proceedings, and are not binding.

5. The Opponent appeared before the Controlling Authority. However, instead of filing a written statement, the Opponent filed an application seeking rejection of the claim on the ground that it was barred by law. The Controlling Authority, which is vested with the power to adjudicate claims for gratuity under the provisions of the Payment of Gratuity Act, decided the said application summarily, without framing any issues or considering any evidence on record, in a casual and mechanical manner. By its order, the Controlling Authority held that Application (PGA) No. 398 of 2022 was not tenable and maintainable solely on the ground that the Industrial Court had discussed the applicability of the Payment of Gratuity Act in

paragraph 23 of its judgment. The Controlling Authority failed to consider that the Industrial Court had neither the power nor the jurisdiction to decide or adjudicate a claim for gratuity while exercising jurisdiction under Items 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971. On the contrary, it is the Controlling Authority alone that is empowered to entertain, decide, and adjudicate claims relating to gratuity under the provisions of the Payment of Gratuity Act, 1972.

6. It is further submitted that the learned Controlling Authority erred in allowing the application at Exhibit C-2. The learned Controlling Authority failed to appreciate that, under the provisions of the Payment of Gratuity Act, 1972, the Industrial Court has no jurisdiction to entertain, decide, or adjudicate a claim for gratuity under Section 4 of the said Act.

7. The learned Controlling Authority further erred in holding that the Industrial Court was competent to decide the Applicant's claim for gratuity. It failed to appreciate that the observations made by the Industrial Court in paragraph 23 of its judgment were without jurisdiction and, therefore, are non est in the eyes of law and not binding upon the parties or the Controlling Authority.

8. The learned Controlling Authority also failed to appreciate that the Controlling Authority appointed under

Section 3 of the Payment of Gratuity Act is the statutory authority empowered to entertain and adjudicate disputes relating to gratuity in accordance with Section 7 of the Act. By dismissing the Applicant's claim solely on the basis of the observations made by the Industrial Court, the learned Controlling Authority acted contrary to the provisions of the Payment of Gratuity Act and the settled principles of law, thereby passing an erroneous and unsustainable order.

9. Therefore, the Applicant respectfully submits that the impugned order dated 08.07.2022 deserves to be quashed and set aside. It is further prayed that this Hon'ble Court be pleased to hold that Application (PGA) No. 398 of 2022 is maintainable under the provisions of the Payment of Gratuity Act, 1972, and to direct the Controlling Authority to adjudicate and decide the Applicant's original gratuity application on its own merits, in accordance with law.

10. Upon consideration of the grounds raised in the present Appeal and after hearing the learned representatives for the parties, the following points arise for determination. My findings on the said points are recorded hereunder, together with the reasons therefor -

POINTS**FINDINGS**

- | | |
|--|------------------------|
| 1. Whether the learned Controlling Authority was justified in holding that Application (PGA) No. 398 of 2022 was not maintainable on the basis of the observations made by the Industrial Court in paragraph 23 of its judgment dated 23.12.2021 ? | :- In the Negative |
| 2. Whether the impugned order dated 08.07.2022 passed by the learned Controlling Authority is legal, proper, and sustainable in law ? | :- In the Negative |
| 3. What Order? | :- As per final Order. |

:- R E A S O N S :-

11. **As to Points No. 1 to 3** :- The applicant was employed with Lido Auto Services, of which the opponent is the proprietor, and was working as a Cashier. It is the case of the applicant that he filed the present application under Section 4 of the Payment of Gratuity Act, 1972, before the Controlling Authority, seeking payment of gratuity upon termination of his services on account of the closure of the opponent's establishment, after completing 37 years of service.

12. The opponent appeared before the learned Controlling Authority and filed an application at Exh. C-2, seeking rejection of the applicant's claim under Section 4 of the Payment of Gratuity Act, 1972. The learned Controlling Authority decided the said application and summarily rejected the applicant's claim on the ground that the application filed by the applicant was not maintainable in view of the judgment and order passed by the Industrial Court in Complaint (ULP) No. 232 of 2016.

13. In fact, the Payment of Gratuity Act, 1972, is a beneficial piece of social legislation enacted with the object of securing the payment of gratuity to employees upon cessation of their employment. The Act provides a complete statutory mechanism for adjudication of disputes relating to claims for gratuity. The Controlling Authority is entrusted with the duty to determine whether the Act is applicable to the establishment, whether the employee satisfies the statutory requirements, whether gratuity is payable, the quantum of gratuity payable, and any other incidental or consequential dispute arising in relation to the claim for gratuity.

14. In the present case, the record shows that the opponent filed an application challenging the maintainability of the application filed by the applicant. The order passed by the learned Controlling Authority shows that even the reply of the applicant was not taken on record and the application was

decided summarily. In paragraph 2 of the order passed by the learned Controlling Authority, it is mentioned that the learned Counsel for the opponent submitted that the present application was not maintainable in view of the order passed by the Industrial Court. It is further observed in the said paragraph that the learned Counsel for the applicant had not filed a reply and was ready to argue the matter.

15. Therefore, it appears from the record that the learned Controlling Authority, without affording a proper opportunity of hearing to the applicant, decided the application filed by the opponent and summarily rejected the applicant's claim on the ground that the Industrial Court, in Complaint (ULP) No. 232 of 2016, decided on 23.12.2021, had held that the applicant was not entitled to receive gratuity.

16. Therefore, it is necessary to peruse the judgment and order passed by the Industrial Court in the aforesaid Complaint (ULP) No. 232 of 2016. Upon perusal of the said judgment and order dated 23.12.2021, passed in Complaint (ULP) No. 232 of 2016, it appears that, in paragraph 23 at pages 23 and 24, the learned Industrial Court observed as under :-

“The complainant has also claimed the amount of gratuity to the tune of Rs. 1,74,000/-. The question arise whether the Payment of Gratuity Act, 1972 is applicable to

the respondent no. 1 - Outlet. The said Act is applicable to every factory, mine, oilfield, plantation, port and railway company. Also to every shop or establishment in which, ten or more persons are employed and such other establishments in which, ten or more employees are employed as the Central Government may specify in this behalf. The Respondent No.2 - Outlet does not satisfy these conditions. For this reason, the provisions of the Payment of Gratuity Act, 1972 are not applicable”

In the said judgment, by its final order, the learned Industrial Court partly allowed the complaint and declared that Respondent Nos. 1 and 2, i.e., the opponent herein, had engaged in unfair labour practices under Item 9 of Schedule IV of the MRTU & PULP Act. The learned Industrial Court further directed the respondents to cease and desist from engaging in such unfair labour practices. It also directed the respondents to pay closure compensation, the amount towards notice pay, and interest at the rate of 10% per annum, and further directed them to pay costs of Rs. 5,000/- to the applicant.

17. Record further reveals that While deciding the said complaint, the learned Industrial Court considered the following issues :-

Issues

1. Whether the Complainant has proved that he was employee of Respondents No. 1 and 2 ?
2. Whether he has proved that Respondent No. 2 has terminated his services, without following due process of law ?
3. Whether the Complaint is filed within limitation ?
- 3A. Whether this Court has jurisdiction to entertain the Complaint ?
4. Whether the Complainant is entitled for the reliefs sought ?
5. Whether the Complaint is maintainable ?
6. Does the Complainant prove that there is relationship of employee-employer between the Complainant and Respondent Nos. 3 ?

However, the entire record of Complaint (ULP) No. 232 of 2016 does not indicate that any issue was framed with regard to the adjudication of the applicant's claim for gratuity. The record also nowhere reveals that the applicant was afforded an opportunity to establish his claim for payment of gratuity. Admittedly, the complaint contains a reference to the grant of gratuity. However, the same was not adjudicated upon by the learned Industrial Court by framing an appropriate issue or by

affording both parties a proper and effective opportunity to lead evidence and make submissions on the said issue.

18. The order passed by the learned Controlling Authority also does not demonstrate that the learned Controlling Authority considered or dealt with these material aspects before summarily rejecting the applicant's claim. On the contrary, it also appears that, while passing the impugned order, the learned Controlling Authority reproduced Section 1(3) of the Payment of Gratuity Act, 1972. However, in paragraph 7 of the order, the learned Controlling Authority observed that, as per the provisions of the Payment of Gratuity Act, the employment of ten or more persons is necessary for the applicability of the Act and that the said Act applies to every factory, mine, oilfield, plantation, port and railway company. However, the learned Controlling Authority has not recorded any independent finding as to whether the provisions of Section 1(3) of the Payment of Gratuity Act are applicable to the establishment of the opponent or to the case of the applicant, and directly jumped to the conclusion that the Industrial Court has rejected the claim of gratuity, therefore, the application filed by the applicant is not tenable.

19. It is also pertinent to note that the present aspect has been decided on the doctrine of res judicata. However, in order to establish res judicata, it must be shown that :- (i) the matter

was directly and substantially in issue; (ii) the issue was finally decided; (iii) the parties had an opportunity to contest the said issue; and (iv) the earlier Court was competent to decide the said issue. The judgment and order of the Industrial Court shows that the Industrial Court had incidentally decided the issue of payment of gratuity to the applicant without framing any issue, whereas the Competent Authority, under the provisions of Section 4, has the power to determine all aspects relating to the said claim.

20. The question of res judicata is also a mixed question of fact and law, and unless the parties are afforded an opportunity to contest and adjudicate the said issue by a full-fledged trial, the same cannot be decided. However, the learned Controlling Authority, without considering all these aspects and merely after hearing the matter, and that too without the applicant filing a reply, has jumped to the conclusion that the application filed by the applicant is not maintainable. Therefore, in my opinion, the order passed by the learned Controlling Authority is not legal and proper.

21. Hence, from the above discussions, I came to the conclusion that the order passed by the learned Controlling Authority is erroneous and requires interference. In order to decide the claim of the applicant, the matter can be remanded

back. Hence, I answer the points accordingly and proceed to pass the following order :-

:- Order :-

- i) The Appeal is allowed.
- ii) The impugned Order dated 08.07.2022 passed by learned Controlling Authority below Exh. C-2 in Application (PGA) No. 398 of 2022 is hereby quashed and set aside.
- iii) The matter is remanded back to the learned Controlling Authority for fresh consideration and adjudication of the applicant's claim for gratuity, in accordance with law.
- iv) The learned Controlling Authority shall afford proper and sufficient opportunity to both the parties.
- v) The learned Controlling Authority shall decide the application afresh on its own merits, without being influenced by the observations made in the present order.
- iv) Parties to appear before the learned Controlling Authority on 10.09.2026.

- v) No order as to costs.
- vi) A copy of this order be forwarded to the learned Controlling Authority, 5th Labour Court, Mumbai, along with the Record and Proceedings in Application (PGA) No. 398 of 2022, for information and necessary action in accordance with law.

Place :- Mumbai.

(SMT. A. C. Raut),
Appellate Authority under the P. G. Act
& Member, Industrial Court, Mumbai.

Date :- 11.08.2026.

Argued On :- 11.08.2026

Judgment directly dictated on computer :- 11.08.2026

Judgment checked & signed on :- 11.08.2026

Judgment uploaded on CIS :- 11.08.2026

SPC/-