

CNR NO. MHLCO10009392020



Received on : 30/09/2020
Registered on : 06/11/2020
Decided on : 29/06/2026
Duration : Y M D
05 08 30

BEFORE DR. DASTAGIR R. PATHAN, CONTROLLING AUTHORITY
UNDER THE PAYMENT OF GRATUITY ACT & JUDGE,
SIXTH LABOUR COURT, MUMBAI.

APPLICATION (PGA) NO.442/2020.

EXH. NO. .

Mrs. Julie Piyush Mehta,
Age. 45 years, Occu. : Nil
R/o. 1606, Wing A, Samarpan Exotica,
Behind Metro Mall,
Borivali (East), Mumbai - 66.

... Applicant.

vs.

M/s. Rivera International,,
Add. 397-A, 1-B, Shop No.07,
Naaz Cinema Compound,
Dr. Bhadkamkar Marg,
Lamington Road, Mumbai - 04.

... Opponent.

Coram : Dr. Dastagir R. Pathan, Controlling Authority.

Appearance : Advocate Shri Kurian George for applicant.
Advocate Shri. S. S. Hegade for opponent.

:: J U D G M E N T ::
(Decided on the dt. 29/06/2026)

Present application filed by applicant under Sections 04, 07 and 09 of the Payment of Gratuity Act, 1972 (hereinafter referred as 'the P.G. Act') claiming gratuity amount of Rs.4,65,865/-.

02. It is the case of applicant that, she was working as 'Marketing Executive' with opponent since January 2000 and she resigned her job on the dt.31/03/2019, but submitted her resignation

letter on the dt.25/08/2020 through Post. Along with resignation letter, she had sent Form 'T' dtd.25/08/2020 under P. G. Act, but opponent failed to entertain it and pay her the gratuity amount. Hence, she was constrained to file present application. Therefore, she prayed that, she is entitled for gratuity amount for her services of 19 years to the tune of Rs.4,65,865/- from the opponent.

03. The opponent appeared and filed their written statement below Exh.No.C-2 and denied the entire contentions of this application contending that, the opponent is a Proprietorship firm engaged in the business of Distribution & Consultation for Broadcast and other electronic equipments. On the say of applicant's husband, she was appointed as "Assistant Service Representative". The work of applicant was good and diligent. The husband of applicant approached the proprietor and sought short term loan of Rs.1,75,000/- to purchase a house, assuring that, the loan amount would be repaid within 06 months with Rs.5,000/- p.m. as installment. Thereafter, the proprietor took her husband to China, where her husband took loan of Rs.2,00,000/- to purchase gifts. In 2018, the husband of applicant requested for loan of Rs.8,00,000/- to purchase a house worth 02 Crore.

04. Thereafter, husband of applicant started playing severe mischief in his job, in connivance with applicant they started same business in the name and style of "Theatre at Home" and several products were given in the said name. When it was asked to husband of applicant and applicant, instead of explaining the facts, husband of applicant resigned from his job on the dt.11/12/2018 and thereafter, applicant orally resigned her job on the dt.31/03/2019. When the accounts were checked, it revealed that, the loan amount was not paid nor the installments were monthly deducted. As the husband of applicant and

applicant had committed several crimes, the proprietor lodged an FIR against them. As the acts of applicant constitute and involve moral turpitude, as per the provisions of P. G. Act the gratuity amount of applicant is liable to be forfeited. Hence, prayed to reject this application.

05. On the basis of rival pleadings of both parties, following Issues are framed by my learned predecessor at Exh.No.O-3. I have reproduced those Issues and recorded my findings thereon for the reasons stated thereof;

Sr. No.	Issues		Findings
1.	Does applicant prove that, she is entitled for gratuity amount of Rs.4,65,865/- ?	----	Yes.
2.	Does opponent prove that, gratuity of applicant stands forfeited due to an act committed by applicant in the course of her employment which constitute an offence involving moral turpitude ?	----	No.
3.	Whether the applicant is entitled for gratuity with interest ?	----	Yes @ 10%.
4.	What order ?	----	Application is allowed.

:: REASONS ::

06. To substantiate the contentions, the applicant has relied on her own evidence affidavit filed below Exh.No.U-05 and to support her claim, she has filed the copies of Resignation Letter (Exh.No.U-07), E-mail sent to opponent (Exh.No.U-08), Form-I (Exh.No.U-09) and Postal receipt (Exh.No.U-10). Applicant closed her evidence by filing pursis

below Exh.No.U-11. On behalf of opponent, they have examined their witness Mr. Rajesh Gagumal Sadarangani (O.W.No.01) by filing his evidence affidavit below Exh.No.C-10. Opponent failed to lead their further evidence, hence, their evidence was closed by this Court.

07. Heard both the Advocates at length. Applicant has filed synopsis of Written Arguments below Exh.No.U-17 and relied on the case laws of;

- i. **Hindoostan SPG & WVG Mill Ltd and ors. vs. Hindustan Crown Mills (2007 LawSuit (Bom) 298).**
- ii. **Vidhyadhar vs. Manikrao (1999 LawSuit (SC) 316).**
- iii. **H. Gangahanume Gowda vs. Karnataka Agro Industries Corpn Ltd. (2003 I CLR 705).**

08. On the contrary, the opponent has relied on the case laws of;

- a. **M. Senniappan vs. Deputy Commisioner of Labour and ors. (1997 (2) L.L.N. 361).**
- b. **Kaliya vs. State of Madhya Pradesh (2013) 10 SCC 758).**
- c. **Ramnish Greer and Anr. vs. CBI and Anr. (2022 SCC OnLine 3971).**
- d. **Gopinath Nair (A) vs. N. Radha Bai and ors. (1988 (1) L.L.N. 1030).**
- e. **K. C. James Mathew vs. Cement Corporation of India Ltd. N.D. (1997 SCC On Line Ker 371).**
- f. **Shriram manohar Bande vs. Uktranti Mandal and ors. (2024 SCC OnLine SC 642)**
- g. **LIC of India vs. R. Dhandapani (2006) 13 SCC 613).**

AS TO ISSUE NO. 01 TO 03 :-

09. Admittedly, applicant was working with opponent, but opponent is challenging that, the applicant and her husband were involved in serious misconduct of moral turpitude and they were involved in the criminal activities which caused loss to the proprietor of opponent, and criminal proceeding is pending against the applicant, hence, she is not entitled for gratuity as it is forfeited as per law. Further, during argument it was pointed out that, the resignation of applicant comes in operation when employer accepts the same, the opponent have not accepted the resignation.

10. The opponent have contended that, an FIR is lodged against the applicant and her husband and criminal proceeding is pending against them, hence she is not entitled for gratuity amount. Now it has to be seen under which provision the gratuity amount can be denied or refused to pay by the employer. In this regard, I would like to quote the provision of section 04, sub-section 6 of the P. G. Act, which is as followed;

4. Payment of Gratuity.- (1)

(2)

(3)

(4)

(5)

(6) Notwithstanding anything contained in sub section (i),-

(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee [may be wholly or partially forfeited].

- (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part; or
- (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

11. Now in this matter, the opponent have contended several acts about the applicant and her husband, but they have not filed a single document to substantiate their contentions. They have contented that, they have lodged FIR against them and a criminal proceeding is pending against them. But they have failed to file the copy of FIR and the charge sheet. In absence of cogent evidence, it would not be proper to rely on the bare words of witness of opponent.

12. Now as per above mentioned provision, if the employer terminates the service of employee for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, or for employee's riotous or disorderly conduct or any other act of violence on his part, which constitutes an offence involving moral turpitude, then under such circumstances, the gratuity payable to the employee can be forfeited. In this matter, rather than bare words the opponent have not produced anything against the applicant. Therefore, it can said that, the applicant was not involved in any of such alleged acts which can forfeit her gratuity amount.

13. Now during arguments, it is pointed out that, the resignation of applicant comes in operation when employer accepts the same, the opponent have not accepted the resignation and applicant has failed to prove that she had resigned from her job. Applicant has contended that, she had resigned her job on the dt.31/03/2019, but submitted her resignation letter on the dt.25/08/2020 through Post, along with Form 'T'

dtd.25/08/2020 under P. G. Act. In this regard, she has relied on the copies of Resignation Letter (Exh.No.U-07), e-mail sent to respondent (Exh.No.U-08), Form-I (Exh.No.U-09) and Postal receipt (Exh.No.U-10).

14. On perusal of Resignation Letter (Exh.No.U-07), she had clearly mentioned that, she stopped working from the dt.31/03/2019 and inadvertently she failed to file the resignation letter. Further, she relied on the email dtd.08/09/2020, which shows that, the copy of resignation letter and Form-I is attached to it. Further, she has filed postal receipt (Exh.No.U-10), which clearly shows that, the letter was sent in the name of the opponent's witness Mr. Rajesh Gagumal Sadarangani (O.W.No.01). Now on perusal of written statement of opponent, nowhere they have challenged the issuance or acceptance of Resignation Letter (Exh.No. U-07), on the contrary, they are admitting in paragraph No.1K that, the applicant had orally resigned on the dt.31/03/2019. This shows that, the opponent had knowledge about the oral resignation of applicant. Had it been so, the opponent have miserably failed to bring on record what efforts were taken by them after the said knowledge of resignation.

15. Now the applicant had orally resigned her job on the dt.31/03/2019, which was well within knowledge of opponent's witness who is the owner of opponent company, but they did not oppose or denied the same nor issued any notice in this regard, thereafter, the applicant had sent the written resignation and e-mail as mere formality. Now the witness of opponent Mr. Rajesh Gagumal Sadarangani (O.W.No. 01) in his cross examination has admitted that, applicant had sent the resignation letter along with Form-I to the company. This shows that, the resignation letter along with Form-I was also received by the opponent company, but they have not taken any adverse steps in this regard, which means that, they have accepted the same and it can be termed as Deemed

acceptance. Now the opponent are estopped from denying or challenging the same during the arguments and when they have miserably failed to raise any objection in this regard in their written statement.

16. It is pertinent to note that, the allegations are against the husband of applicant and applicant, but the opponent failed to show the involvement of applicant in any of the alleged act. Therefore, it can be said that, the opponent have miserably failed to prove the allegations against the applicant, under such circumstances, in absence of cogent evidence, they cannot deny or forfeit the gratuity amount payable to the applicant. On the contrary, considering the provisions of Section 4(a) of the P. G. Act, if there is any dispute as to the amount of gratuity or as to admissibility of claim, it is the duty of employer to deposit the gratuity amount with the Controlling Authority. But the opponent have failed to follow this provision. Hence, considering the above discussion, it can be said that, the applicant is entitled for the gratuity amount from opponent.

17. Now the gratuity is paid on the Basic Salary plus Dearness Allowance from the entire salary. On perusal of record, the applicant has filed the copy of Form 'T' (Exh.No.U-09), in it, she has mentioned her net salary as Rs.42,500/- p.m. and there is no dearness allowance paid to the applicant. Therefore, now the gratuity amount has to be calculated only on basic salary i.e. Rs.42,500/-. Further, she contended that, he joined the opponent company in January 2000 and she resigned on the dt.31/03/2019, considering this aspect, her total service can be 19 years and 03 months, which can be rounded of to 19 years. Now there is nothing on record that, the opponent have paid any kind of gratuity amount to the applicant, therefore it can be held that, the opponent have withheld the gratuity amount payable to the applicant.

18. As per Section 04 of the P. G. Act, the applicant fulfills all the requirements for entitlement of gratuity. Despite of this, the opponent failed to pay him the gratuity amount within time. The applicant, till date, has not received the gratuity amount from the opponent. In this regard, it is important to see the provisions of Section 7(1) to (3) of the P. G. Act. I am reproducing the said provision;

“7. Determination of the amount of Gratuity-

- (1) A person who is eligible for payment of gratuity under this Act or any person authorized, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed for payment of such gratuity.
- (2) As soon as gratuity becomes payable the employer shall, whether an application referred to in sub-section (i) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.
- (3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable”.

19. As per aforementioned provisions, as soon as gratuity becomes payable, the employer has to arrange the amount of gratuity within 30 days from the date it becomes payable has to be paid to the person to whom the gratuity is payable. As a matter of record, the applicant has not received his gratuity within 30 days from the date it become payable.

20. Now as as discussed above, the Basic salary of applicant was Rs.42,500/-, in terms of provisions of sub-section (1) of section 04 of P. G. Act, the applicant is entitled for payment of gratuity. Now, in view of last drawn monthly salary of the applicant and her continuous service,

the amount of gratuity of the applicant as per the applicable payment of gratuity Rules, is calculated as per the prevalent formula as under;

“Basic Salary ÷ 26 days of a month x 15 days gratuity x Total Working Years = Total Gratuity payable”. Likewise it is calculated from the salary of applicant as under;

$$\text{Rs.42,500/-} \div 26 \text{ days} \times 15 \text{ days} \times 19 \text{ years} = \text{Rs.4,65,865.38 ps.}$$

As per above mentioned calculation, the applicant is entitled to the total gratuity of **Rs.4,65,865.38 ps.** (rounded of to **Rs.4,65,865/-**).

21. Advocate for the applicant vehemently argued that, in terms of provisions of sub-section 3(A) of section 07 of the P. G. Act, the employer is bound to pay interest on the amount of gratuity, if the amount of gratuity is paid after 30 days from the date of termination/resignation of services of an employee. Learned advocate submitted that, the opponent cannot deny the payment of statutory interest. Therefore, learned advocate submitted that, claim for interest be allowed @ 12 % p.a. in favour of applicant. In this regard, he relied on the case law of **H. Gangahanume Gowda vs. Karnataka Agro Industries Cor. Ltd's case (supra)**.

22. As per sub-section (2) of section 07, irrespective of receipt of notice in Form 'I', it is mandatory on the part of the employer to determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority specifying the amount of gratuity. It is important to note that, even after the applicant had sent the said notice in Form 'I', the opponent have failed to pay the gratuity amount to the applicant. Therefore, the applicant was constrained to file present application.

23. In the case law of **H. Gangahanume Gowda vs. Karnataka Agro Industries Cor. Ltd's case (supra)**, the Hon'ble Supreme Court held that, in the cases of delay in payment of gratuity, the application of interest is not only mandatory, but it is a statutory compulsion. The Hon'ble Supreme Court further observed in para 09 of said judgment as under;

“9.It is clear from what is extracted above from the order of learned Single Judge that interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the courts during the pendency of enquiry. The learned Single Judge having held that the appellant was entitled for payment of gratuity was not right in denying the interest on the delayed payment of gratuity having due regard to Section 7(3A) of the Act. It was not the case of the respondent that the delay in the payment of gratuity was due to the fault of the employee and that it had obtained permission in writing from the controlling authority for the delayed payment on that ground. As noticed above, there is a clear mandate in the provisions of Section 7 to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. Since the employer did not satisfy the mandatory requirements of the proviso to Section 7(3A), no discretion was left to deny the interest to the appellant on belated payment of gratuity.....”

24. Now considering the ratio laid down in the above mentioned case law, it is clear that, if the employer fails or delays to pay the gratuity amount to the employee, the employee is entitled for interest on said amount along with the gratuity. Hence, in this matter, after resignation, the applicant was entitled for the due gratuity amount from the opponent, but the opponent failed to pay the gratuity amount to the applicant within time. Therefore, the applicant is entitled for the interest

on the gratuity amount from the date of resignation i.e. 25/08/2020.

25. Now the applicant is not claiming any interest on the due gratuity amount. But as per the provisions of sub-section (3A) of Section 07 of the P. G. Act, the opponent are liable to pay simple interest at such rate, not exceeding the rate, notified by the Central Government from time to time for re-payment of long-term deposits, as that Government, may by notification specify. The present rate of interest notified by the Central Government is 10% p.a. Under such circumstances, the applicant is entitled for simple interest at the rate of 10% p.a. on the total amount of gratuity of Rs.4,65,865/-. It is clear that when there is no payment of gratuity within 30 days as per sub-section (3) of section 07, the interest is payable from the date on which the gratuity becomes payable to the date on which it was paid. Therefore, it can be said that the applicant is entitled for the gratuity amount along with the simple interest @ 10 % p.a. from the date of his resignation till realization of entire amount. With these considerations, I answer Issue no.01 & 03 in affirmative and Issue no.02 in negative, and record my reasons, and to answer the Issue no.04, I pass following order;

:- ORDER :-

1. The application is allowed.
2. The opponent is directed to pay the total gratuity amount of Rs.4,65,865/- (Rupees Four Lakh Sixty-Five Thousand Eight Hundred & Sixty-Five only) to the applicant within 01 month of passing of this order.
3. The opponent is directed to pay the simple interest @ 10 % p.a. on the amount of Rs.4,65,865/- from the dt.25/08/2020 till the realization of entire gratuity amount to applicant.

4. Issue Notices in Form 'R' to the opponent.

Place : Mumbai.
Date : 29/06/2026.
Rry/-

(Dr. Dastagir R. Pathan)
Controlling Authority Under the
Payment of Gratuity Act & Judge,
6th Labour Court, Mumbai.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same, word to word, as per the original Order.

Name of the Stenographer : Rajesh Ramesh Yewale.

Name of the Court : Commissioner for Employees'
Compensation, Mumbai.

Date of Order : 29.06.2026.

Order signed by the P.O. on : 29.06.2026.

Order uploaded on : 29.06.2026.

Sd/-

Stenographer