

**BEFORE SMT. D. A. DOIPHODE, CONTROLLING AUTHORITY UNDER
PAYMENT OF GRATUITY ACT & JUDGE,
THIRD LABOUR COURT, THANE**

**APPLICATION (PGA) NO. 354 OF 2022
CNR NO : MHLCO4001269-2022**

Mr. Narayan Mahadev Khedkar

...Applicant

Versus

**Mr. Nandkumar Yadavrao Tasgaonkar
and Ors.**

...Opponents

**ORDER BELOW EXH. C-4
(Passed on 20/11/2023)**

1. The instant application is filed by the opponents for dismissal of main application on the ground of limitation.

2. Brief facts of the application are as under:

It is the contention of opponents that, applicant retired on 31/07/2018. Therefore, it was mandatory for the applicant to file the application under section 4 of the Payment of Gratuity Act 1972 (In Short PG Act) within 3 years. The main application for claiming the gratuity amount is filed on 15/10/2022. Thus, it is prima facie barred by law of limitation. Lastly, they prayed to dismiss the main application on the ground of law of limitation.

3. Ld. Advocate for the applicant has filed say on over leaf of the application. He submitted that, the employer shall determine the gratuity amount and notice to be given to the employee as per section 7 (2) of the the PG Act. The employer to make the payment

of gratuity within 30 days under section 7(3) of PG Act. The employer should deposit the admissible amount to the Controlling Authority under section 7(4)(a) of the PG Act. However, the opponents have not followed all these provisions. The applicant requested to the opponents via letters and e-mails. The applicant approached to the Government Labour Officer and thereafter he filed application under PG Act. The opponents have given false and empty assurance to the applicant. According to Rule-7 of the PG Act, the delay can be condoned on the ground of just, fair and sufficient cause to file the main application under PG Act. Lastly, he prayed to reject the application and directions be given to the opponents to proceed with the matter to avoid further delay.

4. Ld. Advocate for the opponents filed written notes of arguments. He submitted that, the applicant has himself admitted in the say that, the delay is occurred to file main application under PG Act. The applicant has not mentioned satisfactory reason to condone the delay. The applicant has not taken efforts as stated by him via letters and e-mails to claim gratuity amount. Therefore, application needs to be rejected with exemplary cost.

5. Ld. Advocate for the applicant has orally argued and submitted that, the opponents have not followed the provisions of PG Act. The applicant has filed copies of letters and e-mails issued to the opponents and vice versa. These letters and e-mails are sufficient to hold that, applicant was aware about his rights to claim the gratuity amount from the opponents. Hence, he prayed to reject the application.

6. According to the Rule-7 of Payment of Gratuity (Central) Rule- 1972 an employee is eligible for the payment of gratuity under the Act shall apply within 30 days from the date of the gratuity become payable in Form-I to the employer. The provision states limitation to file application under PG Act. I have minutely gone through the pleadings and documents filed by the applicant. It appears that, the date of retirement i.e. 31/07/2018 is not disputed to both the parties. Thereafter, applicant had issued letter on 01/09/2018, reminder-1 on 01/10/2018, e-mail on 07/01/2019 to the opponents and thereby claimed all his retirement benefits including gratuity amount. Thereafter the applicant approached to the Labour Commissioner's Office and the photostat copies of the proceeding conducted before the Labour Commissioner state that, the opponents appeared and specifically stated that, they will give the details payable to the applicant. It shows that, applicant was aware about his rights and had taken steps to receive the pensionary benefits.

7. According to the applicant, he filed application within limitation and according to the opponents, main application is filed after the period of limitation. I have framed the issues on 07/07/2023 and also framed the issue of limitation. It is mandatory for the applicant to file the application within limitation as per the provisions of law. However, the issue of limitation is mixed question of law and fact. Therefore, I am of the opinion that, it would not just and proper to dismiss the main application at this initial stage. On the other side, it would be just and proper to give an opportunity to both the parties to adduce evidence in support of their contention. Resultantly, I proceed to pass following order:

ORDER

Application stands rejected.

Date : 20/11/2023

SSA

Sd/-
(D. A. Doiphode)
Controlling Authority under
Payment of Gratuity Act
Third Labour Court, Thane