IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2139 OF 2025

The Jalgaon District Central
Co-operative Bank Limited,
Ring Road, Tq. & Dist. Jalaon,
Through it's Executive Director. ... Petitioner
(Orig. Opponent)

Versus

Shri Avinash Yashwant Patil,
Age : 60 years, Occu. : Nil.,
R/o. Plot No. 16, Deshmukh Nagar,
Dekhusim Road, Amalner,
Tq. Amalner, Dist. Jalgaon. ... Respondent
(Orig. Applicant)

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Mr. V. D. Salunke, Advocate for Petitioner.
Mr. Shrikant S. Patil, Advocate for Respondent.

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CORAM : S. G. CHAPALGAONKAR, J.
RESERVED ON : 24th JUNE, 2026
PRONOUNCED ON : 07th JULY, 2026

JUDGMENT :

1. The petitioner impugns order dated 13.09.2024 passed by Appellate Authority / Member, Industrial Court, Jalgaon in Appeal (PGA) No. 08 of 2024, thereby upholding judgment and order dated 06.03.2024 passed by Controlling Authority under the Payment of Gratuity Act, 1972 and Labour Judge, Jalgaon, whereby petitioner has been directed to pay amount of gratuity along with interest from date of termination of service.

2. The petitioner is a District Central Co-operative Bank registered under provisions of Maharashtra Co-operative Societies Act, 1960 and engaged in banking business. Since 30.04.1983 respondent was employed under establishment of Bank. On 20.06.2017 his services came to be terminated after holding departmental inquiry. Apart from termination, his right to receive amount of gratuity has been forfeited under same order. In short, respondent was charged for unauthorized disbursement of loans in course of discharge of his duties, thereby causing loss to Bank.

3. The respondent assailed his termination before Labour Court under provisions of the MRTU and PULP Act 1671 alleging unfair labour practices against petitioner. Independently he initiated proceeding vide Application (PGA) No. 12 of 2017 before Controlling Authority and Labour Court under the Payment of Gratuity Act, 1972 assailing forfeiture of gratuity amount. The Controlling Authority, after hearing parties, directed petitioner to release gratuity along with interest. Aggrieved petitioner filed Appeal (PGA) No. 08 of 2024 before Industrial Court, Jalgaon/ Appellate Authority, who dismissed appeal upholding order passed by Controlling Authority.

4. Mr. V. D. Salunke, learned Advocate appearing for

petitioner would submit that respondent was found guilty of causing financial loss to Bank. Eventually, his services have been terminated and right to receive gratuity is fortified. The respondent has filed a complaint assailing order of termination-cum-forfeiture of gratuity before Labour Court. Therefore, his independent application before Controlling Authority under the Payment of Gratuity Act could not have been entertained. According to Mr. Salunke, till this date loss caused to Bank due to illegal disbursement of loans by respondent is not recovered. The respondent was given due opportunity to defend himself during departmental inquiry. No separate notice for forfeiture of gratuity was required under law. However, Controlling Authority erroneously allowed respondent's application and observing that forfeiture of gratuity cannot be made without quantification of loss or giving an independent notice before forfeiture of gratuity, independent of the inquiry as regards service-related disciplinary action. According to Mr. Salunke, Appellate Authority reiterated erroneous findings recorded by Controlling Authority while upholding order of Controlling Authority.

5. Per contra, Mr. Shrikant Patil, learned Advocate appearing for respondent supports impugned orders. According to him, no criminal proceeding was initiated against respondent. He

has not been subjected to trial for alleged misconduct. In this backdrop, petitioner-employer could have at the most invoked the powers under Section 4(6)(a) of the Act 1972 for forfeiture of gratuity to the extent of damage or loss caused due to negligence or wilful omission of respondent-employee. However, in present case, so-called unauthorized or illegal disbursement of loans alleged to have been made by respondent is recoverable and substantial amount has been already recovered from the borrowers.

6. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that there is no controversy as to factual matrix. Indisputably, respondent was employed with petitioner-Bank and he has rendered almost 34 years of service before his termination. He was subjected to departmental inquiry on allegation of unauthorized or illegal disbursement of loans causing loss to Bank. He was found guilty by Inquiry Officer which culminated in an order of dismissal of service with forfeiture of gratuity. It can be observed that respondent was served with a charge-sheet for his misconduct. A departmental inquiry was initiated against him for aforesaid misconduct. However, respondent was never served with separate notice regarding intention of petitioner to forfeit his gratuity.

7. Section 4 of the Act of 1972 prescribes that gratuity shall be payable to an employee on termination of his employment after he has rendered continuous service for not less than five years. Sub-section (6) of Section 4, reads thus:

> *"4(6) . Notwithstanding anything contained in sub-section (1),-*
>
> *(a) the gratuity of an employee, whose services have been terminated for any act, wilful 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."*

8. In the present case, services of respondent have been terminated for acts of wilful omission or negligence, thereby causing loss or damage. Admittedly, there was no charge of riotous or disorderly conduct, any act of violence, or any act constituting an offence involving moral turpitude. The dismissal order dated 19.06.2017 issued by Bank suggests that respondent was held guilty as per Standing Order Nos. 23(1)(3)(4)(5)(9) read with

Standing Order No.24. The order of dismissal itself stipulates punishment of forfeiture of gratuity. Admittedly, respondent was never given an independent show-cause notice as regards to petitioner's intention to forfeit the gratuity.

9. In this background, taking into account language of clause (a) of sub-section (6) of Section 4, forfeiture of gratuity was permissible if loss caused to employer due to wilful omission or negligence of respondent. In present case, no specification of actual loss caused to petitioner-Bank is available. The dismissal order stipulates that respondent was responsible for unauthorized disbursement of loans amounting to Rs.29,13,683/- is still due and recoverable. The Controlling Authority has referred to the evidence recorded on behalf of Bank, it suggests that aforesaid amount is recoverable from twenty eight farmer-borrowers and loan amount of around nine farmer-borrowers has been recovered. It is therefore evident that, till this date, so-called loss caused to Bank is not determined. Therefore, even by invoking clause (a) of sub-section (6) of Section 4, no exact amount liable to be forfeited from the gratuity of respondent can be determined.

10. The Controlling Authority as well as Appellate Authority have rightly relied upon observations of this Court

(Nagpur Bench) in case of ***The Chairman and Managing Director, Bank of Maharashtra and Ors. v. Shri Kishore S/o. Shankarrao Khandatkar and Ors. in Writ Petition No. 1572 of 2022***, wherein it is held that in absence of material to indicate as to what was financial loss caused to employer and a proper show-cause notice to employee, the power under Section 4(6)(a) of the Act of 1972 cannot be invoked to forfeit gratuity of an employee.

11. In case of ***Nanubhai Nichhabhai Desai v. Deputy General Manager, UCO Bank, 2017 (4) Mh.LJ 271 : 2017 DGLS (Bom.) 168,*** this Court observed that what the disciplinary authority found was that the employee exceeded his authority and failed to exercise care expected of him, thereby acting to the detriment of Bank. The misconduct would fall within clause (a) of Section 4(6) of the Payment of Gratuity Act or sub-rule (a) of Rule 10 of the Bank's Gratuity Fund Rules, but then the question is, has it actually caused any damage or loss to employer. In absence of any specific charge specifying particular amount of loss or damage caused to bank and findings thereon, forfeiture of gratuity was not permissible. In such a case, it was obligatory on part of a Bank to give a separate notice to employee and follow principles of natural justice before taking action under the Payment of Gratuity Act or the Rules.

12. The petitioner contends that separate application filed by respondent before Controlling Authority under Act of 1972 was not maintainable as he has already initiated proceedings before Labour Court against dismissal order, which itself stipulates punishment of forfeiture of gratuity. This Court cannot countenance with the submission. The Payment of Gratuity Act, 1972 is a special enactment which provides a scheme for payment of gratuity to employees engaged in various establishments. It provides a mechanism for payment of gratuity to employees with corresponding rights and obligations of employers and employees. It also provides mechanism for redressal of grievances in this regard. Whereas, the MRTU and PULP Act prescribes for various unfair labour practices and remedies available to employees against employers for specified acts that amounts to unfair labour practices. Both acts operate in different spheres.

13. In this backdrop, although Labour Court is empowered to deal with complaints under the MRTU and PULP Act, so also notified as Controlling Authority under the Payment of Gratuity Act, 1972 by appropriate Government, the jurisdiction under both Acts is independent. Therefore, respondent had an independent cause of action and remedies to ventilate his grievances by

independent proceedings emanating from one and same order. The adjudication thereof can be independently made by respective forums within parameters of jurisdiction under scheme of legislation.

14. In light of aforesaid backdrop, this Court finds that Controlling Authority was justified in entertaining respondent's application and setting aside impugned order to the extent of forfeiture of gratuity.

15. In result, no case is made out to cause interference under Article 227 of Constitution of India. Hence, Writ Petition stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

Tandale