

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK JAIN**

**ON THE 28<sup>th</sup> OF AUGUST, 2025**

**WRIT PETITION No. 19726 of 2025**

***N.M. DUBASH STONE AND LIME COMPANY PVT. LTD. AND OTHERS***

*Versus*

***UNION OF INDIA AND OTHERS***

**Appearance:**

*Shri Anoop Nair – Sr. Advocate with Ms. Disha Rohitash – Advocate for the petitioners..*

*Shri Piyush Bhatnagar – Advocate for respondents No. 1 & 2.*

**ORDER**

The present petition has been filed challenging the order passed by the controlling authority under payment of Gratuity Act ( AnnexureP-5) which is final order so also the order Annexure P-4 dated 20.12.2024 whereby the authority closed the case for passing a final order without fixing the case for evidence. Further challenge is made to notice Annexure P-6 consequential to final order (Annexure P-5) whereby the authority has issued notice of recovery in terms of the final order.

2. The counsel for the petitioner has argued that the authority has erred in law in passing the impugned order because the respondent No.3—employee was admittedly in service of the petitioner up to the year 2012 whereas he moved application before the controlling authority under the payment of Gratuity Act, 1972 in the year 2024 which is with a delay of

almost 12 years. It is further argued that the petitioner had already paid the entire claims of the respondent-employee at the time of his leaving the employment and a receipt was also executed by the respondent-employee which has been placed on record with the present petition. Therefore, it is contended that the respondent had been paid the entire gratuity and therefore, nothing required to be paid to the respondent –employee.

3. Heard.

4. The petitioner has made three contentions. First was that the gratuity was paid at the time of leaving the employment in the year 2012 to the respondent. Second contention is that the application was belated and third is that the authority has not fixed the case for evidence.

5. So far as first contention of the petitioner is concerned having made full payment to the respondent- employee, the receipt at page No.25 of the petition is perused. It simply mentions that the respondent has left employment on 31.03.2012 and he has received the full payment and no other payment is due. The said receipt reads as under:-

मैं Munna Patel आत्मज S/o Narbada Prasad Patel निवासी Bistara का यह लिखकर देता हूँ कि मेसर्स N.M. Dubash Stone & Lime Company Pvt. Ltd उपर्युक्त दिनांक से लेकर आज दिनांक 31/3/12 तक के सभी प्रकार के हिसाब किताब की सम्पूर्ण राशि का भुगतान प्राप्त कर चुका हूँ आज दिनांक 31/3/12 तक मेरा किसी भी प्रकार का कोई लेनदेन कम्पनी से बांकी नहीं है

6. It is clear from the perusal of the said receipt that this receipt does not speak about either the service dues or the terminal benefits or the retiral benefits or the gratuity. It simply mentions that the respondent No.3 has received all the dues payable to him up to 31.03.2012. This receipt even

does not mention any amount which has been paid to the respondent No.3 in total and it cannot be inferred from this receipt that gratuity was paid to the respondent-employee.

7. So far as the other contention regarding the case not being fixed for evidence is concerned, as per Payment of Gratuity (Central) Rules, 1972 (for short 'Rules of 1972') the procedure for dealing with the application is provided under Rule 11. As per Rule 11(4) the following has been provided:-

*“11(4). After completion of hearing on the date fixed under sub-rule (1), or after such evidence, examination of documents, witnesses, hearing and enquiry, as may be deemed necessary, the controlling authority shall record his finding as to whether any amount is payable to the applicant under the Act. A copy of the finding shall be given to each of the parties.”*

8. The aforesaid provision of Rule 11 nowhere makes it mandatory for the controlling authority to fix the case for evidence and to record evidence of the parties like a civil suit. The provision only requires the controlling authority to take such evidence as may be deemed necessary before recording the finding. It does not create any substantive provision that the applicant is under obligation to prove his own case by adducing evidence like a civil suit and as per Evidence Act.

9. Coming to the present case, in the reply filed before the authority by the petitioner, the only objection that was taken in reply was that the entire dues have been paid to the respondent No.3-employee at the time of his retirement in the year 2012 and receipt was also annexed with the reply. The second objection was taken as to delay. No other objection was taken.

10. The reply is also very short hardly running into one page and is on record as (Annexure P-3).

11. This Court asked the counsel for the petitioner that whether the petitioner is in possession of any other evidence to indicate that any payment of gratuity had been made to the respondent-employee which he could not produce before the authority or which he could have produced before the authority if the case was fixed for evidence, learned senior counsel replied in negative that since the case was old, therefore now no other material is available with the petitioner and the receipt is the only material which is now available with the petitioner. As already noted above by this Court, the said receipt does not inspire any confidence and if the receipt was the only evidence available with the petitioner then if the authority has not fixed the case for oral evidence then no error seems to be done by the authority because once the petitioner admitted the employment of respondent No.3 but did not have any document to indicate that gratuity had been paid to the respondent No.3, then there was no point in fixing the case for evidence unnecessarily and for prolonging the proceedings.

12. At this stage, learned counsel for the petitioner argued on the question of delay by stating that as per Rule 7 of Rules of 1972 application has to be made within 30 days.

13. The said issue is not longer *res-integra*. A Division Bench of this Court has already dealt with the issue in detail and has held that the limitation as prescribed under Rule 7(1) of M.P. Rules which is analogous with the Central rules does not bar the right of the employee once obligation on the employer to pay gratuity does not depend on application to be submitted by the employee who has exited from the employment. The

**Division Bench in WA 563/2023 ( Little World Higher Secondary School**

**Vs. State of M.P. & Ors.) held as under :-**

*“14. As per Section 7(1) of the Act of 1972, a person who is eligible for payment of gratuity is required to send written application to the employer for payment of gratuity in the manner as may be prescribed. However, as per Section 7(2), there is obligation cost on the employer to determine the amount of gratuity and give notice in writing to the person to whom gratuity is payable and further as per Section 7(3), to arrange payment of the said amount of gratuity within 30 days from the date it become payable to the person entitled to receive the gratuity.*

*15. When Section 7(1) is read along with Section 7(2) and (3) it becomes clear that the obligation on the employer to pay gratuity does not depend on application to be submitted by the employee who has exited from the employment. The application to be submitted by the employee is right given to the employee to submit an application to the employer merely so that the employer may be reminded of his statutory obligation. However, in the same breath Section 7(2) & (3) make position abundantly clear that without waiting for application of the employee it is the obligation of the employer to determine the amount of the gratuity and arrange the payment of the same within 30 days from the date it becomes payable. Section & (2) and (3) are independent provisions and do not depend on prior compliance of section 7 (1). Section 7 (2) operates as soon as gratuity “becomes payable” and not upon submission of application to the employer. The date from which it “becomes payable” is also laid down in Section 4 (1) of the Act of 1972, that we will deal in succeeding paragraphs.*

*16. Section 3-A as inserted by amendment of 1987 further provides that in case compliance of Section 7(3) is not made by the employer within the period specified in Section 7(3) then the employee will be entitled to simple interest at the rate to be notified by the Central Government and further that the payment of interest can be defended by the employer only if the delay is due to fault of the employee and further that the employer had obtained permission in writing from the Controlling Authority for the delayed payment on this ground.*

*17. The unamended provision of Section 7(3) as existed prior to 1987 amendment was as under:-*

*“(3) The employer shall arrange to pay the amount of gratuity, within such time as may be prescribed, to the person to whom the gratuity is payable”*

*It is further important to note here that there was no provision of Section 3-A prior to 1987 which when read along with Section 7(2) & (3) that if the employer does not pay gratuity and does not make compliance of Section 7(3) then interest would continue to run from the date on*

*which the gratuity becomes payable. This provision of Section 3-A makes it clear that neither liability to pay gratuity or right to receive gratuity nor liability to pay interest or right to receive interest depends on any limitation period nor it depends in on any application to be submitted by the employee. The right is absolute, and gratuity becomes payable irrespective of application to be preferred to the employer and it has to be paid within 30 days from the date it becomes payable.*

**18.** *The date on which the gratuity becomes payable to an employee is laid down in Section 4(1) as the date on which employee leaves employment after rendering continuous service for not less than five years either on account of superannuation, retirement, resignation, death or disablement. Section 4 (1) is as under:-*

*“Section: 4 Payment of gratuity. (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, -*

*(a) on his superannuation, or*

*(b) on his retirement or resignation, or*

*(c) on his death or disablement due to accident or disease.”*

**19.** *Aforesaid Section 4(1) of Act of 1972 when read in juxtaposition to Section 7(2) & (3) and (3-A) makes it clear that the date on which the gratuity becomes payable is the date on which the employee leaves employment and it does not depend on adjudication of claim of the employer in any manner nor it is subjected to application to be made by employee.*

**20.** *When coming to the provisions of M.P. Rules, it is very clear to this Court that even said rules though provide for limitation but the second part of Rule 7(5) provides in no uncertain terms that no claim for gratuity under this Act shall be invalid merely because the claimant failed to present his application within the specified period. Though it is mentioned that the dispute in this regard shall be referred to the Controlling Authority for its decision but as per substantive provision of Act laid down in Section 7, the Controlling Authority is required to adjudicate the disputes as per Section 4 of the Act of 1972 which are in the matter of dispute as to the amount of gratuity payable to an employee or as to the admissibility of claim of the employee for payment of gratuity or as to the person entitled to receive the gratuity and obligation is cast on the employer to deposit with the Controlling Authority such amount as he admits to be payable by him as a gratuity. Therefore, no jurisdiction has been conferred on the Controlling Authority to adjudicate any dispute of limitation or as to the claim of the employee being barred by the limitation because such provision runs directly in conflict with the substantive provisions of the Act of 1972 which is a social security welfare legislation and Section 7(2) & (3) and 3 (A) as discussed above by us in this order do neither provide for nor contemplate of any limitation period for claiming gratuity and these provisions, more*

particularly after amendment in the Act of 1972 in the year 1987, no doubt remains that the liability to pay gratuity and the right to receive gratuity matures on the date of exit from employment and it does not mature on claim being made to the employer and the adjudication of claim to be made by the employer. The claim becomes perfect and mature on the date of exit from employment and Controlling Authority will adjudicate only if there is dispute as to admissibility of the claim which may be in the matter of length of service, wages last drawn, nature of employment, nature of exit from employment, dispute as to forfeiture of gratuity as per Section 4(6) etc. However, the act does not contemplate any limitation for raising claim for payment of gratuity by an employee nor it contemplates defeating such claim by any law of limitation.

21. It is trite in law that limitation does not curtail substantive right but curtails a remedy to claim substantive right. When the remedy provided as per Section 7(4) of the Act of 1972 is unconditional and does not depend on limitation and more particularly Sections 7(2) (3) and (3A) make it clear that the right would mature on the date of exit from employment and it becomes obligatory for the employer to deposit admitted claim of the employee with the Controlling Authority within 30 days of exit from employment then the employer cannot raise the ground of limitation to defeat or defend such claim of gratuity.

22. The aforesaid issue of applicability of limitation in case of delayed approach to the Controlling Authority was dealt with by a Single Bench of this Court in detail in the case of **MP Madhya Kshetra Vidyut Vitran Company Limited versus D.D. Singh** reported in **2014(3) MPLJ 641** and by taking note of the relevant legal provisions in the matter of payment of gratuity, a single bench of this Court dealt with the aspect of applicability of limitation as per the Rules of 1973 and held that since in terms of Rule 7(5), it has been provided that no claim for gratuity under the act shall be invalid only because the claimant failed to present his application within the specified period, the claims for gratuity cannot be dismissed on the ground of limitation. The Single Bench in the aforesaid case held as under:-

“12. So far the question of delay in approaching the Authority is concerned, the Rule 7 of Payment of Gratuity (M.P.) Rules, 1973 prescribes the method of submission of application. Rule 7(5) provides that no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within specified period.”

The aforesaid judgment stands affirmed in appeal by the Division Bench in WA No. 2013/2014 (Gwalior).

23. In the case of Mohan Lal (supra) a Division Bench of this Court has considered the aforesaid Section 7 of the Act of 1972 as well as Rule 7 of M.P. Rules held that the claim of the employee for gratuity would not be defeated by delay. The Division Bench held as under:-

*“6. We revert to the other ground which prevailed with the Appellate Authority in holding that the claim-petition was not maintainable because application filed with the employer by the employee under Rule 7(1) was time barred. That has a short and also a long answer. Sub-Rule (5) of Rule 7 effectively rebuffs that contention. It provides that on the sole ground that gratuity was claimed late and application was not made within specified period to the employer the claim shall not be treated invalid. However, the same provision also contemplates that if there is any dispute and if there is any controversy in regard to belated application that shall be resolved by the Controlling Authority. Evidently, for the first time in appeal, the ground was urged to deprive the Controlling Authority of its jurisdiction envisaged under Rule 7(5) to deal and decide the controversy. That apart, it has been rightly urged by Shri Lahoti, appearing for the petitioner/employee, that neither section 7(1) nor Rule 7(1) is mandatory. That is made clear not only by sub-rule (5) of Rule 7, but by the other parts of the parent provisions contained in section 7. Sub-section (2) makes it employer's duty to determine the amount of gratuity and to give notice in writing to the employee of the gratuity payable "whether an application referred to in sub-section (1) has been made or not". Subsection (3) obligates the employer to arrange payment of the gratuity within the time prescribed and by sub-rule (4) he is required to deposit with the Controlling Authority such amount as he admits to be payable by him against gratuity. It is noteworthy that neither clause (a) of sub-section (4) nor the explanation appended to it prescribes any period of limitation for making application to the Controlling Authority for deciding dispute of non-payment of gratuity.”*

**24.** *Another Division Bench of this court in the case of L.S. Patel (supra) was again seized of the similar issue and again held that the claim of gratuity would not be defeated by limitation as provided under the Rules and by taking note of the provisions of Section 7(1) (2) (3) and (3A) of Act of 1972, the Division Bench held as under:-*

*“10. From aforesaid discussion, what comes out loud and clear is that the principal amount of gratuity determined and payable u/S 7(1) (2) and (3) of the 1972 Act is statutory in nature and there is no limitation prescribed under the 1972 Act for claiming the same. Similarly, the amount of interest payable under sub-section (3A) of Section 7 of the 1972 Act is also statutory in nature. When both i.e. the principal amount of gratuity and the interest accrued thereupon becoming payable due to failure of employer to release gratuity within 30 days of retirement, then it follows as a necessary consequence that the amount of statutory interest worked out and becoming payable u/S 7(3A) becomes part and parcel of the principal amount of gratuity determined and payable u/S 7(1)(2) and (3) of the 1972 Act.”*



25. This is settled in law that amounts of retiral dues, including gratuity, are not bounties. It is deferred payment to the employee for the long services rendered by him to the Department. This payment is made to the employees in December of their life with a view to provide them a security. They can use this amount for their own settlement, discharge of social obligations, etc. The retiral dues are also recognized as property under the Article 300-A of the Constitution. A person can be deprived of his property only in accordance with a “law” made in this regard. In **Bhaskar Ramchandra Joshi v. State of M.P.**, reported in 2013 (4) MPLJ 35, this Court has considered this aspect and opined as under:—

“10. The Apex Court on different occasions had considered the scope and ambit of property. In *Madhav Rao Scindia v. Union of India*, (1971) 1 SCC 85 : AIR 1971 SC 530 opined that Prievy Purse payable to exrulers is property. In *Nagraj, K. v. State of A.P.*, AIR 1985 SC 553, Apex Court opined that right of person to his livelihood is property which is subject to rules of retirement. In *State of Kerala v. Padmanabhan*, (1985) 1 SCC 429 : AIR 1985 SC 356 the Apex Court opined that right of pension is property under the Government service Rules, In *Madhav Rao Scindia v. State of M.P.*, AIR 1961 SC 298 and *State of M.P. v. Ranojirao*, AIR 1968 SC 1053, the Apex Court opined that property in the context of Article 300-A includes ‘money’, salary which has accrued pension, and cash grants annually payable by the Government; pension due under Government Service Rules; a right to bonus and other sums due to employees under statute. This view was also taken in (1971) 2 SCC 330 : AIR 1971 SC 1409, *Deokinandan v. State of Bihar*. Bombay High Court in the case reported in (2012) 3 Mah. L.J. 126, *Shapoor M. Mehra v. Allahabad Bank* opined that retiral benefits including pension and gratuity constitute a valuable right in property. In *Deokinandan* (supra) Apex Court opined as under :-

“(i) The right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had 16 no powers to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order denying the petitioner right to receive pension affects the fundamental right of the petitioner under Article 19(1)(f) and 31(1) of the Constitution and as such the writ petition under Article 32 is maintainable.

11. In the light of aforesaid legal position, it is crystal clear that right to get the aforesaid benefits is constitutional right. Gratuity or retiral dues can be withheld or reduced only as per provision made under M.P. Civil Services (Pension) Rules, 1976. In the present case, there is no material on record to show that respondents have taken any action in invoking the said rules to stop or withhold gratuity or other dues.”

**26.** *The Apex Court in the case of State of Jharkhand v. Jitendra Kumar Shrivastava, reported in 2013 AIR SCW 4749 opined as under:—*

*“14. Article 300A of the Constitution of India reads as under: -  
“300A. Persons not to be deprived of property save by authority of law No person shall be deprived of this property save by authority of law.” Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced”.*

**27.** *No other enabling provision is brought to the notice of this Court which permits the employer to deprive the employee from the right of gratuity, only on the ground of delay. In absence of any enabling provision, in our opinion, employees cannot be deprived of their right of gratuity which is derived from Article 300-A of the Constitution. Thus, ground of delay is of no help to the appellant. It is therefore, held that the ground of delay taken by the appellant is contrary to the provisions of the Act of 1972 and the M.P. Rules.*

**28.** *Even coming to the manner in which the appellant has proceeded in the instant matter it is seen that the respondent No.3-employee had contended in her application before the Controlling Authority that she has been approaching the school for release of gratuity but she has only been given assurance from time to time but no gratuity has been paid. In the reply this assertion was not denied but on the contrary plea was taken that the Act of 1972 does not apply to the school and also that the petitioner does not fall within the class of employees entitled to receive gratuity because neither the respondent No.3 falls within the definition of employee in terms of Section 2(e) nor school falls within the definition of employer in terms of Section 2(f) of the Act of 1972. The plea of limitation was also raised but there was no denial that the applicant had been approaching the school (which may be by oral request) for release of gratuity from time to time which was specifically pleaded in the application.*

**29.** *In view of the above, we find that neither the entitlement of the respondent No.3 to receive gratuity would depend on a prior formal application to be submitted to the employer-appellant nor limitation period would apply because it would not apply to the facts of the case. Even irrespective of facts of this case, no limitation is applicable for claiming gratuity by the employee who has completed more than five years of service till the date of exit as held by us in detail above and also by Division Benches of this Court in the case of **Mohan Lal (supra)** and **L.S. Patel (supra)**.”*

14. Consequently, no reasons are found to interfere in the impugned orders. The petition fails and is hereby **dismissed**.

nks

**(VIVEK JAIN)**  
**JUDGE**