IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9972 OF 2026

Breach Candy Swimming Bath Trust and Ors. .....*Petitioners*

: Versus :

Rajesh Somnath Nerkar .... ***Respondent***

Mr. Archit Jayakar with Ms. Pooja Yadav & Mr. Kshitij Abbhi, for Petitioners.

Ms. Tanaya Patankar with Mr. Nikhil Patil i/b Mr. Rahul Shirgavkar, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Reserved On : 18 August 2026.

Pronounced On: 01 September 2026.

Judgment:

1) Breach Candy Club is an elite social club in Mumbai run by a Trust. Founded in 1878 and nestled in a premium location in South Mumbai, the entry to the Club is not easy[1]. For over a decade now, disputes are going on over governance and managing the affairs of the Trust and about retaining control over the management. The Club's ex-Manager is caught up in the crossfire over management disputes, and the new managing committee held him responsible for shredding the original

[1] Article in NDTV Lifestyle '*Mumbai's Breach Candy Club, Where Just Money Can't Buy Access For Indians*' published on 29 May 2026

membership records while carrying out the digitization process at the instance of the erstwhile managing committee. The Club terminated his services and has denied him gratuity. The Controlling Authority under the Payment of Gratuity Act, 1972 has ordered the Club to pay gratuity to the ex-Manager. The Club is opposed to payment of gratuity to its ex-Manager, who worked with it for 23 years and believes that he is responsible for causing financial losses to the Club to the tune of Rs. 5 crores and has accordingly filed the present Petition challenging the order of the Controlling Authority.

2) The Petition is filed by the Petitioner-Trust and its trustees challenging the judgment and order dated 19 November 2025 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 **(P.G. Act)** by which Application (PGA) No. 127 of 2025 filed by the Respondent has been allowed and the Petitioners are directed to pay an amount of Rs.11,67,785/- to the Respondent towards gratuity alongwith simple interest @ 10% p.a. from 2 July 2023 onwards.

3) Petitioner No.1 is a registered Trust, and it manages and administers the Breach Candy Club in Mumbai. Petitioners No. 2 to 7 are the present trustees constituting the managing committee of the Trust. Respondent was employed by the Trust on 1 November 2000 as Office Clerk. On 14 September 2001, his designation was changed from Office Clerk to Computer Clerk. From 20 January 2006 onwards, Respondent was given the position of Assistant Manager by the Trust. On 9 July 2008, Respondent was made Manager of the Trust by the earlier Managing Committee.

4) It is the case of the Petitioners that the erstwhile managing committee of the Trust decided to digitize the membership records of the Trust in the year 2012. It is alleged that Respondent shredded the original membership records of the Trust after the digitization during 2012 and 2013. In October 2013, a No-Confidence Resolution was adopted against the then Managing Committee of the Trust in the Extraordinary General Meeting and some of the Petitioners along with other personnel were appointed as the Managing Committee of the Trust. It appears that there were disputes between the members about governance and managing the affairs of the Trust, details of which are not relevant for deciding the issue at hand. By letter dated 25 November 2022, the Respondent was called upon to provide documents of digitization of the Trust membership records. By letter dated 9 December 2022, Respondent allegedly admitted having shredded the original application forms. Respondent was suspended from service on 16 January 2023.

5) Respondent filed S.C. Suit No. 1013 of 2023 in the City Civil Court at Bombay seeking directions, *inter-alia* to resume duties as Manager. The Trust issued show cause notice dated 24 May 2023 to the Respondent calling upon him to provide explanation in relation to various violations alleged in the notices/complaints received. Respondent responded to the show cause notice on 16 June 2023. On 23 June 2023, Respondent's application for temporary injunction was dismissed by the City Civil Court. On 2 July 2023, Petitioner-Trust terminated his services.

Respondent filed Appeal from Order No. 553 of 2023 in this Court challenging the order of rejection of temporary injunction. The Appeal from Order was withdrawn with liberty to make application for gratuity. Respondent accordingly approached the Petitioner-Trust with request for payment of gratuity.

6) On 21 February 2025 Respondent filed Application (PGA) No. 127 of 2025 before the Controlling Authority under the P.G. Act. The notices issued in the Application were served upon the Administrative Manager of the Trust and it is claimed that neither the Trust nor the Trustees had knowledge of filing of gratuity proceedings. Petitioners accordingly failed to appear before the Controlling Authority. On 27 June 2025, Respondents applied for *ex-parte* proceeding of the Application. On 8 August 2025, the request was allowed and the Application was directed to proceed *ex-parte*. By judgment and order dated 19 November 2025, the Controlling Authority allowed Application (PGA) No. 127 of 2025 and directed Petitioners to pay to the Respondent gratuity of Rs.11,67,785/- alongwith simple interest @ 10% p.a. from 2 July 2023.

7) In the meantime, the Suit filed by the Respondent was apparently decreed on 26 September 2025 directing the Defendants therein to pay to the Respondent an amount of Rs.15,38,874/- against arrears of salary from 25 November 2022 onwards by holding that termination and suspension of the Respondent was illegal.

8) After the Application was allowed by order dated 19 November 2025, Respondent's advocate served copy thereof on the

Respondent-Trust by letter dated 29 November 2025. However, Petitioners failed to implement the order of the Controlling Authority. Therefore, Respondent filed Recovery Application (PGA) No. 26 of 2026 before the Controlling Authority on 2 April 2026. The Trust was served with the Recovery Application. It is claimed that only after the service of the Recovery Application, the Petitioners learnt about filing of gratuity application by the Respondent. Accordingly, Petitioners have filed the present petition challenging the judgment and order dated 19 November 2025 passed by the Controlling Authority.

9) Mr. Jayakar, the learned counsel appearing for the Petitioners submits that the impugned judgment and order of the Controlling Authority deserve to be set aside on account of failure to grant opportunity of defending the Application to the Petitioners. That the notices in the gratuity application have not been served on the Petitioners. That the bailiff handed over the notices in respect of the Petitioners to the Clerk working in the Trust. That the Clerk is not an authorized person, who could have been served with the notices in the Application. He relies on Rules 11 and 15 of the Payment of Gratuity (Central) Rules, 1972 **(P.G. Rules)** in support of his contention that the notice needs to be served only on the authorized person. That Respondent was well aware of the position that Mr. Krishnanath Satardekar, Clerk was not authorized to accept service of any documents on behalf of the Trust or the Trustees. He relies on email correspondence of November 2022 in which Respondent has clearly acknowledged knowledge on his part that Mr. Krishnanath Satardekar was not authorized to accept any service on behalf of the Trust or the Trustees. He submits that the Petitioners have thus been denied opportunity of defending the Application and that the same is erroneously decided *ex-parte*.

10) Mr. Jayakar further submits that the Trust is not a juristic entity. That the Trust comprises and is represented by the trustees. Knowing this position well, the Respondent had impleaded all the Trustees of the Trust to his gratuity application. That therefore the Trustees were required to be served independently with the notice in the application. That the bailiff's report does not make out any efforts made by him to serve the Trustees of the Trust. Mr. Jayakar therefore submits that the proceedings conducted by the Controlling Authority suffered from the vice of impropriety, where Petitioners are denied due opportunity of defending the Application. That Petitioners have valid defences to oppose the Application. That therefore the proceedings deserve to be remanded. He submits that Petitioners are willing to deposit the amount of gratuity with the Controlling Authority as a precondition for remand of the proceedings. In support of his contention that the trust is not a juristic entity, Mr. Jayakar has relied on judgment of the Kerala High Court in ***K.R. Rajan Versus. Cherian K. Cherian & Anr.***[2] and of Delhi High Court in ***Duli Chand Versus. M/s. Mahabir Pershad Trilok Chand Charitable Trust***[3] of this Court in ***Municipal Corporation of Greater Mumbai, Office of the Education Department Versus. Mrs. Vrunda Vijaykumar Kulkarni,***[4]

2 2019 SCC Online Ker 4699

3 1948 (6) DRJ 153

4 WP-306 of 2018 decided on 2 & 6 August 2018

11) Mr. Jayakar further submits that under Rule 11(5) of the P.G. Rules, the maximum permissible time for seeking recall of the order has also elapsed. That Petitioner No.1 cannot file an appeal under Section 7(7) of the P.G. Act on account of statutory bar on condonation of delay beyond the period of 60 days. He submits that the Petitioner-Trust is thus rendered remediless on account of erroneous orders passed by the Controlling Authority.

12) Without prejudice to the ground of non-service of notice, Mr. Jayakar submits that the Petitioners have validly forfeited the gratuity of Respondent under the provisions of Section 4(6) of the P.G. Act. That Respondent has committed grave misconduct resulting in heavy losses to the Petitioners. That termination letter clearly quantified the losses at Rs.5 crores. That Petitioners are entitled to adjust the amount of losses suffered by them against the gratuity payable to the Respondent under the provisions of Section 4(6)(a) of the P.G. Act. He submits that there is a clear admission by the Respondent of having committed the misconduct of shredding original records of members. That therefore since misconduct is established by admission on the part of the Respondent, Respondent is not entitled to gratuity. He submits that under the appointment letter, Respondent was entrusted with the responsibility of safe upkeep of the records. That he has violated the terms of his employment and has been rightly terminated. He submits that though the Suit of the Respondent has been partly decreed, the Appeal preferred by the Petitioners is pending before this Court. That the Respondent has also filed a cross-appeal, being dissatisfied with the decree of the Trial Court.

He therefore submits that the impugned order of the Controlling Authority be set aside and the Application be remanded for fresh decision.

13) Lastly, Mr. Jayakar submits that in the event this Court arrives at the conclusion that Petitioner No.1-Trust was duly served with the notice of the gratuity application, at least opportunity be granted to Petitioner Nos.2 to 7 to file their independent appeal against the impugned order of the Controlling Authority as there is still time left for filing the appeal, if the period is computed from the date of receipt of order by them.

14) Ms. Patankar, the learned counsel appearing for the Respondent opposes the Petition. She raises preliminary objection and submits that the petition is not maintainable in view of failure to avail alternate remedy of filing appeal under Section 7(7) of the P.G. Act. She relies on judgment of this Court in ***Nanded Zilla Dekhrekh Sahakari Sanstha Maryadit Versus. Narhar Pralhadrao Kulkarni***[5]. She submits that the statutory remedy of filing appeal is foreclosed due to expiry of period of limitation and relies on judgment of the Apex Court in ***Assistant Commissioner (CT), LTU, Kakinada and Ors. Versus. Glaxo Smith Kline Consumer Health Care Limited***[6]. Alternatively, she submits that all the Petitioners are duly served with the notice of the gratuity application. She submits that for the purpose of service of notice of P.G. Application, the Trust and the Trustees are the same. That the employer

5 2017 (5) Mh.L.J. 286

6 (2020) 19 SCC 681

is ultimately the Trust and the Trustees do not have individual liability to pay gratuity to the Respondent. That Trustees were impleaded only for representing the Trust. She invites attention of this Court to the Bailiff's Report in support of her contention that all the 8 notices are accepted by Mr. Krishnanath Satardekar who was working as Administrative Manager of the Trust and not a Clerk. That Petitioners are erroneously branding Mr. Krishnanath Satardekar as a Clerk whose designation is correctly pleaded in the petition as Administrative Manager. She relies on letters dated 29 June 2023 and 30 June 2023 in support of her contention that notices acknowledged by Mr. Krishnanath Satardekar have been responded by the Trust thereby indicating authority in Mr. Krishnanath Satardekar to receive letters, communications, notices etc. on behalf of the Trust. That therefore Mr. Krishnanath Satardekar is the authorized person within the meaning of P.G. Rules. She submits that pleadings in para 4.46 to 4.47 of the petition indicate that the reason for failure to appear before the Controlling Authority is admitted as '*inadvertently remained to be informed to the trust/persons in charge of the legal matters'*. Thus, the real case in the plaint is inadvertence in placing the notices before the trustees/persons in charge and not non-receipt of the notices as such.

15) Ms. Patankar submits that the Petitioners are habitual in not taking cognizance of services of notices on them. She invites the attention of this Court to the notice dated 29 November 2025, whereby a copy of the order passed by the Controlling Authority was served. She submits that the said copy was acknowledged by another person, Mr.

Andre, and that the order was still not acted upon by the Petitioners. That notices in the Recovery Application are also served in similar manner and if Petitioners can act upon notices received in the Recovery Application, there is no reason why they should not have acted upon the notice issued in the main application.

16) Ms. Patankar would accuse the Petitioners of suppression of material facts. She submits that Petitioner suppressed letters dated 16 December 2024 and 25 January 2025 and Form-I submitted on 19 February 2025. The Petitioners clandestinely and without notice to the Respondent, withdrew the gratuity amount payable to the Respondent from the LIC on 17 February 2025, even before the notice in Form-I was served upon them on 19 February 2025. That these facts are suppressed in the petition by the Petitioners.

17) Ms. Patankar further submits that reliance by the Respondents on the provisions of Section 4(6) of the P.G. Act is inapposite. She submits that Petitioners have never communicated decision to forfeit the gratuity by service of notice under Form-M. In support of her contention that Form-M is mandatory she relies on judgment of this Court in ***Chairman and Managing Director, Bank of Maharashtra & Ors. Versus. Kishore & Ors***[7] Ms. Patankar relies on decree passed by the Civil Court in support of her contention that termination has been held to be illegal. That the City Civil Court has recorded an express finding that shredding of records was as per the directions issued by the erstwhile Managing Committee. That therefore

7 2022 SCC Online Bom 11759

admission given by the Respondent needs to be read in that context. That the Respondent is also discharged from criminal prosecution. On above broad submissions, Ms. Patankar prays for dismissal of the petition.

18) Rival contentions urged on behalf of the parties now fall for my consideration.

19) The case involves failure on the part of Petitioner No.1-Trust to pay gratuity to the Respondent, who was admittedly its employee during the period from 1 November 2000 till his termination on 2 July 2023. Respondent served for 23 long years with the Petitioner-Trust. His services were terminated vide letter dated 2 July 2023. Termination was subject matter of S.C. Suit No. 1013 of 2023 before the City Civil Court, in which the Respondent has partly succeeded, and his termination is held to be illegal, and a partial money decree is passed in his favour. During pendency of the Suit, Respondent filed Application (PGA) No. 127 of 2025 before the Controlling Authority. Petitioners did not appear before the Controlling Authority and the proceedings are decided *ex parte*. The Application is allowed and the Petitioners are directed to pay an amount of Rs.11,67,785/- to the Respondent towards gratuity alongwith simple interest @ 10% p.a. from 2 July 2023 onwards.

20) Considering the limited scope of enquiry, it is not necessary to delve deeper into the reasons why Respondent's services are terminated. The same was subject matter of issue in S.C. Suit No. 1013 of 2023. Suffice it to observe that the City Civil Court has answered the issue about legality in suspension and termination in favour of the Respondent and against the Petitioners. By decree dated 26 September 2025, the Respondent is awarded monetary claim in the sum of Rs.15,38,874/- along with interest @ 6% p.a. possibly towards arrears of pay from 25 November 2022 till the date of filing of the suit. His prayer for damages of Rs.80,00,000/- has been rejected. Similarly, counter-claim filed by the Petitioners seeking damages of Rs.5 crores against the Respondent has also been rejected. Both the parties have filed First Appeals before this Court, which are pending.

21) The limited scope of enquiry in the present petition is whether the impugned order passed by the Controlling Authority directing payment of gratuity to the Respondent warrants interference.

22) It must be observed at the very outset that Petitioners have not availed the statutory remedy of filing Appeal under Section 7(7) of the P.G. Act. against the order passed by the Controlling Authority. Sub-section (7) of Section 7 provides for statutory remedy of filing Appeal before the Appellate Authority. However, the requirement is that the Appeal must be filed within a period of 60 days from the date of receipt of the order. The Appellate Authority has discretion of condoning the delay of only upto the maximum period of 60 days under the first proviso to sub-section (7) of Section 7. Under the second proviso, it is mandatory that the employer must deposit the amount of awarded gratuity as a precondition for entertainment of the Appeal. Sub-section (7) of Section 7 of the P.G. Act provides thus:

> (7) Any person aggrieved by an order under sub-section (4), may, within sixty days from the date of the receipt of the order, prefer an appeal to

> the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:
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> Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.
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> Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub- section (4), or deposits with the appellate authority such amount.

23) Petitioners have however not availed the remedy of filing Appeal under Section 7 and have straightaway proceeded to file the present petition under Article 227 of the Constitution of India challenging the order of the Controlling Authority dated 19 November 2025. There are multiple reasons assigned by the Petitioners for their failure to file an appeal against the impugned order. The first reason is that the maximum period condonable under proviso to Section 7(7) has expired *qua* Petitioner No.1-Trust. Though Petitioner No.1-Trust complains of improper service of notice in gratuity application, there is no denial to the fact that it received the order by advocate's notice dated 29 November 2025. Therefore, at the very least, Petitioner No. 1–Trust could have preferred an appeal under Section 7(7) of the P.G. Act after 29 November 2025. Since the maximum period permissible for filing of an Appeal has expired even from 29 November 2025, Petitioner-Trust is now precluded from filing the appeal.

24) In respect of Petitioner Nos.2 to 7, it is sought to be contended that they never received either the notice in the main gratuity application or notice dated 29 November 2025. It is claimed that they acquired knowledge about passing of the impugned order only on 24 April 2026 when notices in Recovery Applications were served on them. However, they have also chosen to file the present petition by joining hands with the Petitioner-Trust.

25) In my view, for the purpose of discharging the statutory liability to pay gratuity to the employee, Petitioner No.1 cannot be regarded as distinct and separate than Petitioner Nos. 2 to 7. In law, the Trust is not a juristic entity and is required to be sued through the trustees. In that regard, reliance by Mr. Jayakar on judgments of the Delhi High Court in ***Duli Chand*** (supra) and of Kerala High Court in ***K.R. Rajan*** (supra) is apposite. However, for the purposes of the present proceedings, Petitioner Nos.2 to 7 cannot take a stand different than the one taken by Petitioner No.1. The ultimate liability to pay the gratuity to the Respondent rests on the employer which is Petitioner No.1-Trust. Thus, impleadment of Petitioner Nos.2 to 7 to the P.G. Application was only for the purpose of representing the Trust. In that sense, Petitioner Nos.2 to 7 cannot segregate themselves from Petitioner No.1 by seeking to adopt a different stand. This discussion is necessitated on account of complaint raised by the Petitioners that Petitioner Nos.2 to 7 were not individually served with the notices in P.G. Application. The aspect of service of notices is being dealt with separately in the latter part of the judgment. This Court however does not appreciate the plea raised on behalf of Petitioner Nos.2 to 7, who have joined in a common petition filed by Petitioner No.1, that they have a separate or independent right to defend the P.G. Application or to challenge the order passed by the Controlling Authority. Infact, Mr. Jayakar has urged before the Court that liberty be granted to Petitioner Nos.2 to 7 to file Appeal against the order passed by the Controlling Authority. Such plea sought to be raised on behalf of Petitioner Nos.2 to 7 is totally baseless. Once liability *qua* Petitioner No.1 to pay gratuity gets crystalized, the Trustees cannot separate themselves and seek to challenge the Trust's liability in their individual capacity as trustees. This is a reason why I have held that for the purpose of payment of gratuity, the Trust and the Trustees are the same.

26) Coming back to the issue of failure on the part of the Petitioners to file appeal against the order of the Controlling Authority, there is a purpose and object behind not permitting the employer to challenge the order of the Controlling Authority beyond the stipulated time. P.G. Act is a special statute governing liability of employer and right of employee in respect of the service gratuity. The legislative intent is not to permit the errant employer to keep the employee under long litigation and therefore bars the remedy of appeal upon expiry of the 60+60=120 days. It is impermissible to file the appeal once period of 120 days expire.

27) In ***Nanded Zilla Dekhrekh Sahakari Sanstha Maryadit*** (supra), this Court has held that it is impermissible to entertain the appeal once the maximum period prescribed in Section 7(7) of the P.G. Act is over. This Court held thus:

> 22. The intent of the legislature in not permitting the filing of an appeal under section 7(7) beyond 120 days is apparent and is more conspicuous when certain provisions for condonation of delay are provided in other Labour Laws. The Labour Courts (Practice and Procedure) Rules, 1975

framed under the MRTU and PULP, 1971 prescribe limitation under Rule 61 which is 90 days. Said Rule 61 reads as under:—

> "61. If a complaint under section 28 covers any unfair labour practice which occurred more than 90 days before the date the complaint was filed, the complainant shall file along with the complaint a separate application, for condonation of delay. That application shall disclose separately and specifically each unfair labour practice which occurred more than 90 days after the complaint was filed and in respect of which condonation of delay is sought, the date of the occurrence thereof and the reasons for condonation of delay in respect thereof Such an application shall be supported by an affidavit."

23. It is, therefore, clear that the legislature intended entertaining a complaint beyond 90 days subject to condoning the delay for reasons which may be acceptable.

28. Though the proviso below section 7(7) does not use the said words "but not thereafter", it permits extending of the period of limitation by a further period of 60 days. In my view, if the legislature did not intend to permit filing of an appeal under section 7(7) beyond 60 days after the limitation period of 60 days is over, it cannot be interpreted to conclude that the proviso setting forth the limitation of 60 days would have no sanctity. Had the legislature intended to permit a litigating party to file an application beyond the said 60 days, in all beyond 120 days and if the said delay was to be condoned by enlarging the limitation period, the legislature would not have prescribed 60 days by the proviso to section 7(7).

29. In the matter of Western Coalfields v. Presiding Officer, Central Government, 2000 (III) CLR 399, it was concluded that when the law does not provide for enlargement of the limitation period beyond what has been prescribed, the Court would not have the jurisdiction to condone the said delay. I am, therefore, of the view that the decision of the Gujarat High Court in the GSRTC case (supra) and Backbone Projects case (supra) would not be of assistance to the petitioner.

30. In the light of the above, I do not find that the Appellate Authority/Industrial Court has committed any error in concluding that the appeals filed by the petitioner beyond 120 days under section 7(7) cannot be entertained.

28) In ***Mahanagar Media Network Pvt Ltd. vs. Stanny Pariera***[8], this Court has discussed the legislative object behind imposing strict

8 Writ Petition No. 4574 of 2025decided on 10 August 2026

period of limitation for challenging the order of the Controlling Authority under the P.G. Act. This Court has held that it is not permissible to directly file Petition in this Court merely because the period of limitation for filing of appeal under Section 7(7) of the P.G. Act has expired. This Court has held thus:

> 9) ..... There is legislative objective behind prescribing a limit on condonation of delay considering the position that the PG Act is a social welfare legislation. Gratuity is payable only upon cessation of employment and is to be paid at the time of their retirement. Legislative objective is that employees cannot be made to wait endlessly for receipt of gratuity. The gratuity is to be paid with a view to provide financial assistance to the employee whose monthly salary stops after cessation of service/retirement. Therefore, the Legislature has put an embargo on condonation of delay in filing appeal under first proviso to sub-section 7 of Section 7 of the PG Act. An additional condition is imposed in the second Proviso for employers, who cannot embroil the employee in endless litigation by simply lodging an appeal before the Appellate Authority. The employer must deposit awarded amount of gratuity so that baseless appeals are not filed with the objective of delaying payment of gratuity and the employee does not have to run behind the employer for recovery of gratuity, in the event of dismissal of the appeal
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> 10) In ***Chief Executive Officer, Zilla Parishad, Beed*** (supra), order passed by the Controlling Authority was directly sought to be challenged before the High Court under Articles 226 and 227 of the Constitution of India. Discouraging such tendency and keeping in mind the legislative scheme of the PG Act, this Court held in paragraphs 10 to 13 of the judgment as under:-
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>> 10. The question therefore is when a specific act has been put in place to deal with all connected and incidental issues to payment of gratuity, whether it would it be appropriate for any party, in order to avoid the precondition of deposit of entire amount while filing appeal, to by pass the said provision and invoke the writ jurisdiction of this Court.
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>> 11. The payment of gratuity and its provisions is a part of social security legislation which not only has to be dealt with on a broader spectrum, but with a high degree of sensitivity.
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>> 12. I have therefore no hesitation in concluding that this writ petition, filed with an intent and object of avoiding deposit of the

> determined amount while preferring an appeal, is not maintainable before this Court, by bypassing the Appeal provision u/s. 7(7).
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> 13. In the light of the above, the petition stands dismissed for being untenable. Nevertheless, this would not come in the way of the petitioner taking recourse to section 7 (7) of the Gratuity Act for preferring an appeal against the impugned order dated 23/08/2011 passed by the Controlling Authority.

11) Similarly, in ***Management of Sri Sowdeswari Industries, Coimbatore*** (supra) the Madras High Court deprecated the shortcut method of challenging order of Controlling Authority by filing Writ Petition in the High Court and has held in paragraphs 5 to 8 as under:-

> 5. The contention of the third respondent-workman is that the statutory appeal provided under Section 7(7) of the Payment of Gratuity Act, has not been exhausted by the writ petitioner-management and it is a precondition that in the event of preferring an appeal under Section 7(7) of the Act, the amount of gratuity to be deposited and the said appeal must be filed within a period of 60 days
> from the date of the original order. The writ petitioner had not done anything in this regard and therefore, the writ petition deserves to be rejected.
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> 6. The learned counsel appearing on behalf of the writ petitioner states that the management during the relevant point of time was closed down and was not running the business. Therefore, it will be difficult for the management to settle the entire dues to the employees. This Court is not inclined to accept such contentions in view of the fact that the writ petitioner-management received the
> notice from the first respondent-competent authority and failed to participate in the adjudication in an effective manner.
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> 7. This apart, the final order had been passed by the first respondent on 2.7.2012 and thereafter, the recovery certificate was also issued on 3.4.2014. The writ petition was filed on 22.4.2014, challenging the original order passed by the first respondent without exhausting the remedy of appeal provided under Section 7(7) of the Gratuity Act.
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> 8. Thus, the writ petitioner has not exhausted the statutory remedy provided under the Act, not deposited the gratuity amount for the purpose of preferring an appeal and no such appeal was filed within a period of 60 days as contemplated

> under the said Act. This being the factum of the case, this Court is of the opinion that the writ petitioner has not established any ground for the purpose of considering the claim made in the writ petition. Accordingly, the writ petition stands dismissed and the order passed by the first respondent in G.A.No.6 of 2012 dated 2.7.2012 stands confirmed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.
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> 12) In my view, in the present case as well, the Petitioner cannot be permitted to bypass the statutory remedy under the PG Act by filing Writ Petition directly in this Court merely because the maximum period of condonable delay has expired.

29) Thus, the right to file appeal by the Petitioners stands foreclosed upon expiry of period specified in Section 7(7) of the P.G. Act. Reliance by Ms. Patankar on judgment of the Apex Court in ***Assistant Commissioner (CT), LTU, Kakinada Vs. Glaxo Smith Kline Consumer Health Care Ltd.*** in this regard is apposite. In that view of the matter, Petitioners cannot be permitted to maintain the present Petitioner by taking disadvantage of their own mistake of not filing the Appeal and sleeping over the order of the Controlling Authority despite having full knowledge of the proceedings and the Order.

30) Non-filing of the Appeal is sought to be justified by the Petitioners claiming that they were not properly served with notices in the P.G. Application. The plea sought to be raised appears to be completely baseless. It is first necessary to examine the events that occurred before filing of the Application for gratuity by the Respondent before the Controlling Authority. Respondent had filed Appeal from Order No. 553 of 2023 in this Court challenging the order rejecting temporary injunction by the City Civil Court in S.C. Suit No.1013 of 2023 after he was terminated from service. By order dated 6 December 2023, this Court permitted the Respondent to withdraw the Appeal from Order noting the contention that he was not paid gratuity and granted liberty to him to file an application before the Controlling Authority for payment of gratuity. Petitioners were represented before this Court through an advocate and noticed the factum of Respondent's grievance about non-payment of gratuity and the liberty granted to file application before the Controlling Authority. After passing of order dated 6 December 2023, the Respondent first approached the Petitioners seeking gratuity vide letter dated 16 December 2024 which was acknowledged by Petitioner No.1-Trust. No action was taken on letter dated 16 December 2024, which necessitated filing of one more representation dated 25 January 2025, demanding gratuity and receipt of this letter was also acknowledged by Petitioner No.1-Trust. Petitioner No.1 responded to the reminder dated 25 January 2025 given by the Respondent through email dated 27 January 2025 stating that '*the Managing Committee is reviewing this and would revert shortly*'. There are no averments relating to this email by the Petitioners in the petition. Since the gratuity was not paid, Respondent submitted Form-I *(application for gratuity by an employee)* claiming gratuity of Rs.11,67,785/- on 19 February 2025, receipt of which was also acknowledged by the Petitioner No.1-Trust. It is only after Petitioner No.1-Trust failed to act on letters dated 16 December 2024, 25 January 2025 and 19 February 2025 that the Respondent approached the Controlling Authority by filing Application (PGA) No. 127 of 2025 on 21 February 2025.

31) According to Ms. Patankar, one more important development occurred after receipt of the first two letters dated 16 December 2024 and 25 January 2025 and after the response of Petitioner No. 1-Trust dated 27 January 2025. She has placed on record a copy of the statement of LIC dated 17 February 2025, indicating that an amount of Respondent's gratuity of Rs. 11,67,785/- was withdrawn by the Trust and the same was transferred and credited to the account of Petitioner No. 1-Trust. Thus, while informing the Respondent that the Managing Committee was reviewing the request of the Respondent for release of gratuity, the Trust appears to have withdrawn the gratuity of the Respondent from LIC on 17 February 2025. Here it must be added that there is no reference to the document dated 17 February 2025, in any of the pleadings. However, the document placed on record by Ms. Patankar clearly indicates appropriation of Respondent's gratuity by the Petitioner-Trust from LIC gratuity fund.

32) The above events would clearly indicate that the Petitioners were fully aware of the efforts made by the Respondent for securing the amount of his gratuity. They knew that Respondent was going to file and Application for gratuity before the Controlling Authority. Before filing such application also, Respondent had thrice written to the Petitioners for payment of gratuity. Petitioners had promised to look in the matter. They apparently did not want to pay gratuity to the Respondent and therefore withdrew the gratuity amount from LIC while falsely informing the Respondent that the managing committee was reviewing the matter.

33) Having considered the conduct of Petitioners before filing of P.G. Application, now their conduct post filing of the Application also needs to be appreciated.

34) The bailiff report indicates that he visited the premises of the Trust on 25 March 2025 and handed over to Mr. Krishnanath Satardekar 8 notices bearing no. 778 to 785 in respect of 8 Respondents in the Application. Mr. Krishnanath Satardekar accepted the notices on behalf of all the Petitioners. Since the Trustees were not impleaded in independent capacity, their addresses were indicated as office of the Trust. Mr. Krishnanath Satardekar accepted the notices on behalf of the Petitioner-No. 1 Trust, as well as on behalf of the other trustees. Petitioners however did not act after being served with the notices in the Application. The conduct of the Petitioners in not responding to the notice served by the bailiff was consistent with their past conduct in not reacting on the three applications submitted by the Respondent. Consistent with their past conduct, Petitioners decided not to respond to the notices received from the Controlling Authority on 25 March 2025.

35) Considering the above factual situation, I am not inclined to accept the contention sought to be raised on behalf of the Petitioners that notices of the Application were not duly served on them. The contention that Mr. Krishnanath Satardekar was not the authorized person to accept the notice on behalf of the Petitioner-Trust is raised out of desperation and is clearly baseless. He was not a Clerk as sought to be orally suggested during the course of arguments. He was the Administrative Manager as described in the Petition. He had full authority to receive notices on behalf of the Trust and the trustees.

36) Reliance by Mr. Jayakar on Rule 15 of the P.G. Rules is clearly misplaced. Rule 15 provides thus:

> **15. Service of summons or notice:-**
>
> (1) Subject to the provisions of sub-rule (2) any notice, summons, process or order issued by the controlling authority may be served either personally or by registered post acknowledgement due or in any other manner as prescribed under the Code of Civil Procedure, 1908 (At 5 of 1908).
>
> (2) Where there are numerous persons as parties to any proceeding before the controlling authority and such persons are members of any trade union or association or are represented by an authorised person, the service of notice on the Secretary, or where there is no Secretary, on the principal officer of the trade union or association, or on the authorised person shall be deemed to be service on such persons.

37) Under Rule 15(2), when there are numerous persons as parties to the proceedings before the Controlling Authority who are members of an association, service thereof on authorized person is deemed to be service on such persons. In the facts and circumstances of the present case, it is clearly established that Mr. Krishnanath Satardekar is an authorized person to receive notices on behalf of the Petitioners. Though Mr. Jayakar has sought to reply upon email correspondence of 24 November 2022 and 26 November 2022 to paint a picture as if Mr. Krishnanath Satardekar did not have any authority to accept service, Ms. Patankar has placed on record letter dated 29 June 2023 accepted by Mr. Satardekar on which Petitioner No.1-Trust has given response on 30 June 2023. Also, the earlier correspondence of November 2022 is in respect of the grant of medical leave, and all that is communicated by Mr. Andre by email dated 24 November 2022 is that he and Mr. Krishnanath Satardekar did not have the authority to sanction leave. Authority to sanction leave is an altogether different concept from the authority to accept service. It is thus clearly established that Mr. Krishnannath Satardekar had full authority to accept service of notice on behalf of the Petitioners. The notices of the P.G. Application were duly served on the Petitioners.

38) The conduct of the Petitioners after passing of order dated 19 November 2025 by the Controlling Authority is also telling. Petitioners, who consciously did not bother to appear before the Controlling Authority, continued with their attitude and did not take any action despite receipt of copy of the order served on the Managing Committee of the Trust vide letter dated 29 November 2025. Despite receiving the letter from an Advocate stating that the Controlling Authority had directed payment of gratuity along with interest, Petitioners continued with their non-cooperative attitude and failed to obey the order or to challenge the same. They drew Respondent to another round of litigation, where he was required to file Application for issuance of Recovery Certificate. It is only after receipt of notices in the Recovery Application on 24 April 2026 that the Petitioners finally realized that some action needs to be taken and this is how the petition is filed on/or before 16 July 2026.

39) Considering the above position, I am not inclined to accept the contention sought to be raised on behalf of the Petitioners that they did not have notice of the P.G. Application filed by the Respondents.

Therefore, the pretext set up for non-availability of alternate remedy of filing Appeal under Section 7(7) of the P.G. Act cannot be accepted.

40) After receipt of copy of the Order of the Controlling Authority, Petitioners could have also availed the remedy of applying for setting aside the *ex-parte* order under Rule 11(5) of the P.G. Rules which provides thus :

> (5) If the employer concerned fails to appear on the specified date of hearing after due service of notice without sufficient cause, the controlling authority may proceed to hear and determine the application ex parte. If the applicant fails to appear on the specified date of hearing without sufficient cause, the controlling authority may dismiss the application:
>
> Provided that an order under this sub-rule may, on good cause being shown within thirty days of the said order, be reviewed and the application re-heard after giving not less than fourteen days' notice to the opposite party of the date fixed for re-hearing of the application.

41) Petitioners were served copy of the order by letter dated 29 November 2025 and had sufficient opportunity of filing an application under Section 11(5) for recall of the order dated 19 November 2025. The Petitioners have thus consciously not availed multiple opportunities made available to them and cannot now be permitted to maintain a direct Petition before this Court, on the pretext that the remedy of filing appeal is no longer available due to passage of time.

42) In my view the Petition deserves to be dismissed as I am not inclined to entertain the same.

43) However, if the aspect of entertainability of the Petition is to be momentarily ignored, I find no valid defense on the part of the

Petitioners for denial of gratuity to the Respondent. As observed above, Respondent has admittedly served the Petitioners for 23 long years. He has been terminated and his termination has been held to be illegal by the City Civil Court. Since the employment was governed by contract of service and since Petitioner No.1 is not an instrumentality of State, reinstatement could not be granted. Therefore, the City Civil Court has passed only a money decree in favour of the Respondent. Respondent's claim for damages is pending before the Appellate Court. However, the least that needs to be paid to him is the gratuity statutorily payable under the provisions of the P.G. Act.

44) Mr. Jayakar has relied upon the provisions of Section 4(6) of the P.G. Act to contend that the Petitioners are justified in withholding the gratuity for recovery of losses caused to the Petitioner-Trust on account of the acts of the Respondent. Section 4(6) of the P.G. Act provides thus:

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

45) However, if gratuity is to be withheld, a notice in Form-M under Rule 8 of the P.G. Rules is required to be given. The Respondent had served notice in Form-I on the employer under Rule 7. If the employer was of the opinion that the gratuity was forfeited, a notice rejecting the claim for payment of gratuity under Form-M was required to be issued under Rule 8(1)(ii) of the P.G. Rules. Rule-8 of the P.G. Rules provides thus :

> **8. Notice for payment of gratuity:-**
>
> (1) Within fifteen days of the receipt of an application under rule 7 for payment of gratuity, the employer shall,-
> (i) if the claim is found admissible on verification, issue a notice in Form 'L' to the applicant employee, nominee or legal heir, as the case may be, specifying the amount of gratuity payable and fixing a date, not being later than the thirtieth day after the date of receipt of the application, for payment thereof, or
> (ii) if the claim for gratuity is not found admissible, issue a notice in Form 'M' to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.
>
> (2) In case payment of gratuity is due to be made in the employer's office, the date fixed for the purpose in the notice in Form 'L' under clause (i) of sub-rule (1) shall be re-fixed by the employer, if a written application in this behalf is made by the payee explaining why it is not possible for him to be present in person on the date specified.
>
> (3) If the claimant for gratuity is a nominee or a legal heir, the employer may ask for such witness or evidence as may be deemed relevant for establishing his identity or maintainability of his claim, as the case may be. In that case, the time limit specified for issuance of notices under sub-rule (1) shall be operative with effect from the date such witness or evidence, as the case may be, called for by the employer is furnished to the employer.
>
> (4) A notice in Form 'L' or Form 'M' shall be served on the applicant either by personal service after taking receipt or by registered post with acknowledgement due.
>
> (5) A notice under sub-section (2) of section 7 shall be in Form 'L'.

46) In the present case, no notice of forfeiture of gratuity has been served on the Respondent. In this regard, reliance by Ms. Patankar on judgment of this Court in ***Chairman and Managing Director, Bank of Maharashtra*** is apposite in which this Court has held that mere issuance of a notice in Form-M rejecting the claim for payment of gratuity is not sufficient, and that the notice must enumerate the basis and extent of the financial loss claimed by the employer, which is alleged to have been caused due to the willful disobedience and negligence of the employee. This Court has held in paras-29, 30 and 32 of the judgment as under:

> **29.** A proper appreciation of the provisions of the Act of 1972, as also the Rules framed thereunder would show that although Form-M is titled as a notice, in real terms, it is a decision rejecting claim for payment of gratuity or information given to the employee that his gratuity stands forfeited. This view is supported by an observation made by a learned Single Judge (Rohit Deo, J.) of this Court in the case of General Manager, HRM and others v. Appellate Authority and others (Writ Petition No. 956 of 2022 decided on 08/04/2022), the relevant portion of the said judgment reads as follows:
>
> "7. In response to a specific query put by me as to whether prior notice is issued to the employee before forfeiting the gratuity, the learned Counsel for the employer Mr. R.N. Sen invites my attention to notice form dated 15-7-15 which is at Annexure-5 to the memo of the petition. The said communication, as a fact, is not a show cause notice. Rather, by the said communication, the employee is only informed the decision of the employer that the gratuity stands forfeited."
>
> **30.** This Court is of the opinion that an employer cannot simply issue notice in Form-M to the employee rejecting claim for payment of gratuity. This has to be preceded by a show cause notice, because the gratuity amount to which the employee is otherwise entitled is to be forfeited, which is a drastic consequence for the employee. Such a notice would enumerate the basis and extent of financial loss as claimed by the petitioner-employer, due to the alleged willful omission or negligence of the employee. An opportunity would also be available for the employee to contest the same, ensuring fairness of procedure. In the present case, admittedly show cause notice was not issued to the respondent No. 1 before the said notice rejecting claim for payment of gratuity was directly issued to him under Form-M on 06/10/2012. The reason stated

> by the petitioner-employer in the said notice for forfeiting gratuity reads as follows:
>
> > "Reasons:-There is a loss to the Bank to the extent of Rs. 69.72 lacs plus unapplied interest thereon on account of your misconduct."
>
> **32.** This Court is of the opinion that unless such an exercise was carried out by the petitioner-employer and on the basis of such material, proper show cause notice was issued to the respondent No. 1, power under section 4(6)(a) of the Act of 1972, could not have been invoked to forfeit the gratuity of respondent No. 1. Merely referring to the contents of the enquiry report would not suffice and in any event the figure mentioned in the enquiry report was about Rs. 68.45 Lakhs, while the notice rejecting claim for payment of gratuity stated the figure as Rs. 69.72 Lakhs plus unapplied interest thereon. As noted above, the respondent No. 1 already suffered punishment of compulsory retirement on the basis of five out of the six charges being proved in the departmental enquiry and therefore, reliance placed on the contents of the enquiry report for invoking section 4(6)(a) of the Act of 1972, on the part of the petitioner-employer is not justified.

47) In the present case, Petitioners did not issue notice in Form-M indicating the reasons for forfeiture of the gratuity. Therefore, forfeiture of gratuity cannot be lightly or readily inferred.

48) Even otherwise, termination order dated 2 July 2023 does not state that the gratuity is forfeited. The operative part of the order reads thus:

> For all the reasons stated above, you have rendered yours services liable to be terminated. Hence, we Mare constrained to immediately terminate your services.
>
> Moreover, on account of all the infractions notice above, you have caused serious prejudice and an immeasurable loss to the Trust, which is presently quantified at Rs. 5,00,00,000.
>
> In the Asstt. Manager Promotion Letter, the Trust is authorised to adjust such loss against your salary and hence, the your salary from November

> 2022 onwards till the date of this letter is adjusted against the loss caused by you of Rs. 5,00,00,000
>
> For the said reasons the Trust cannot consider payment of any ex-gratia and/or bonus to you.

49) Thus, in the termination letter, Petitioners claimed sufferance of loss of Rs. 5 crores and far from taking a position that the gratuity is forfeited, it was stated that "*the Trust is authorised to adjust such loss against your salary and hence, your salary from November 2022 onwards till the date of this letter is adjusted against the loss caused by you of Rs. 5,00,00,000".* Accordingly, the salary from November 2022 onwards till the termination was not paid. The Petitioner-Trust also communicated its decision for non-payment of the gratuity and bonus to the Respondent. Thus, there is nothing to indicate that the Petitioner-Trust intended to forfeit the gratuity of the Respondent in any manner.

50) So far as the adjustment of salary from November 2022 onwards against the alleged loss of Rs.5 crores is concerned, the Civil Court has allowed claim for that salary. Even otherwise, Section 4(6) of the P.G. Act contemplates forfeiture of gratuity to the extent of the damage or loss caused, if the services are terminated for any act, willful omission or negligence causing any damage or loss or destruction of the property belonging to the employer. In the present case, the allegation against the Respondent is unauthorized shredding of original records relating to membership of the Trust. In that sense, the act of the Respondent does not cause a direct loss to the employer. The loss contemplated under Section 4(6) is a direct loss suffered by the employer and not a perceived loss. To illustrate, if an employee is responsible for loss of any item or stock, or acts in a negligent manner where the property of the employer is destroyed, gratuity to the extent of such loss can be forfeited. In the present case, Petitioners have quoted a whimsical and fanciful amount of Rs. 5 crores. In any case, counterclaim filed by the Petitioners for recovery of alleged loss of Rs.5 crores has already been dismissed by the Civil Court. Since First Appeal is pending, this Court is not going into the aspect of loss suffered by the Petitioners, and they would be free to agitate the same in the pending appeal. As of now, for the limited purpose of gratuity, this Court proceeds to hold that the requirement of Section 4(6)(a) of the P.G. Act is not met, and there is no forfeiture of gratuity within the meaning of that provision.

51) Thus, even on merits, the Respondent is found to be entitled to payment of gratuity. The Controlling Authority has rightly allowed the Application filed by him. Therefore, there is no warrant for interference in the impugned order passed by the Controlling Authority.

52) Coming to the aspect of interest, the Controlling Authority has awarded interest @10% p.a.. However the Petitioners have failed to implement the order of the Controlling Authority despite being served with copy of the same. This made Respondent incur further expenses in filing Recovery Application under Section 8 of the P.G. Act. Section 8 specified different and compound rate of interest for recovery of gratuity. Section 8 provides thus:

> **8. Recovery of gratuity**
>
> If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling

> authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:
> Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:
> Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act

By Notification dated 1 December 1987 issued under Section 8 of the P.G. Act, the Central Government has specified the compound rate of interest of 15% on unpaid amount of gratuity. Since the Petitioners made Respondent filed Recovery Application (*in which Recovery Certificate with 15% interest is bound to be issued*), the Petitioners shall pay to the Respondent gratuity awarded by the Controlling Authority with 15% compound interest. This direction is necessary since this Court is proposing to fix a timeline for payment to avoid any further delay by the Petitioners by contesting the Recovery proceedings. It should not happen that specification of timeline by this Court works to the disadvantage of the Respondent. Therefore what would ultimately be done in the Recovery proceedings is ensured by directing payment of interest as specified under Section 8 of the P.G. Act.

53) In fact, the conduct of the Petitioners in denying gratuity to the Respondent is not appreciated by this Court. Merely because there are disputes between the two managing committees, the same does not mean that the Respondent should be denied gratuity for the 23 long years of service rendered by him. Afterall, gratuity is paid to the employee with a view to ensure that there is some amount available to look after post-retirement needs. The services of the Respondent have been terminated 3 years ago and is without any salary and the gratuity is also denied to him.

54) What has disturbed the Court more is the manner in which Petitioners have conducted themselves 'before', 'during' and 'after' proceedings before the Controlling Authority. The conduct is already noted above. Petitioners had taken a decision not to pay gratuity to Respondent under any circumstances, and they went on ignoring the letters and notices. For the conduct of deliberately not acting on repeated correspondences made by Respondent and notices issued by the Authority and for taking a false stand that Petitioners were never aware about filing of gratuity application and about its outcome, costs deserve to be imposed on the Petitioners. I deem it appropriate to determine the costs at Rs. 1,00,000/-. As a matter of fact, the Court has come across document evidencing withdrawal of Respondent's gratuity by the Petitioners after receipt of letters from him thereby depicting deliberate design to deny gratuity. The amount of costs would have been higher based on that document, but because the same is produced by the Respondent during the course of hearing of Petition, I am not considering that document while determining the quantum of costs. Therefore, the costs are capped at Rs. 1,00,000/-. It is however clarified that the observations made in the judgment shall not come in the way of decision of both the First Appeals filed by the rival parties.

55) The Writ Petition is accordingly **dismissed**. Over and above the gratuity and statutory interest payable to the Respondent, Petitioners shall pay costs of Rs.1,00,000/- to him. The amount of gratuity with interest, as well as the amount of costs shall paid to the Respondent within a period of 6 weeks.

[SANDEEP V. MARNE, J.]

NEETA SHAILESH SAWANT Digitally signed by NEETA SHAILESH SAWANT Date: 2026.09.01 21:10:23 +0530