

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P(C) No.9222/2007**

% **Date of decision: 29.02.2008**

Municipal Corporation of Delhi Petitioner
Through: Ms.Saroj Bidawat, Advocate.

Versus

Shri Jagmal Respondent
Through : Nemo.

CORAM :-

* **HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner, Municipal Corporation of Delhi has impugned the order dated 30th July, 2007 passed by the Appellate Authority dismissing the appeal of the petitioner against the decision of the Controlling Authority holding that the respondent is entitled for the balance amount of gratuity of Rs.45,306/- along with simple interest at 10% per annum.

2. The respondent, Sh.Jagmal, an employee of Municipal Corporation of Delhi who worked under Assistant Director of

Horticulture, Civil Line Zone of Municipal Corporation of Delhi, had filed an application for determination of gratuity payable to him and for a direction to the Commissioner of petitioner to pay the same.

3. The respondent was appointed on 12th April, 1961 and he retired on 30th April, 2002 after rendering continuous service for 41 years. The last drawn wages of the respondent were Rs.5,662/- and he has claimed an amount of gratuity of Rs.48,534/-.

4. The application of the respondent was contested on the ground that the Municipal Corporation of Delhi was following the CCS (Pension), 1972 Rules for the purpose of calculation of gratuity and consequently an amount of Rs.88,622/- was paid to the respondent as gratuity. The petitioner Corporation also relied on the fact that the exemption has been granted to the Corporation from the applicability of the Gratuity Act and consequently the Gratuity Act, 1972 is not applicable and the respondent is not entitled for any gratuity under the Gratuity Act, 1972.

5. Relying on MCD v. Padma Devi and MCD v. V.T.Naresh, 1986 (52) FLR 335 the competent authority held that the employees of Municipal Corporation of Delhi are entitled to receive gratuity amount either under the payment of Gratuity Act or CCS(Pension) Rules whichever is higher. Consequently, if on calculation of the gratuity amount under the

CCS(Pension) Rules the amount of gratuity is higher then the gratuity is payable under the CCS(Pension) Rules and in case the amount of gratuity is higher under the Gratuity Act, 1972 then the gratuity be paid under the said Act.

6. The competent authority, therefore, calculated the gratuity payable to the petitioner under the Gratuity Act, 1972 to be Rs.1,33,928/- and since the amount of Rs.88,622/- has already been paid, the order dated 15th December, 2006 was passed holding that the respondent is entitled for a sum of Rs.45,306/- as balance gratuity with a simple interest at 10% per annum as per Section 7(3-A) of the Payment of Gratuity Act, 1972 from the date it became payable that is 30th April, 2002. Regarding the exemption granted to the Municipal Corporation of Delhi it was held that the exemption was granted by order dated 22nd July, 2005 and so it could be prospective and not retrospective and on this ground respondent cannot be denied the balance amount of gratuity.

7. The appeal filed by the petitioner was dismissed by the Appellate Authority by order dated 30th July, 2007 against which the present writ petition is filed.

8. This is no more res integra that prior to exemption being granted on 22nd July, 2005 the provision of Gratuity Act, 1972 were also

applicable to the employees of Municipal Corporation of Delhi. The learned counsel for the petitioner is unable to show anything to the contrary that if gratuity is payable under the CCS(Pension) Rules and under the Gratuity Act, 1972 also then the Gratuity cannot be paid under the act under which it is higher. This is, however, correct that an employee shall not be entitled to claim gratuity under both the Acts. The Apex Court in the case of Municipal Corporation of Delhi v. Dharam Pakash and Ors, (1998) 7 SCC 221 had held to this effect. Para 2 of the said judgment is as under:-

2. The short question that arises for consideration is whether an employee of the MCD would be entitled to payment of gratuity under the Payment of Gratuity Act when the MCD itself has adopted the provisions of the CCS (Pension) Rules, 1972 (hereinafter referred to as "the Pension Rules"), whereunder there is a provision both for payment of pension as well as of gratuity. The contention of the learned counsel appearing for the appellant in this Court is that the payment of pension and gratuity under the Pension Rules is a package by itself and once that package is made applicable to the employees of the MCD, the provisions of payment of gratuity under the Payment of Gratuity Act cannot be held applicable. We have examined carefully the provisions of the Pension Rules as well as the provisions of the Payment of Gratuity Act. The Payment of Gratuity Act being a special provision for payment of gratuity, unless there is any provision therein which excludes its applicability to an employee who is otherwise governed by the provisions of the Pension Rules, it is not possible for us to hold that the respondent is not entitled to the gratuity under the Payment of Gratuity Act. The only provision which was pointed out is the definition of "employee" in Section 2(e) which excludes the employees of the Central Government and State Governments receiving pension and gratuity under the Pension Rules but not an employee of the MCD. **The MCD employee, therefore, would be entitled to the payment of gratuity under the Payment of Gratuity Act. The mere fact that the gratuity is provided for under the Pension Rules will**

not disentitle him to get the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Possibly for this reason, Section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act, if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. Admittedly MCD has not taken any steps to invoke the power of the Central Government under Section 5 of the Payment of Gratuity Act. In the aforesaid premises, **we are of the considered opinion that the employees of the MCD would be entitled to the payment of gratuity under the Payment of Gratuity Act notwithstanding the fact that the provisions of the Pension Rules have been made applicable to them for the purpose of determining the pension. Needless to mention that the employees cannot claim gratuity available under the Pension Rules.**

9. In the facts and circumstances the plea of the petitioner that the order of the Controlling Authority dated 15th December, 2006 and Appellate Authority is contrary to law as not sustainable. The respondent is entitled for gratuity under the Gratuity Act, 1972 and since a part of the amount has already been paid, the respondent is entitled for difference as has been held by the Controlling Authority and Appellate Authority. There is no manifest error in the orders of Controlling authority and the Appellate Authority so as to entail interference by this Court.

10. The writ petition in the facts and circumstances is without any merit and it is, therefore, dismissed.

February 29th, 2008.
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ANIL KUMAR, J.