

HIGH COURT OF MADHYA PRADEESH JABALPUR

(Writ Petition No. 9998/2008 (S))

Municipal Corporation Burhanpur
vs
Nathu

(Writ Petition No. 9999/2008(S))

Municipal Corporation Burhanpur
Vs.
Smt. Jasoda Bai

(Writ Petition No. 10000/2008(S))

Municipal Corporation, Burhanpur
Vs.
Dinkar Rao

PRESENT : **HON'BLE SHRI JUSTICE SANJAY YADAV**

Counsel for Petitioner : Shri Atulanand Awasthy, Advocate.
Counsel for respondents : Shri M.S. Bhatti, Advocate.

ORDER

(30.9.2013)

PER SANJAY YADAV, J

Common question raised vide these petitions are as to whether in view of Madhya Pradesh Municipal Services (Pension) Rules, 1980, provisions of Payment of Gratuity Act, 1972 would be applicable to the employees belonging to Municipal Corporation. These petitions were accordingly heard and are decided by this common order.

2. Relevant facts not in dispute briefly are that, the respondents while in employment with the Municipal Corporation, Burhanpur, retired from service on attaining the age of superannuation and being aggrieved by non-settlement of gratuity preferred an application before the Controlling Authority under

Section 7 of Payment of Gratuity Act, 1972 read with Rule 10 of Madhya Pradesh Payment of Gratuity Rules, 1973.

3. That, objections were raised on behalf of employer Municipal Corporation as to tenability of such application in view of existence of Madhya Pradesh Municipal Service (Pension) Rules, 1980. The Controlling Authority while dispelling the contentions, held that the respondent workmen are entitled for gratuity under the Payment of Gratuity Act, 1972, by order dated 6.4.1998.

4. Aggrieved by the order passed by Controlling Authority, the petitioner, Municipal Corporation, preferred an appeal under sub-section (7) of Section 7 of 1972 Act; whereon, appellate authority by order dated 29.10.2007 dismissed the appeal holding that the provisions of Payment of Gratuity Act, 1972 are applicable to the Municipal Corporation and that even if no option has been tendered by the existing municipal employees under M.P. Municipal Services (Pension) Rules, 1980, will not dis-entitle them for gratuity at the rate as stipulated under the Act of 1972.

5. In the aforesaid factual back-drop the issue exposited in the beginning has arisen for consideration.

6. The Payment of Gratuity Act, 1972 was enacted to provide scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto.

7. Section 2 (e) defines “employee” to mean any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

8. The expression 'employer' finds its definition under Section 2 (f) in the following manner:

2 (f) “employer” means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop—

- (i) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,
- (ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority,
- (iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person ;”

9. Section 4 stipulates that 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 on his superannuation, or on his retirement or resignation, or on his death or disablement due to accident or disease.

10. Section 5 of the 1972 Act empowers the appropriate Government to exempt, subject to conditions as may be specified in the notification any any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which Act applies from the operation of its provisions.

11. It is not in dispute that the Central Government vide notification No. SO 239 dated 8th January 1982 published in Central Government Gazette of India dated 23rd January 1982 in exercise of its powers conferred by clause (c) of sub-section 3 of Section 1 of the Payment of Gratuity Act, 1972 specified “Local Bodies” in which ten or more persons are employed or were employed on any day of the preceding 12 months as a class of establishment to which the said act shall apply with effect from the date of publication. It being not in dispute that the petitioner Municipal Corporation being a local body, the provisions of Payment of Gratuity Act, 1972 are applicable in full force.

12. Section 14 of 1972 Act provides for :

14. Act to override other enactments, etc. - The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than

this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

13. While dwelling upon the issue as to applicability of provisions of Payment of Gratuity Act to the employees of Municipal Council/Corporation, it has been held by Supreme Court in *Municipal Corporation of Delhi v. Dharam Prakash Sharma and another* (AIR 1999 SC 293):

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.

14. Therefore, in view of the notification dated 8.1.1982 and the provisions contained under Payment of Gratuity Act, 1972 and as per the law laid down by the Supreme Court in the case of *Municipal Corporation of Delhi v. Dharam Prakash Sharma and another* (supra), it is beyond any iota of doubt that the provisions of Payment of Gratuity Act, 1972 are applicable to the petitioner Municipal Corporation and the employees are entitled to seek benefit thereunder.

15. Next contention of the learned counsel for the petitioner is that under 1980 Rules imperative it was for the employees to have opted for pension scheme as were brought in vogue by the Rules of 1980. It is urged that since the respondents employees did not opt for pension scheme no benefit could enure to them under Rule 1980. Therefore, they are not entitled to claim any gratuity before the controlling authority. The contentions are noted to be rejected at the outset for the reasons that Payment of Gratuity Act, 1972 has been made applicable to the local bodies w.e.f 23.1.1982. Even if the employees of Municipal Corporation have not opted for the pension under 1980 Rules will not deprive them of availing the remedy under 1972 Act.

16. Contention regarding as to delayed claim, the appellate authority has aptly dwelt upon the same in paragraph 2 of the appellate order (वाद प्रश्न क्रमांक-2 के संबंध में वैधानिक स्थिति यह है कि नियम 7(1) के अनुसार सेवा के पर्यावसान के पश्चात 30 दिन के अंदर आवेदक द्वारा अनावेदक को ग्रेज्युटी भुगतान अधिनियम ग्रेज्युटी

भुगतान अधिनियम 1972 एक सामाजिक कानून है और इसे ही मददेनजर रखते हुये नियम 7 (5) में यह प्रावधानित है कि ग्रेज्युटी का कोई दावा मात्र इसलिये अविधि मान्य नहीं होगा की दावेदार ने अपना आवेदन निर्दिष्ट कालावधि में अन्द प्रस्तुत नहीं किया था। माननीय उच्च न्यायालय द्वारा मोहनलाल पिता नानुमल विरूद्ध अपीलेंट ऑथारिटी पेमेन्ट ऑफ ग्रेज्युटी एक (1991—एम.पी. एफ.जे.—355) में पारित निर्णय के अनुसार यह आदेशात्मक नहीं है। अतः उपादान भुगतान अधिनियम 1972 के अन्तर्गत आवेदक का आवेदन पर कोई विपरीत प्रभाव नहीं पड़ेगा एवं आवेदक का आवेदन स्वीकार किया जाता है।) In this context reference can be had of decision in Mohanlal v. Appellate Authority Under Payment of Gratuity Act, Bhopal and others [1991 MPLJ 355] wherein it is held

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 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”. Sub-section (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.”

17. In view whereof having thus considered this Court do not find any substance in the challenge put-forth by Municipal Corporation in the order passed by the Controlling Authority under Payment of Gratuity Act and its affirmation by appellate authority.

18. In the result petition fails and is hereby dismissed. No costs.

(SANJAY YADAV)
JUDGE

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