

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.185 of 2020

Agartala Municipal Corporation

-----Petitioner(s)

Versus

Sri Samir Kumar Ghosh & 2 Ors.

-----Respondent(s)

For Appellant(s) : Mr. S. Deb, Sr. Adv.

Mr. K. K. Pal, Adv.

For Respondent(s) : Mr. S. Bhattacharjee, Adv.

**HON'BLE MR. JUSTICE S. TALAPATRA
HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY**

Order

29/01/2021

Heard Mr. S. Deb, learned senior counsel assisted by Mr. K. K. Pal, learned counsel appearing for the appellant.

This inter-court appeal is directed against the judgment dated 29.05.2020 delivered in W.P.(C) No.1091 of 2017 by which the learned Single Judge has observed and directed inter alia as follows:

"The question of applying revised limit would also have to be judged in terms of the provisions of the said Act. As noted, the Central Government revised the ceiling for payment of gratuity under the said Act to Rs.10,00,000/- under a notification dated 24 th May, 2010. The petitioner having retired w.e.f 31 st December, 2015 such revised limits would apply to him. Such a question had come up for consideration before this Court in case of Bhupati Debnath (supra) in which following observations were made:

7. Clause (a) of Section 2 of the Act defines the term "appropriate Government" as under:

"2. (a) "appropriate Government" means,—

(i) in relation to an establishment— (a) belonging to, or under the control of, the Central Government, (b) having branches in more than one State, (c) of a factory belonging to,

or under the control of, the Central Government, (d) of a major port, mine, oilfield or railway company, the Central Government, (ii) in any other case, the State Government.

8. This distinction between the State or the Central Government being an appropriate Government in relation to different classes of establishments, manifests itself in various sections contained in the said Act. For example, under Section 3 the appropriate Government may, by notification, appoint an officer to be a Controlling Authority who shall be responsible for the administration of the Act. Different Authorities may be appointed for different areas. Under Section 4A the appropriate Government may notify date with effect from which every employer other than an establishment belonging to or under the control of the Central or the State Government would have to obtain an insurance for liability for payment of gratuity. Under sub-section (1) of Section 5 the appropriate Government may by notification exempt any establishment, factory, mine or oilfield etc. from the operation of the provisions of the Act. Under sub-section (2) of Section 5 similarly the appropriate Government may notify exemption of any employee or class of employees from the operation of the provisions of the said Act.

9. However, when it comes to Section 4 of the said Act which pertains to payment of gratuity, this distinction of the appropriate Government being Central or the State Government, has no effect. Sub-section (1) of Section 4 provides that the gratuity shall be payable to an employee on termination of his employment after he has rendered continuous service for not less than five years, on his superannuation or retirement or resignation or death or Page - 9 of 11 disablement due to accident or disease. Sub-section (2) of Section 4 provides that for every completed year of service or part thereof in excess of six months the employer shall pay gratuity to an employee at the rate of 15 (fifteen) days wages based on the rate of wages last drawn by the concerned employee. Sub-section (3) of Section 4 which is of importance reads as under:

“(3) The amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time.”

10. As per this provision thus the amount of gratuity payable to an employee would not exceed such amount as may be notified by the Central Government from time to time. The group of words “such amount as may be notified by the Central Government from time to time” was substituted by Act 12 of 2018 for the group of words “ten lakh rupees”. This limit of ten lakhs of rupees was self in substitution of earlier limits of lesser amounts.

11. It can thus be seen that insofar as the payment of gratuity, its computation and the ceiling up to which such amount can be paid as referred to in Section 4 of the said Act, the term “appropriate Government” has no bearing. This distinction is also apparent from the statement of objects and reasons which provides that for the purpose of uniformity, the Central Act was envisaged. At the same time, appropriate Government is for the purpose of administering the Act. The ceiling limit for payment of gratuity is provided in sub-section (3) of Section 4. Previously, such ceilings were contained in the sub-section

itself. Pursuant to amendment by virtue of Act 12 of 2018 the power to prescribe such ceiling has been vested in the Central Government to be exercised by issuing notification in this regard. It is in exercise of such delegated powers of legislation that the Central Government has issued a notification dated 29.03.2018 which reads as under:

S.O. 1420 (E).—In exercise of the powers conferred by sub-section (3) of section 4 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies that the amount of gratuity payable to an employee under the said Act shall not exceed twenty lakh rupees.

12. This revised ceiling thus would apply to all establishments irrespective of whether they are controlled or governed by the State or the Central Government as the appropriate Government. The stand of the respondents, therefore, that unless and until such revised ceiling of payment of gratuity is adopted by the State Government, the employees of the said corporation cannot claim benefit of such revised limit cannot be accepted. Revised ceiling limit of `20,00,000 (rupees twenty lakhs) would be applicable to the petitioner.

[10] In the result, it is directed that the respondent AMC shall calculate the gratuity in terms of Section 4(2) of the Act payable to petitioner by taking into account his basic salary and dearness allowance. The gratuity so calculated would be paid by applying revised ceiling of Rs.10,00,000/-. After deducting the gratuity already paid, remaining amount would be paid within a period of 4(four) months from today along with simple interest @ 6% per annum upon completion of 1(month) month from the date of superannuation till actual payment."

Mr. Deb, learned senior counsel appearing for the Municipal Corporation-appellants has submitted that the writ petitioner, the respondent No.1 herein had retired from the service on 31.12.2015 as the Head Clerk. Within time, his gratuity had been paid following the notification No.F.8(3)-FIN(G)09 dated 05.05.2009 issued by the Finance Department declaring the maximum ceiling of retirement gratuity @ Rs.4,00,000/-.

On the basis of the said notification which was adopted by the Municipal Corporation-appellant, the due gratuity had been paid to the petitioner. But the petitioner has challenged the decision of the Municipal Corporation-appellant by stating that the amount of gratuity would be determined by Section 4(3) of the Payment of Gratuity Act, 1972 inasmuch as Agartala Municipal Corporation is an establishment within the definition of Section 1(3)(c) of the Payment of Gratuity Act, 1972.

It is not in dispute that the Central Government having due regard to the Section 1(3)(c) of the said Act has published a notification on 08.01.1982 and the said notification as referred above provides as follows:

"S.O. No.239....In exercise of the powers conferred by clause © if sub-section (3) of Section 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specified "local bodies" in which ten or more persons are employed, or were employed, on any day preceding twelve months, as a class of establishments to which the said Act shall apply with effect from the date of publication of this notification in the Official Gazette."

Thus, there cannot be any amount of dispute that Agartala Municipal Corporation comes within the establishment, in terms of Clause-C of sub-Section 3 of Section 1 of the Payment of Gratuity Act, 1972.

Mr. S. Deb, learned senior counsel has contended that by means of Tripura Municipal Act, 1994, the municipal bodies

have their authority to determine pay and allowances, pension and gratuity. However, no such specific provision has been referred to. As stated, the Municipal Corporation has adopted the said notification dated 05.05.2009. That apart, Mr. Deb, learned senior counsel has submitted that since Agartala Municipal Corporation has adopted its own rule of Payment of Gratuity Act, the provisions of Payment of Gratuity Act, 1972 will not apply to its employee. In support of his contention Mr. Deb, learned senior counsel has referred a decision of the apex court in **Nagar Ayukt Nagar Nigam, Kanpur vs. Mujib Ullah Khan and Another** reported in **(2019) 6 SCC 103** the passages as follows have been highlighted:

"8. A perusal of the above provisions would show that the Act is applicable to (1) every factory, mine, oilfield, plantation, port and railway company; (2) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, the said provision has two conditions, viz. (i) a shop or establishments within the meaning of a State law and (ii) in which ten or more persons are employed; and (3) the establishments or class of establishments which Central Government may notify.

9. The appellant is not covered by clauses (a) and (b) of Section 1(3) of the Act. Clause (a) is not applicable on the face of the provisions, but even clause (b) is not applicable in view of Section 3 (c) of the 1962 Act as such Act is not applicable to the offices of the Government or local authorities. The Local Authorities means a municipal committee, district board etc or entrusted with the control or management of a municipal or local fund in terms of Section 3(31) of the General Clauses Act, 1897."

According to Mr. Deb, learned senior counsel, having due regard to the pedagogy of the powers, repugnance will not apply in the present case.

We are unable to accept that analogy inasmuch as the Payment of Gratuity Act while defining employee by Section-2(e) has provided that employee means any person (other than an apprentice) employed on wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, 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.

This exception has been carved out is for the Central Government and the State Government, who have their independent source of power to frame any Act or rules for their own employees. In that case, in respect of those employees, the provision of Payment of Gratuity Act will not apply.

Admittedly, the writ petitioner is not an employee of the Central Government or State Government but of a local body. As such the said exception as carved out while defining 'employee' cannot authorise Agartala Municipal Corporation (the appellant) to make their own rules which is in contrast to the provisions of Central Statute namely the Payment of

Gratuity Act, 1972 inasmuch as the Central Government has notified that local bodies having employees more than ten would be covered by the provisions of Payment of Gratuity Act, 1972.

Hence, We do not find any infirmity in the observation or direction of the learned Single Judge. Accordingly, this appeal stands dismissed.

However, in the circumstances of the case, there shall be no order as to costs.

JUDGE

JUDGE



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