

(2008) 02 GUJ CK 0113
In the Gujarat High Court

Case No : Special Civil Application No's. 2138, 2139 to 2140 of 2002, 2143, 2145 to 2146 and 2148 of 2002

Chief Officer

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 27-02-2008

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 50
Constitution of India, 1950 — Article 12, 226, 227, 254
Gujarat Municipalities Act, 1963 — Section 271
Industrial Disputes Act, 1947 — Section 33C(2)
Life Insurance Corporation Act, 1956 — Section 48(2B)
New Mangalore Port Trust (Adaptation of Rules) Regulations, 1980 — Regulation 4
Payment of Gratuity (Central) Rules, 1972 — Rule 5
Payment of Gratuity Act, 1972 — Section 14, 2(e), 4(2) , 4(5), 5

Citation : (2008) 117 FLR 675 : (2008) 3 LLJ 206

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : S.K. Jhaveri, for Jirga D. Jhaveri, for the Appellant; A.K. Clerk, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned advocate Ms. Jirga D. Jhaveri for the petitioner Nagarpalika and learned advocate Mr.A.K. Clerk for respondents workmen.

2. In all these petitions, the petitioner - Bilimora Nagarpalika has challenged the order passed by the controlling authority under the Payment of Gratuity Act, 1972 (for short "the Act"). The respondents workmen in each petition approached the controlling authority claiming the amount of gratuity under the Act and in those applications, the controlling authority has decided that workmen are entitled to amount of gratuity according the provisions of the Act. Accordingly, the controlling authority has calculated the amount and directed the petitioner Nagarpalika to pay the amount of gratuity to the concerned employees with 12% interest within a period of 30 days from the date of receipt of order

from the controlling authority.

3. Learned advocate Ms. Jhaveri appearing on behalf of petitioner Nagarpalika submitted that Section 2(e) of the Act provides definition of "employee". She further submitted that the Nagarpalika is having its own gratuity rules, therefore, the provisions of the Act are not applicable to the concerned employees. The Rules framed by the petitioner Nagarpalika have been approved by the State Government as per Annexure-B to the petition. She relied upon Rule 5 which provides the mode of calculation of the amount of gratuity to the concerned employee. According to her, as per the Rules, the amount of gratuity is paid to the concerned employee. Therefore, no payment is to be made by petitioner to the concerned employees. She also raised contention that petitioner Nagarpalika being a local authority and therefore, provisions of the Act are not applicable. She also submitted that the controlling authority has not considered the Gratuity Rules which are at Annexure-B and relying upon the provisions of the Act, the controlling authority decided the issue against the petitioner Nagarpalika. Section 2(e) of the Act reads as under:

2(e) "employee" means 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].

3.1 She also relied upon the decision of this Court (Coram : R.M. Doshit, J.) passed in SCA No. 18365 of 2006 dated 5.12.2006 wherein this Court has observed that "Be that as it may, I am of the view that the impugned judgment and order passed by the controlling authority is wholly without the jurisdiction and the authority of law. The present petition preferred under Article 226 of the Constitution of India is maintainable. There is no dispute that the respondent is a member of the Panchayat service and thus the servant of the State Government. It is also not in dispute that a Government servant in Panchayat service is governed by the specific rules made in that behalf by the State Government. Hence, the provisions contained in the Act of 1972 shall not apply in the case of the respondent. It is apparent that the controlling authority has failed to consider and decide this vital issue which goes to the root of its jurisdiction. As the respondent is not governed by the Act of 1972, the controlling authority had no jurisdiction or authority of law to entertain the claim made by the respondent. The impugned judgment and order are thus passed by the controlling authority without the authority of law and are vitiated by inherent lack of jurisdiction.

3.2 Learned advocate Ms. Jhaveri also submitted that concerned employees are governed by separate gratuity rules sanctioned/approved by the State Government and therefore, concerned employees are not entitled to the benefits

as provided under the Act. She further submitted that respondents employees are governed by BCSR Rules and therefore, the Act is not applicable.

4. Learned advocate Mr. A.K. Clerk appearing on behalf of respondents submitted that the contentions raised by learned advocate Ms. Jhaveri were not raised before the controlling authority by the petitioner. Therefore, these contentions for the first time before this Court and therefore, petitioner may not be permitted to raise said contentions. He also submitted that there is a delay of more than 3 years in filing the petitions after the order passed by the controlling authority and petition was filed after completion of period of appeal. Therefore, according to him, there is inordinate delay in filing the present petitions by the petitioner. He also raised contention that against the order of the controlling authority u/s 7(7) of the Act, appeal is available to the petitioner but, no appeal was preferred and straightway, petitions were filed after inordinate delay. Therefore, all the petitions are required to be dismissed. He also raised contention that definition of "employee" is given in Section 2(e) of the Act, would not be applicable in the present case because exclusion of employee should satisfy two conditions; one is that he holds a post under the Central Government or State Government and secondly he is governed by any other Act or Rules. Meaning thereby that both the conditions are required to be satisfied and then only, such person cannot be considered as an employee u/s 2(e) of the Act. He submitted that respondents employees were not holding any post either in State Government or Central Government and mere framing of the Rules, would not attract exclusion u/s 2(e) of the Act in case of present respondents employees. He also submitted that though two rules are in operation, then also provisions of the Act are applicable as decided by the Himachal Pradesh High Court in case of State of H.P. Vs. Lashkari Ram, He further submitted that Gratuity Act provides better terms to the employee to receive the gratuity amount. Therefore, if said Act is applicable, then concerned employee can claim gratuity on better terms and accordingly, claims were made by respondents employees under the Act. He relied upon the decision of Apex Court in case of Jashwant Singh Gil v. Bharat Coking Coal Ltd. and Ors. reported in (2007) 1 SCC 663. Along with affidavit in reply, copy of a resolution is produced at Page-19. As per said resolution, in case of Champaklal Kavat, an order was passed by controlling authority under the Act, against which appeal was preferred and ultimately, a petition was filed by Nagarpalika challenging the order passed by appellate authority. Finally the petition filed by the Nagarpalika was dismissed and the payment was made to said Champaklal Kavat. He also submitted that similarly, in case of Chhanalal, subsequently it was decided to make the payment when controlling authority has passed an order in favour of Shri Chhanabhai. He also submitted that in view of the above, a resolution was passed by Nagarpalika resolving that now in case of any employee, the decision of the controlling authority should have to be implemented in favour of concerned employee by paying gratuity amount. He also submitted that another petition is also filed by concerned employees seeking direction from this Court to direct the statutory authority to recover the amount

of gratuity from the petitioner and therefore, some suitable direction may be issued to such statutory authority so that they may recover the remaining amount with interest from the petitioner.

5. I have considered the submissions made by both the learned advocates and also perused the order passed by the controlling authority. I have also perused all annexures annexed with petitions and affidavit in reply with documents. It is necessary to note two or three important aspects while perusing the order passed by the controlling authority. In case of Chhanabhai Bilimoria, total claim was of Rs. 51,297.75; form "I" was filled up and submitted to the Nagarpalika; no reply was given by the Nagarpalika; ultimately form "N" was filled up by concerned employee and submitted on 21.4.1999; thereafter, it was admitted by controlling authority, the matter was discussed between the parties before the controlling authority from 26.5.1999 to 11.8.1999; during hearing before the controlling authority, representative of the concerned employer as well as concerned employee both remained preset; that no reply was given by the Nagarpalika; no documentary evidence was produced by the Nagarpalika and no oral evidence led by Nagarpalika before the controlling authority. Meaning thereby that there was no objection at all raised by the Nagarpalika against the application made by Shri Chhanabhai Bilimoriya and no reply, documents and oral evidence was produced before the controlling authority by the petitioner. Ultimately, the controlling authority has examined the workman on 11.8.1999 which was not objected by learned advocate, Mr. Manoj Parekh, who appeared on behalf of Nagarpalika and no cross-examination was taken by learned advocate Mr. Manoj Parekh. Ultimately, the controlling authority has considered oral as well as documentary evidence produced by employee and come to the conclusion that respondent employee is entitled to the amount of gratuity on completion of 21 years' service and his daily wage comes to Rs. 162.85 and he retired on 31.5.1997. Therefore, the controlling authority has directed to the petitioner Nagarpalika to pay Rs. 51,297 with 12% interest within a period of 30 days.

6. Similarly, the petitioner Nagarpalika has not produced any evidence against the application made by concerned employee. Though learned advocate Mr. Manoj Parekh remained present on behalf of Nagarpalika in case of Thakore C. Gandhi, no challenge was made by the Nagarpalika, as oral evidence of the employee was not challenged and the concerned employee was not cross-examined. Therefore, the controlling authority has directed to pay Rs. 82,019.70 with 12% interest within a period of 30 days to the concerned employee.

7. In case of Ramanbhai Jeshvabhai Patel, one contention regarding financial constraint of Nagarpalika was raised and therefore, only that question was considered by the controlling authority but, there was no challenge made by the Nagarpalika before the controlling authority that concerned employee was not entitled to the amount of gratuity under the provisions of the Act. Therefore, the controlling authority has granted Rs. 46,123/- with 12% interest.

8. In case of Laxmiben Manibhai, certain payment was made by the Nagarpalika

to her and it was made clear by controlling authority that between the parties, there is no dispute in respect to the record produced by the concerned employee. There was delay in filing the application by the concerned employee which was condoned by the controlling authority as it was not opposed by the Nagarpalika before the controlling authority. Therefore, the controlling authority has directed to the Nagarpalika to pay Rs. 22,762/- with 12% interest.

9. In case of Sukho Chotu Solanki, only financial constraint of Nagarpalika was raised as a defence by Nagarpalika. Except that, no other contention was raised by the Nagarpalika and considering the date of joining, retirement and salary, the controlling authority has directed to the Nagarpalika to pay Rs. 1,01,066/- with 12% interest.

10. In case of Bhanji Maru, no objection was raised by petitioner Nagarpalika before the controlling authority and no reply was filed against the application made by concerned employee. Therefore, the controlling authority has directed to the Nagarpalika to pay Rs. 1,70,072/- with 12% interest.

11. In case of Vadilal G. Shah, the Nagarpalika has not raised any contention before the controlling authority. Not only that but the Nagarpalika has not remained present and no reply was filed by the Nagarpalika. Therefore, the controlling authority has granted the amount of Rs. 1,46,838/- with 12% interest in favour of concerned employee.

12. The above referred order passed by the controlling authority suggests that applications made by concerned employees were not objected by the Nagarpalika and no contention was raised; no reply was filed and even concerned employee was not cross-examined by the Nagarpalika, which impliedly amounts to accepting the claim of concerned employee by the Nagarpalika. Raising all legal contentions before this Court first time is an afterthought, as it were not raised before the controlling authority at the relevant time. Therefore, this Court cannot permit the petitioner to raise these contentions for the first time before this Court because these petitions are filed by the petitioner under Article 227 of the Constitution of India and this Court is only examining whether controlling authority has rightly passed the order or not. Therefore, the contentions raised by learned advocate Ms. Jirga Jhaveri are not accepted, as it cannot be allowed to be raised before this Court for the first time.

13. It is necessary to note that though remedy of appeal is available to the petitioner u/s 7(7) of the Act, no appeal was preferred by the petitioner and straightway, petitions were filed after a period of more than 2 years.

14. However, other contention raised by learned advocate Ms. Jhaveri is in respect to Rules framed by the Nagarpalika, which has been sanctioned by the Government of Guajrat, while exercising power u/s 271(a) of the Gujarat Municipalities Act, 1963. Accordingly, she relied upon Rule-5 which for the purpose of calculation of gratuity only basic pay as defined under BCSR Rules will be taken into account exclusive of dearness allowance. The gratuity will be paid

on the basis of the average of last 12 months pay preceding the date of the relieve from service. The contention is that because the concerned employee is governed by BCSR Rules and Gratuity Rules as referred above, provisions of the Act are not applicable. The Himachal Pradesh High Court has considered this aspect in the case of State of H.P. Vs. Lashkari Ram, wherein after considering the definition of "employee" u/s 2(e) of the Act and after considering the Central Civil Services Rules (Pension), 1972 and employee having worked in different capacity, was held to be entitled to get benefits of Gratuity Act as well as Civil Service Rule (Pension) Rules. Whether Rules prevailed or the Act, that question was also examined by the Apex Court in case of Jashwant Singh Gill (supra). The Apex Court has considered the Rules framed by the Bharat Coking Coal Ltd. are not statutory rules and they have been made by the holding company of respondent No. 1. The Payment of Gratuity Act was enacted with a view to provide for a scheme for payment of gratuity to the employees engaged inter alia in mines. The Act provides for close - knit scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. A statutory right accrued, thus, cannot be impaired by reason of a rule which does not have the force of a statute. The provisions of the Act, therefore, must prevail over the Rules.

15. In aforesaid decision, there were no statutory rules but, in facts of this case, there may be statutory rules. The Apex Court has considered similar aspect in case of E.I.D. Parry (I) Ltd. Vs. G. Omkar Murthy and Others, Relevant observations made in Para.2, 3 and 4 are quoted as under:

2. Four contentions are put forth before us, namely, that

(i) The Central Act prevails over the State Act by virtue of Article 254 of the Constitution and Section 40(3) is invalid and the claims are unsustainable;

(ii) Section 40(3) of the State Act stood repealed on the coming into force of the Andhra Pradesh Shops and Establishments Act, 1988 and gratuity became payable u/s 47(5) of the State Act where payment of gratuity is not payable under the Central Act;

(iii) Section 14 of the Central Act overrides other enactments in relation to gratuity, and

(iv) The respondents have been paid gratuity under the Central Act for the period covered and for the balance period of service gratuity is paid under the prevailing trust scheme.

At the relevant time when the respondents voluntarily retired from service the definition of "employee" u/s 2(e) of the Central Act read as not to include employee whose wages exceeded Rs. 1,000/- per mensem while the

respondents-employees were all getting wages more than Rs. 1,600/- per mensem and, therefore, the Central Act could not be applied. If that is so, it is certainly permissible for the respondents to have made an application for payment of gratuity u/s 40(3) of the State Act. Further the scheme of the Central Act would indicate that it would not be applicable in cases where the State Act is more beneficial than the Central Act. In this case, the finding is that the State Act is more beneficial than the Central Act. Therefore, the contentions sought to be advanced on behalf of the appellant as to repugnancy or otherwise of the State Act would not arise at all. If both the enactments can co-exist and can operate where one Act or the other is not available then we find no difficulty in making the State Act applicable on the fact situation available as has been done in the present case. Therefore, we find that the contentions raised on behalf of the appellant are unsustainable.

3. Shri Narayan B. Shetye, the learned Senior Advocate appearing for the appellant, submitted that the Central Act is a complete Code containing detailed provisions and creates right of payment of gratuity and, therefore, the Central Act should prevail over the State Act. Reliance has been placed on the decision of this Court in *State of Punjab Vs. Labour Court Jullunder and Others*, . In that case the issue before the Court was whether for payment of gratuity an application could be made u/s 33-C(2) of the Industrial Disputes Act, 1947, and it was held that such an application could not be filed under the said Act. Therefore, this decision cannot be of any assistance to the appellant inasmuch as the question before us is whether the Central Act or the State Act would apply for payment of gratuity.

4. The decision in *M.S.R. Murthy v. Arya Somayajula Yagneswara Chenulu* 1985 Lab IC 189 (AP) also is of no use to the appellant inasmuch as the State Act is held not to operate to the extent the Central Act prevails. In the present case, on facts, it is found that the Central Act is not applicable.

15.1 In aforesaid two decisions, the Apex Court has considered the fact that even when statutory rules are available, the provisions of the Act prevail. Therefore, in this case though services rules may be statutory, considering Section 14 of the Act, provisions of the Act should prevail.

16. The contention raised by learned advocate Ms. Jhaveri that Gratuity Act is not applicable to the Nagarpalika being the local authority, cannot be accepted as the Nagarpalika is covered by definition of "establishment" and the provisions of the Gratuity Act are applicable. Section 1(3)(b) of the Act wherein definition "establishment" is provided, which reads, thus,

every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishment in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.

16.1 The aforesaid contention is not accepted because the local authority being

an establishment covered under the Gratuity Act, the Gratuity Act is applicable as has been held by the Madras High Court in case of The Commissioner, Sathyamangalam Municipality, Sathyamangalam Vs. The Deputy Commissioner of Labour (Appellate Authority under Payment of Gratuity Act), Salem, The Assistant Commissioner of Labour (Controlling Authority under Payment of Gratuity Act), Salem and T. Mahali, wherein it has been observed by the Madras High Court that, "Payment of Gratuity Act, 1972 ? Sections 2(e), 5 and 7(3-A)- Local authority also established liable under Act to pay gratuity - Award of interest to employee for period after expiry of 30 days from retirement, held proper. Even the Panchayat is also considered to be an establishment under the provisions of the Gratuity Act and the Act is applicable as decided by Madhya Pradesh High Court in the case of S.N. Verma Vs. State of Madhya Pradesh and Others, Relevant observations in the aforesaid decision is in Para.6 which is quoted as under:

6. Thus the Panchayat is indisputedly a "local body" and if it is employing more than ten persons it would be an "establishment" within the meaning of the notification given above. An employee of an Panchayat is entitled to the payment of gratuity as per provisions of Payment of Gratuity Act,1972 unless under any other rule of the Panchayat or the State Government he has a right to receive "better terms of gratuity" as per Section 4(5) of the Act. Though there is an observation in the judgment dated June 27, 1997 in W.P. No. 1743 of 1997 that the gratuity is payable to the Panchayat employees as per Madhya Pradesh Janpad Panchayat Employees (Qualifications, Recruitment and Conditions of Service) Rules, 1976, on a perusal of these rules it is conceded that there is no provision in these rules for payment of gratuity. In such a situation an employee of the Panchayat would be entitled to gratuity as per Payment of Gratuity Act,1972. The Supreme Court has held in Bakshish Singh Vs. M/s. Darshan Engineering Works and others, that the provisions for payment of gratuity contained in Section 4(1)(b) of the Act are one of the minimal service conditions, which must be made available to the employees notwithstanding the financial capacity of the employer to bear its burden. It is settled law that the establishments which have no capacity to give to their workmen the minimum conditions of service prescribed by the statute have no right to exist. The respondent Janpad Panchayat is admittedly employing more than ten persons and therefore the petitioner who was its employee is entitled to gratuity under the Payment of Gratuity Act,1972.

16.2 The Delhi High Court in case of Municipal Corporation of Municipal Corporation of Delhi Vs. Smt. V.T. Naresh and another, relying upon the decision of Apex Court in case of State of Punjab Vs. Labour Court Jullunder and Others, it is held that a Corporation and/or local authority like Municipal Commissioner of Delhi is an establishment governed by Payment of Gratuity Act,1972. The word "establishment" in the Gratuity Act is not controlled by any type of establishment and it will include commercial, public sector establishment." Relevant observations in the aforesaid decisions are in Para.6 and 7 which are quoted as

under:

6. It will be noticed that the word "establishment" used in the aforesaid clause of Payment of Gratuity Act, 1972 is not controlled by any type of establishment. It will include commercial, public sector establishment, private sector establishment as also the non-commercial establishment. Therefore, it is merely because Municipal Corporation of Delhi which is created by Delhi Municipal Corporation Act, 1957 is also a local body or local authority, it does not mean that the Corporation will not be an "establishment" so long as it is so in relation to any law relating to "establishment". It need not multiply the instances. Only one is sufficient to make the Act applicable. I have, thus, no doubt that the Municipal Corporation of Delhi is an "establishment" within the meaning of Section 1, Sub-section (3) Clause (b) of the Act.

7. Coming to the second point, even if Municipal Corporation of Delhi has certain schemes, it is no bar to the applicability of the employees of the petitioner-Corporation. It is only common which can be said that an employee cannot have benefit of both under Payment of Gratuity Act as well as scheme of regulations/pension framed by the Corporation but if he has availed of the benefit under Payment of Gratuity Act, to that extent benefit will be denied to him under the regulations/pension scheme framed by the Corporation. If the scheme framed by the Corporation gives higher benefit to the extent the employee obtains benefit under the "Payment of Gratuity Act, to that extent those benefits will be adjusted while claiming benefit under the Scheme of Regulations/pensions framed by the Corporation. The employee cannot have complete benefit under both the Payment of Gratuity Act as well as under the Scheme of regulations/pensions. To the extent the benefit has been granted to him under the Payment of Gratuity Act, only to that extent the benefit will be adjusted while enforcing the scheme of regulations/pension framed by the Corporation. Similarly, if under a Scheme framed by the Corporation the benefit is less than that which is available in the Payment of Gratuity Act, the employee will be entitled to claim difference under the Payment of Gratuity Act. No other point was argued. The petition, therefore, fails and is dismissed. Since nobody has put in appearance on behalf of the respondent, parties are left to bear their own costs.

17. The Allahabad High Court in case of Nagar Palika Moradabad v. Appellate Authority and Additional Labour Commissioner, U.P. Kanpur and Ors. reported in , it has been held that municipal board is an "establishment" governed by the Payment of Gratuity Act, 1972. Relevant observations of the said decision are in Para.8, 9 and 10 which are quoted as under:

8. Sub-section (3) of Section 1 lays down that the provisions of the Act are to apply to every establishment in which 10 or more persons are employed.

9. The argument sought to be advanced by the learned Counsel for the petitioner is that the Municipal Board cannot be described as an "establishment" because the word "establishment" connotes some business institution or atleast it may

include a public institution. Such a definition of a word "establishment" is to be found in Black's Legal Dictionary.

10. I am afraid the argument is not sustainable. The activities which are carried on by the Municipal Board do go to make it a public institution undoubtedly. In fact, Municipal Board, or for that matter, such local bodies do exist to cater to the needs of the general public and, therefore, many statutory duties have been conferred upon such bodies. To say that in spite of those functions which have to be carried out by those institutions in accordance with the mandate of law, those do not become public institutions is too bald an argument to be accepted.

18. This Court has, in case of Dabhoi Nagarpalika and Anr. v. S.J. Khedia and Anr. 1996 II CLR 910, held that Payment of Gratuity Act is applicable to the Nagarpalika.

19. The Karnataka High Court in case of The Management of Sri. Venkatramana Temple and Sri. Hale Mariyamma Temple Vs. The Deputy Labour Commissioner and The Appellate Authority under the Payment of Gratuity Act, 1972, Hassan Region, The Assistant Labour Commissioner and Controlling Authority under the Payment of Gratuity Act, 1972 and K. Vishwanatha Shenoy, has observed in Para.12 and 14 as under:

12. On these rival contentions and on a further examination of the case-law, it is clear that the word "establishment" in Section 1(3)(b) of the Payment of Gratuity Act, 1972 is not to be restricted as referring to "commercial establishments" alone. The Act has been held to apply even to institutions which were exempted under the Shops and Establishments Act (see: Principal, Bhartiya Mahavidyalaya and Another Vs. Ramakrishna Wasudeo Lahudkar, There is no doubt that a liberal construction has to be given to the expression and any institution or organization where systematic activity is carried on, by employing ten or more persons, would fall within the ambit of the provision.

14. The further contention that the employee ought to have had recourse to remedies prescribed under the provisions of Act is also not tenable. The employee is certainly entitled to elect his remedy, in the absence of a bar.

20. The Karnataka High Court has, in case of U. Ratnakar Rao Vs. Union of India (UOI) and Others, observed that, "Payment of Gratuity Act, 1972 ? Section 2(e) - New Mangalore Port Trust (Adaptation of Rules) Regulations, 1980 - Regulation 4 - Central Civil Services (Pension) Rules, 1972 - Rule 50 - Gratuity Act not applicable to person governed by Act or Rule providing for payment of gratuity - Regulation 4 of Port Trust Regulations made Central Pension Rules applicable to its employees - Denial of gratuity as per Central Pension Rules therefore held not proper and payment of balance with interest at 12% ordered.

21. The Andhra Pradesh High Court has, in case of Life Insurance Corporation of India, Hyd. Vs. Regional Labour Commissioner (Central), Hyderabad and others, in Para. 10, observed as under:

10. A reference to the provisions of Sections 2(e), 4, 5 and 14 leads to an irresistible conclusion that either Section 48(2B) of the LIC Act or the LIC Rules for Class-I Officers do not take away the right of an employee to claim the benefit under the provisions of the Act. Indeed, Sub-section (5) of Section 4 provides that an employee is entitled to better terms of gratuity other than the gratuity payable under Sub-section (2) of Section 4 and Section 5 enables the appropriate Government to exempt any establishment from the operation of the Act only if the gratuity payable by the LIC is more favourable to the employees than the benefits under the Act.

22. It is also necessary to take into consideration the resolution (page-19) passed by the Nagarpalika while considering the two cases in case of Champakbhai and Chhanabhai. In case of Champakbhai, matter went upto the High Court and this Court has decided that the Gratuity Act is applicable. Accordingly, the Nagarpalika has accepted the order of the controlling authority and payment was made to the concerned employee. Even in case of Chhanabhai the order passed by the controlling authority has been fully implemented by the Nagarpalika and it was further decided in the same resolution that whatever order is passed under the Payment of Gratuity Act by the controlling authority, is to be implemented by the Nagarpalika.

23. In view of the aforesaid discussion and considering the contentions raised by learned advocate Ms. Jhaveri, according to my opinion, the controlling authority has rightly examined the matters, when there was no opposition and challenge by the Nagarpalika, and the controlling authority has rightly examined the record and passed orders according to provisions of the Act. The controlling authority has not committed any error which requires interference by this Court while exercising the powers under Article 227 of the Constitution of India. Hence, there is no substance in the present petitions. Accordingly, present petitions are dismissed. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.

24. A request is made by learned advocate Ms. Jhaveri to stay the order passed by this Court. Before considering the request made by learned advocate Ms. Jhaveri, it is necessary to note that the concerned employees have retired in the year of 1997/1998 and still they are unable to get the amount of gratuity. Not only that, the concerned employees are senior citizens, aged about more than 70 years and still the Nagarpalika wants a stay against the order passed by this Court. When there was no challenge made before the controlling authority by the petitioner Nagarpalika, I am not able to understand the reason behind making a request to stay the order of this Court. It is also necessary to note that matter remained pending before this Court for about more than 6 years. Therefore, from the date of retirement when the legal right to receive gratuity accrued in favour of concerned employee, at least 10 years have passed and still the Nagarpalika does not want to make the payment to the concerned retired employees, though they are senior citizens. A local authority is considered to be the State within the

meaning of Article 12 of the Constitution of India, therefore, such unreasonable request is rejected.