

(2008) 11 AHC CK 0110

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15257 of 1988

Executive Officer, Nagar Palika, Saharanpur

APPELLANT

Vs

Dy. Labour Commissioner and Controlling Authority, Meerut
and Another

RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:

Payment of Gratuity Act, 1972 — Section 1, 14, 2(e), 2(f), 5
Uttar Pradesh Municipalities Act, 1916 — Section 2(1), 79

Citation : (2008) 11 AHC CK 0110

Hon'ble Judges : S.P.Mehrotra, J

Final Decision : Dismissed

Judgement

S.P. Mehrotra, J.—The present writ petition has been filed under Article 226 of the Constitution of India by the petitioner, inter alia, praying for quashing the order dated 29th May, 1988 (Annexure1 to the writ petition) passed by the Controlling Authority under the Payment of Gratuity Act, 1972, Meerut Camp, Saharanpur.

2. It appears that the late Atma Ram, husband of the respondent No. 2, was employed on the post of "Jamadar" in the Health Department of Municipal Board, Saharanpur. The said Atma Ram expired on 16th April, 1982 while in service. After the death of the said Atma Ram, Smt. Bhagawati Devi (respondent No. 2) made an application dated 9th March, 1987 before the Controlling Authority under the Payment of Gratuity Act, 1972 for payment of gratuity in respect of the deceased Atma Ram. The said application was registered as P.G.A. Case No. 6 of 1988. Copy of the said application has been filed as Annexure2 to the writ petition.

3. The petitioner filed Objections/Written Statement dated 24th May, 1988 in reply to the said application filed by the respondent No. 2. Copy of the said Objections/Written Statement dated 24th May, 1988 has been filed as Annexure3 to the writ petition.

4. By the order dated 29th May, 1988, the Controlling Authority under the ; Payment of the Gratuity Act, 1972, Meerut Camp, Saharanpur (respondent No. 1) I allowed the said application filed by the respondent No. 2 and directed for payment of Rs. 8,999.54 to the respondent No. 2 within a month of the said order dated 29th May, 1988, failing which the petitioner would be liable to pay interest at the] rate of 9% from the date of the order till the date of payment. Cost of Rs. 100/ j was also imposed on the petitioner.

5. The petitioner has thereafter filed the present writ petition, seeking the j reliefs mentioned above.

6. I have heard Sri R.K. Awasthi, learned counsel for the petitioner and the] learned Standing Counsel appearing for the respondent No. 1. None has appeared j on behalf of the respondent No. 2.

7. It is submitted by Sri R.K. Awasthi, learned counsel for the petitioner that I the deceased Atma Ram was regular subscriber to the Provident Fund maintained 1 and contributed by the petitioner as laid down under subsection (2) of Section 79 of the UP. Municipalities Act, 1916; therefore, the deceased Atma Ram was not entitled to payment of any gratuity, in view of the provisions of subsection (3) of Section 79 of the U.R Municipalities Act, 1916. It is further submitted that the Controlling Authority has not correctly appreciated the scope of the above provisions of the U. P. Municipalities Act, 1916, and it has erred in relying upon Section 14 of the Payment of Gratuity Act, 1972.

8. I have considered the submissions made by the learned counsel for the petitioner, and I find myself unable to accept the same.

9. Let us first consider the question of applicability of the Payment of Gratuity Act, 1972 to the employees of the Municipal Board constituted under the provisions of the U.P. Municipalities Act, 1916. Subsection (3) of Section 1 of the Payment of Gratuity Act, 1972 provides as follows:

"1. Short title, extent, application and commencement.

(1)and(2)

(3) It shall apply to

(a) every factory, mine, oilfield, plantation, port and railway company;

(b) 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, or were employed, on any day of the preceding twelve months;

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf."

10. In view of the above provision, it is evident that the Payment of Gratuity Act,

1972 applies to every establishment, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.

11. Clause (e) of Section 2 of the Payment of Gratuity Act, 1972 defines the word "employee" as under:

"(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, semiskilled, 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]."

12. Clause (f) of Section 2 of the Payment of Gratuity Act, 1972 defines the word "employer" as under:

"(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 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;"

13. In *NagarPalika, Moradabad*, through its Officer Incharge, Nagarpalika, Moradabad. Appellate Authority and Additional Labour Commissioner, U.P. Kanpur (appointed as Appellate Authority under the Payment of Gratuity Act, 1972) and others, 1988 AWC 562, this Court has considered the above provisions of the Payment of Gratuity Act, 1972, and has concluded that the Municipal Board, constituted under the provisions of the U.P. Municipalities Act, 1916, is an "establishment" under the provisions of the Payment of Gratuity Act, 1972.

14. In *Municipal Corporation of Delhi M. Dharam Prakash Sharma and another*, AIR 1999 SC 293, their Lordships of Supreme Court opined as follows:

"2. The short question that arises for consideration is whether an employee of

the MCD (Municipal Corporation of Delhi) 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 S 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 S. 14 of the Payment of Gratuity Act the provision for gratuity under Pension Rules will have no effect. Possibly for this reason, S. 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 employee 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 S. 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 Pension Rules."

15. Thus in the above case, the question was as to whether once the package of pension or gratuity under the C.C.S.(Pension) Rules, 1972 was made applicable to the employees of the Municipal Corporation of Delhi, the provisions of payment of gratuity under the Payment of Gratuity Act, 1972 would still apply to such employees. Their Lordships of the Supreme Court have laid down that the Payment of Gratuity Act, 1972, 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 to hold that an employee of the Municipal Corporation of Delhi is not

entitled to the gratuity under the Payment of Gratuity Act, 1972. The employee of the Municipal Corporation of Delhi would, therefore, be entitled to the payment of gratuity under the Payment of Gratuity Act, 1972. The mere fact that the gratuity is provided for under the aforesaid Pension Rules will not disentitle him to get the payment of gratuity under the Payment of Gratuity Act, 1972.

16. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, 1972, the provision for gratuity under the aforesaid Pension Rules will have no effect.

17. Therefore, the employees of the Municipal Corporation of Delhi would be entitled to the payment of gratuity under the Payment of Gratuity Act, 1972 notwithstanding the fact that the provisions of the aforesaid Pension Rules have been made applicable to them for the purpose of determining the pension. However, such employees cannot claim gratuity available under the aforesaid Pension Rules.

18. In view of the above decision, it is evident that the provisions of the Payment of Gratuity Act, 1972 are applicable to the employees of the Municipal Board constituted under the provisions of the U.P. Municipalities Act, 1916.

19. As regards, the submission made by the learned counsel for the petitioner on the basis of the provisions of Section 79 of the U.P. Municipalities Act, 1916, it will be relevant to refer to the provisions of Section 79, as it existed at the relevant time. Section 79 of the U.P. Municipalities Act, 1916, as it stood prior to the amendment made by the U.P. Urban Local Self Government Laws (Amendment) 7 Act, 1994, provided as follows:

"79. Leave allowances, provident fund, annuities and gratuities.

(1) In every case where a Board is entitled to pay a salary to any officer or servant, it shall, subject to any regulations in this behalf, be entitled to pay leave allowances to such officer or servant.

(2) A Board may establish and maintain a provident fund and may itself contribute thereto.

(3) A Board may grant a gratuity, upon his retirement, to any servant of the Board who is excluded from participation in the benefits of the provident fund.

(4) The Board may, with the previous sanction of the State Government, grant, or arrange for the purchase of, an annuity to

(a) any servant who, at the date of his retirement, has not been contributing to a provident fund established under subsection (2) or has contributed thereto for a period of less than 10 years, and

(b) any officer or servant injured, otherwise than by reason of his own default, in the execution of his duty, or, where such injury results in death, the family of such officer or servant.

(5) A Board may, with the like sanction, instead of taking action under clause (b) of subsection (4), grant a compassionate allowance to an officer or servant referred to therein, or to the family of such officer or servant."

20. It may be mentioned that the word "Board" in the above provision meant a Municipal Board as per Section 2(1) of the U.P. Municipalities Act, 1916 as it stood prior to its amendment by the aforesaid Amendment Act, 1994. It may further be mentioned that the word "Board" has been substituted by the word "Municipality" by Section 72 of the aforesaid Amendment Act, 1994.

21. A perusal of the abovequoted Section 79 of the U.P. Municipal Act, 1916 (as it existed at the relevant time) shows that subsection (3) of Section 79 of the U.P. Municipalities Act, 1916 lays down that the Municipal Board may grant gratuity, upon his retirement, to any servant of the Municipal Board, who is excluded from participation in the benefits of the provident fund. The submission of the learned counsel for the petitioner is that as the deceased Atma Ram was a regular subscriber to the Provident Fund maintained and contributed by the petitioner as laid down in subsection (2) of Section 79 of the U.P. Municipalities Act, 1916, he was not entitled for the payment of any gratuity in view of the provisions of subsection (3) of Section 79 of the U.P. Municipalities Act, 1916.

22. Section 14 of the Payment of Gratuity Act, 1972 provides as under:

"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."

23. Section 14 of the Payment of Gratuity Act, 1972 thus gives overriding effect to the provisions of the said Act or any Rule made thereunder over any other enactment or instrument or contract.

24. The provisions of Section 14 of the Payment of Gratuity Act, 1972 will have overriding effect over the provisions of Section 79 of the U.P. Municipalities Act, 1916. Therefore, notwithstanding the provisions of subsection (3) of Section 79 laying down that the gratuity would be paid to a servant of the Municipal Board, who is excluded from participation in the benefits of the Provident Fund, the provisions of the Payment of Gratuity Act, 1972 would apply to the employees of the Municipal Board, even if, they are participating in the benefits of the provident fund. Hence, even if it were to be accepted that the deceased Atma Ram was a regular subscriber of the provident fund, still gratuity would be payable in respect of the deceased Atma Ram under the provisions of the Payment of Gratuity Act, 1972.

25. It is true that under Section 5 of the Payment of Gratuity Act, 1972, the appropriate Government may exempt an establishment if, in the opinion of the appropriate Government, the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred

under the Payment of Gratuity Act, 1972. However, no such exemption has been pleaded by the petitioner nor has anything been brought on the record to show that any such exemption has been granted in respect of the petitioner.

26. Hence, it is concluded that the provisions of the Payment of Gratuity Act, 1972 are applicable to the petitioner, and the impugned order dated 29th May, 1988 directing for payment of gratuity to the respondent No. 2 in respect of her deceased husband (Atma Ram), was legal and valid.

27. The above conclusion is fully supported by the decision of the Supreme Court in Municipal Corporation of Delhi's case (supra).

28. In view of the above discussion, I am of the opinion that the writ petition B lacks merit and the same is liable to be dismissed. The writ petition is, accordingly, dismissed. However, on the facts and in the circumstances of the case, there will be no order as to costs.