

(2011) 03 GUJ CK 0090
In the Gujarat High Court

Case No : Special Civil Application No's. 21759 and 24723 of 2005

Jashdan Municipality

APPELLANT

Vs

Sonaben Bhagabhai Lalit Plots

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Bombay Civil Services Rules, 1959 — Rule 5
Constitution of India, 1950 — Article 226, 227, 254
Gujarat Municipalities Act, 1963 — Section 271
Industrial Disputes Act, 1947 — Section 33(2), 33C(2)
Life Insurance Corporation Act, 1956 — Section 48(2B)
New Mangalore Port Trust (Adaptation of Rules) Regulations, 1980 — Regulation 4
Payment of Gratuity Act, 1972 — Section 2(e), 4(5), 5, 7(4)

Citation : (2011) 03 GUJ CK 0090

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

Bench : Single Bench

Advocate : Mrugen K. Purohit, for the Appellant; R.D. Raval, for Respondent 1 and A.L. Sharma, AGP for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned advocate Mr. M.K. Purohit for Petitioner and learned AGP Mr. Sharma for Respondent Nos. 2 and 3 in both matters. Learned advocate Mr. R.D. Raval for Respondent No. 1 in SCA No. 21759 of 2005. Rule is served to Respondents in SCA No. 24723 of 2005. But no appearance is filed by any advocate on his behalf.

2. In SCA No. 21759/2005, Petitioner has challenged order passed by controlling authority and appellate authority dated 19.3.2005 and 14.9.2005.

2.1 IN SCA No. 24723/2005, Petitioner has challenged order passed by controlling authority and appellate authority dated 17.5.2005 and 14.9.2005.

3. In both matters, on 29.12.2005 following order has been passed by this Court:

1. Heard learned advocate Mr. MK Purohit on behalf of Jasdan Municipality in

both petitions, learned advocate Mr. RD Raval is appearing for Respondent No. 1 and learned AGP Mr. AL Sharma appearing for Respondent No. 2 and 3. In Special civil application No. 24723/2005, Registry has shown that rule remain unserved for Respondent No. 1/2 and 1/5 but learned AGP Mr. AL Sharma is appearing for Appellate Authority Dy. Labour Commissioner and Respondent No. 3 Assistant Labour Commissioner. Therefore, question is serving notice of rule to Respondent No. 2 and 3 does not arise.

2. The Respondent Bhurabhai Mangabhai has expired during pendency of these petition. Therefore, heirs and legal representative of Bhurabhai Mangabhai are join as party. Out of this total five heirs and legal representatives, Respondent Nos. 1/1, 1/2 and 3 have received notice of Rule. Rest is not served but Respondent No. 1 is represented some of Respondent. Therefore, matter is considered to be ready for arguments. For that, learned advocate Mr. MK Purohit requests for some time.

3. Accordingly, matter is adjourned to 1/3/2011.

4. Learned advocate Mr. Purohit submitted that Respondent No. 1 was working with Petitioner - Municipality as Sweeper and she retired from service on 30.4.2003. The Respondent No. 1 has also accepted option of contributory PF scheme during her service and therefore, she is entitled to get the amount of gratuity similar to employees of State Government. Since the Respondent No. 1 completed service of more than 33 years, she is entitled for gratuity of 16 1/2 months' salary which comes to Rs. 88,786.50 ps as per calculation of Municipality. Therefore, Respondent No. 1 was informed by Municipality to collect said amount of gratuity on 14.7.2003. However, she did not turn up and therefore, again on 21.1.2004 she was requested to collect said amount of gratuity. But unfortunately Respondent No. 1 has approached controlling authority constituted under Payment of Gratuity Act by filing Gratuity Case No. 45 of 2003. The Petitioner - Municipality had appeared before controlling authority and submitted written reply, filed affidavit of Chief Officer and also written submissions. However, controlling authority by order dated 19.3.2005 was pleased to allow application of Respondent No. 1 and directed Petitioner - Municipality to pay amount of Rs. 2,04,478 to Petitioner within 30 days. Against which, appeal was preferred by Petitioner - Municipality to appellate authority being Appeal No. 39 of 2005, which was also dismissed by appellate authority.

4.1 Similarly, in case of Bhurabhai Mangabhai - Respondent No. 1 in SCA No. 24723 of 2005, was working as a Sweeper with Petitioner Municipality and retired from service on 30.4.2003. The length of service of Respondent No. 1 was 33 years, therefore, entitled amount of gratuity of 19 1/2 months' salary which comes to Rs. 88,787.50 ps. For that, it was informed to Respondent No. 1 to collect said amount by letter dated 14.7.2003 but, he did not turn up and on 21.1.2004, again request was made to Respondent No. 1 to collect aforesaid amount of gratuity from Petitioner Municipality. But unfortunately Respondent No. 1 has approached to controlling authority by filing Gratuity Case No. 46 of

2003 wherein controlling authority has passed an order on 17.5.2005 and directed to Petitioner Municipality to pay amount of Rs. 2,36,764/- within 30 days. Against that order, appeal was preferred before appellate authority being Appeal No. 48 of 2005 which came to be dismissed by appellate authority. That Respondent No. 1 - Bhurabhai Mangabhai has expired and his legal heirs and representatives are already brought on record as per order dated 13.3.2006.

5. In both petitions, common contentions have been raised by learned advocate Mr. M.K. Purohit appearing on behalf of Petitioner - Jashdan Municipality. He vehemently submitted that Gratuity Act is not applicable and Jashdan Municipality has been excluded from the definition of "employer" u/s 2(e) of Payment of Gratuity Act. He also raised contention that all the employees of Panchayat, Nagarpalika and Municipality are getting benefit of salary, pension, gratuity as an employee of State Government and all the responsibilities of making said payment is on the State Government. The Respondent No. 1 employee has accepted the revised pay scale of State Government as per Gujarat State Civil Services Revision of Pay Rules and also got the benefit of higher pay scale of scheme called "9-18-27" years. He also submitted that Respondent No. 1 employee has accepted the option of contributory PF scheme during period of service and in case when PF scheme is applicable, then Payment of Gratuity Act is not applicable and therefore, learned advocate Mr. Purohit submitted that both authorities have committed an error in granting relief in favour of Respondent No. 1 in both petitions. He also submitted that Petitioner - Municipality is directly under the control and authority of Regional Director of Municipalities and the Municipality has to follow guidelines of Director of Municipalities, State of Gujarat and Chief Officer is also being appointed by State Government and Petitioner - Municipality is governed under provisions of Bombay Civil Services Rules (for short "BCSR Rules") and Respondent is entitled amount of gratuity only as per provisions of BCSR Rules. The basic salary on the date of retirement of Respondent No. 1 is Rs. 3540 + Rs. 1840/- (DA), total comes to Rs. 5381/-. He also submitted that once the option has been accepted by Respondent No. 1 - workman of contributory PF fund and therefore, he is entitled to get the amount of gratuity similar to employee of State Government. The service book of Respondent has been relied by Petitioner - Municipality and also submitted that controlling authority as well as appellate authority have committed gross error in calculating total length of service of both Respondents. The Respondent has voluntarily requested for retirement and his request was accepted on 30th April, 2003. Accordingly, Respondent was retired from service. He submitted that calculation which has been made by Petitioner - Municipality is correct and controlling authority has committed gross error in awarding more amount of gratuity in favour of Respondent - workman. He also submitted that gratuity amount has been calculated on the basis of provisions of BCSR Rules but, that has not been accepted by controlling authority and appellate authority. He also submitted that in Reference (LC) of Industrial Disputes Act, 1947 (for short "the Act") No. 89 of 1972 which was pending before Special Labour Court,

Ahmedabad between association and Jashdan Nagarpalika in which settlement was arrived at and as per settlement, award was passed to the effect that gratuity amount should be paid when Safai Kamdar retired, resigned or left the service or become incapable to serve during employment or in case to heirs at the rate of one month salary last drawn for every year of service. Copy of award passed by Special Labour Court in Reference (LC) IDA No. 89 of 1972 has been produced on record. Therefore, learned advocate Mr. Purohit submitted that controlling authority has not considered submissions made by Municipality and even also ignored written arguments placed on record by Municipality. Therefore, present petition is preferred challenging both orders passed by authorities below. He also submitted that affidavit filed by Chief Officer has not been properly considered by both authorities. He also submitted that when award has been relied by both Respondents, then for recovering such amount of gratuity based on award, recovery application is to be filed u/s 33(c)(2) of the I.D. Act. Except that, no other submission is made by learned advocate Mr. Purohit before this Court.

6. Learned advocate Mr. R.D. Raval appearing in one matter on behalf of employee submitted that controlling authority as well as appellate authority have not committed any error which requires interference by this Court. He submitted that provisions of Gratuity Act itself is very clear that whatever higher amounts under condition of service, for that employee is entitled the amount of gratuity. He also submitted that Section 4(5) of Gratuity Act provides that nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer. He submitted that award passed by Special Labour Court in Reference (LC) IDA No. 89 of 1972 where it was decided by way of settlement between parties that workman working under Jashdan Nagarpalika, gratuity amount should be paid when Safai Kamdar retired, resigned or left the service or become incapable to serve during employment or in case to heirs at the rate of one month salary last drawn for every year of service. This award passed by Labour Court on 27.10.1972 which based on settlement arrived at between both parties. He submitted that this settlement remained intact and not terminated by Municipality. Therefore, Respondent workman in both cases are entitled benefit of aforesaid settlement and also entitled to get one month's last drawn salary for number of years service rendered by both employees. He submitted that Respondent workman in both cases were working as a Safai Kamdar entitled benefit of aforesaid award which has been rightly considered by controlling authority as well as appellate authority.

7. He submitted that considering length of service, date of birth of both Respondents and also considering total period of employment and last drawn salary and on that basis, calculation has been made by controlling authority and also that calculation has been rightly accepted by appellate authority. For that, according to him, either of authorities have not committed any error which requires interference by this Court under Article 227 of the Constitution of India.

He also submitted that controlling authority as well as appellate authority have rightly relied upon award passed by Labour Court which made applicable to Safai Kamdar and for that, he relied upon decision of this Court in case of Nadiad Nagarpalika v. Hasmukhlal Motilal Soni and Ors. reported in 2010 (2) GLH 250. He also submitted that in aforesaid decision, this Court has considered identical question that in case when amount of gratuity is available to concerned employee being a better terms, then employee is entitled amount of gratuity of better terms as per Section 4(5) of Gratuity Act. Relevant discussion made in aforesaid decision are in Para.5 to 12, which is quoted as under:

5. I have considered submissions made by learned advocate Mr. Shah and also perused the order passed by Controlling Authority as well as appellate authority. The facts are not much in dispute between the parties. The Respondent was appointed on 9.3.1970 and retired from service on 30.6.2003. At the time of retirement, his last drawn salary was Rs. 4590/- basic + dearness allowance Rs. 2525/- totaling to Rs. 7115/-. The Petitioner Nagarpalika has made payment of Rs. 50,000/- on 20.6.2005 and Rs. 67,381/- was paid on 9.11.2005 total of which comes to Rs. 1,17,381/-. The total length of services is 33 years and 3 months and therefore, the Respondent has claimed amount of gratuity as per award passed by Industrial Tribunal, Nadiad in Reference (IT) No. 174 of 1974 whee it was decided that maximum amount of gratuity is to be paid 25 months salary which comes to Rs. 1,77,875/-, in stead of that total amount was paid at Rs. 1,17,381/-. Therefore, remaining amount comes to Rs. 60,494/- which is required to be paid by Petitioner with 12% interest. The demand was made by Respondent before Chief Officer of Petitioner - Nagarpalika on 17.10.2008. Thereafter, application was made to Controlling Authority. The Controlling Authority has considered submissions made by both authorities and also considered award passed by Industrial Tribunal, Nadiad in Reference (IT) No. 174 of 1974 which was terminated on 4.12.2003. The contention raised by Petitioner before Controlling Authority that Respondent is not entitled amount of gratuity as per award passed by Industrial Tribunal in Reference (IT) No. 174 of 1974. The facts remain that on 30.6.2003 when workman was retired from service, at that relevant time, the award passed by Industrial Tribunal, Nadiad in Reference (IT) No. 174 of 1974 was in force and not terminated. Therefore, it was a binding award to Petitioner - Nagarpalika and it must have to be applied and complied with by Petitioner in favour of Respondent workman. The Petitioner has not raised any other contention about delay in filing such Gratuity Application before Controlling Authority. There is no specific contention was raised by Petitioner before Controlling Authority that BCSR Rules are applicable and therefore, the Act is not applicable and Respondent is not entitled any amount under the provisions of the Act. But apart from that contention was raised that gratuity amount is paid by Petitioner to each employee, who retired from service as per 5th Pay Commission report. Therefore, contention raised by learned advocate Mr. Shah that BCSR Rules are applicable and therefore, the Act is not applicable and the Respondent is not entitled any amount from Petitioner - Nagarpalika.

6. This Court had an occasion to decide group of SCA No. 2138 of 2002 and allied matters wherein this Court has held that Bilimora Municipality is not exempted from the operation of provisions of the Gratuity Act u/s 5 of the Act, then employee is entitled to benefit of gratuity under the said Act. The order passed in group of SC As has been challenged before the Division Bench of this Court by Bilimora Municipality by way of LPA Nos. 379 of 2008 which is reported in 2008 (2) GLH 448. Relevant observations are in Para.4, 5 and 6, which is quoted as under:

4. Ms. Jhaveri has appeared for the Municipality. She has assailed the judgment of the learned Single Judge. She has submitted that the Municipality has, as far back as in the year 1972, framed rules for payment of gratuity to its employees. The said rules have been approved by the State Government by its Resolution dated 24th November, 1972. Since then, the said rules are implemented and retired employees of the Municipality are paid gratuity according to the said rules.

5. We are unable to accept the contention raised by Ms. Jhaveri. Section 2(f) of the Act of 1972 defines "employer." Sub-clause (ii) of the said Clause (f) expressly includes the "local authority" within the meaning of the word employer. Section 4(1) of the Act of 1972 enjoins the employer to pay gratuity to its employee on termination of employment after he renders continuous service for not less than five years, inter alia, on his superannuation or on his retirement. Thus, the Municipality is under obligation to pay gratuity to its retired employees in accordance with the Act of 1972.

6. Section 5 of the Act of 1972 empowers the appropriate Government to exempt any establishment, etc. to which the Act applies, from the operation of the provision of the Act of 1972. In other words, unless an establishment is expressly exempted by the appropriate Government by notification issued u/s 5 of the Act of 1972, such establishment would be liable to pay gratuity to its retired employees in accordance with the Act of 1972. It was not the case of the Municipality before the controlling authority or before the learned Single Judge or before us that the Municipality is exempted from the operation of the provisions of the Act of 1972 as envisaged by Section 5 of that Act. In absence of the exemption specifically granted u/s 5, the Municipality is duty bound to pay its employees gratuity in accordance with the Act of 1972.

7. In above view of the matter, the order of the learned Single Judge does not warrant interference. The Appeals are dismissed in limine. Civil Applications stand disposed of.

6.1 Therefore, unless and until the Petitioner Nagarpalika exempted by State Government while exercising powers u/s 5 of the Act, the provisions of the Act are applicable to Petitioner - Nagarpalika. Therefore, employees those who are working, no doubt receiving benefits under BCSR Rules for other service benefits, but for gratuity amount employees are entitled the benefits of the Act because there is a specific provisions made in Section 4(5) of the Act which provides that

nothing in this Section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer. Therefore, if any amount to be received as per award which is a better terms of gratuity, then concerned employee is entitled to receive it better terms of gratuity from employer as per award passed by the Industrial Tribunal. Therefore, claiming amount of gratuity in terms of award passed by Industrial Tribunal in Reference (IT) No. 174 of 1974 cannot be considered to be illegal or unauthorized claimed beyond the scope of the Act. The Petitioner - Nagarpalika is not exempted u/s 5 of the Gratuity Act, 1972. The right to gratuity is a statutory right. Similarly, if any amount granted by Controlling Authority is not deposited before Controlling Authority as per Section 7(4) while filing appeal, it is a legal obligation upon employer while filing appeal under proviso to Section 7(7) that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the Appellant produced a certificate of the controlling authority to the effect that Appellant has deposited with him an amount equal to the amount of gratuity required to be deposited in Sub-section-4 or deposit with the appellate authority such amount. Therefore, appellate authority has rightly not entertained appeal because the amount granted by controlling authority u/s 7(4) has not been deposited by Petitioner Nagarpalika before the Controlling Authority or appellate authority. Therefore, subsequent payment or deposit has no legal consequence. The pre-condition of deposit is mandatory. The appeal preferred without deposit is not a valid appeal. (See: Pharma Base India (P) Ltd. (Mumbai) v. State of Maharashtra and Anr. reported in 2008 I CLR 1 (Bombay High Court) and the High Court has no discretion to waive such pre-deposit condition, as decided in case of Arulmiga Sankar Narayanaswamy Devasthanan v. Joint Commissioner of Labour reported in 2008 (1) LLN 273 (Madras High Court).

6.2 Learned advocate Mr. Shah has raised contention that looking to financial condition of Petitioner Nagarpalika, interest amount is to be reduced. This contention cannot be accepted because this being statutory interest cannot be reduced in late or delay application is filed, in case of S.N. Vasudevaiah Vs. Appellate Authority under Payment of Gratuity Act, 1972 and Deputy Labour Commissioner and Controlling Authority Under PG Act and KSC Apex Bank Limited, (Karnataka High Court) and in case of Praye Mohan Prasad v. Regional Labour Court (C) Dhanbad reported in 2007 LLR 173 (Jharkhand High Court).

6.3 But such contention cannot be entertained because it is an employees' right to claim interest on delayed payment being a statutory as decided by the Patna High Court in the case of Champaran Sugar Co. Ltd. Vs. Joint Labour Commissioner and Appellate Authority and Others, The provision of Section 7(3) provides that employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable to the person to whom the gratuity is payable. Section 7(3)(A) of the Act provides that if the amount of gratuity payable under Sub-section (3) if it is paid by employer within the period specified in Sub-section-3, the employer shall pay from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate

specified by controlling authority. It is further provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

7. Therefore, in view of provisions made u/s 7(3)(A) read with Section 7(3), such interest on delayed payment being a statutory compulsion and controlling authority have no discretionary power to deny statutory interest in case of delayed payment of amount of gratuity to concerned employee. The view taken by Apex Court in the case of H. Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd., wherein it is held that proviso to Section 7(3)(A) and Section-8, interest on delayed payment of gratuity is a mandatory and not discretionary if delay is not due to fault of the employee and employer has not obtained permission from controlling authority for delayed payment on that ground.

8. If the appeal preferred against the order of controlling authority without pre-deposit as required u/s 7(7) which is considered to be a mandatory as per decision of Bombay High Court in the case of Pharma Base India Pvt. Ltd. Vs. State of Maharashtra and Another,

9. Similarly, considering provisions of Section 7(3) and 7(3)(A) of the Act, interest on delayed payment is being a mandatory as decided recently by Apex Court in the case of Kerala State Cashew Dev. Corporation and Anr. v. N. Ashokan reported in 2009 (13) Scale 109.

10. The contention raised by learned advocate Mr. Shah that there is a delay in filing application for gratuity amount. Therefore, controlling authority has committed gross error in entertaining such application. But there is no bar in claiming gratuity even after the specified period of 30 days as decided by the Division Bench of Andhra Pradesh High Court that rules prescribing limitation for filing an application for gratuity are merely procedural and would not debar the right of employee to claim gratuity in a decision in the case of Ramjilal Chimanlal Sharma v. Elphinstone Spinning and Weaving Mills. Co. Ltd. reported in 1984 Lab.I.C. 1703 and also in a decision in the case of P. Galemma v. Appellate Authority under the Act, reported in 1994 3 LLJ Supp 791.

11. The decision given by this Court in the case of Karshan Meghji Dabhi is relied referred to above by learned advocate Mr. Shah and submitted that recovery application is maintainable. But it was a case of amount of gratuity claimed by employee based on settlement only and it was not a claim made by employee under the provisions of the Act. If any amount of gratuity claimed by employee under the provisions of the Act, then recovery application u/s 33C(2) of the I.D. Act, 1947 is not maintainable as per decision of Apex Court in the case of State of Punjab Vs. Labour Court Jullunder and Others, Therefore, decision which has been relied by learned advocate Mr. Shah is not helpful and not covered the issue which has been raised before this Court. Apart from that no such contention

raised by Petitioner before controlling authority. The employee is entitled to claim better terms of gratuity as per Section 4(5) of the Gratuity Act, 1972 by filing application under the provision of Gratuity Act, 1972.

12. Therefore, contentions raised by learned advocate Mr. Shah cannot be accepted because controlling authority has rightly considered award passed by Industrial Tribunal, Nadiad in Reference (IT) No. 174 of 1974 which was terminated on 4.12.2003, and prior to that, workman had retired from service on 30.6.2003 and on that day, the award was in force and employee is entitled benefits from such award and such award is binding to Petitioner Nagarpalika. Therefore, controlling authority has rightly granted difference of amount of gratuity with interest, which cannot be considered to be erroneous finding or conclusion given by controlling authority. Therefore, according to my opinion, controlling authority has not committed any error which requires interference by this Court under Article 227 of the Constitution of India. Hence, there is no substance in present petition. Accordingly, present petition is dismissed.

7.1 Learned advocate Mr. Raval also relied upon a decision of this Court in case of Gujarat Housing Board v. Natvarlal Jagjivan Madia and Ors. passed in SCA No. 1161 of 2010. Relevant observations made by this Court in aforesaid decision are in Para.4 to 10, which is quoted as under:

4. I have considered submissions made by learned Advocate Mr. Munshaw before this Court. I have also perused order passed by controlling authority as well as order passed by appellate authority wherein order passed by controlling authority has been confirmed by dismissing appeal preferred by Petitioner.

5. It is necessary to consider relevant provisions of Payment of Gratuity Act, 1972. Provisions of said Act are applicable to Petitioner establishment as per Section 1(3)(b) and (c) and this fact has not been disputed by learned Advocate Mr. Munshaw before this Court. Not only that but this fact has also not been disputed by Petitioner either before controlling authority or appellate authority under the Payment of Gratuity Act and, therefore, Act is made applicable to Petitioner establishment. Section 4 Sub-section (5) of said Act provides that nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer. Section 5 of Act is giving power to appropriate Government by notification and subject to such conditions as may be specified in notification to exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from operation of provisions of this Act if, in the opinion of appropriate Government, the employees of such establishment as aforesaid are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. Sub-section (3) of Section 5 of Act provides that a notification issued under Sub-section (1) or Sub-section (2) may be issued retrospectively a date not earlier than the date of commencement of the Act but no such notification shall be issued so as to prejudicially affect the interests of any person. It is not disputed by Petitioner that Petitioner establishment has not

been exempted by appropriate Government u/s 5 and concerned employee is also not exempted under Sub-section (2) of Section 5 of the Act. As per Section 14 of this Act, 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 by this Act. Aforesaid provisions of the Payment of Gratuity Act, 1972 are mandatory in nature and same are relevant for deciding issue which has been raised by learned Advocate Mr. Munshaw for Petitioner before this Court.

6. Pension scheme which has been accepted by Respondent No. 1 includes benefit of gratuity but amount of gratuity is less favourable than the claim made under the Payment of Gratuity Act, therefore, Respondent workman is entitled to claim such benefit as per the provisions of Payment of Gratuity Act, 1972. This being statutory right available to Respondent workman, it has been rightly examined by controlling authority after considering last drawn salary of employee and Respondent is also covered by definition of Section 2(e) of Payment of Gratuity Act, 1972. Continuity of service as defined u/s 2(c) of Payment of Gratuity Act, 1972 has also been rightly considered by Controlling Authority and Appellate Authority under the Payment of Gratuity Act and provisions of said Act are applicable to Petitioner establishment and last drawn salary Rs. 10230.00 divided by 26 and then to find out one day salary and on that basis amount of gratuity has been calculated by controlling authority considering total 33 years service, for that, employee is entitled for wages of days as claim of gratuity and accordingly order has been passed by controlling authority and same aspects were rightly considered by appellate authority and appellate authority has rightly come to conclusion that controlling authority has rightly passed order and it requires no interference. Appellate authority has rightly come to conclusion that u/s 2(4), Petitioner being commercial establishment, provisions of Payment of Gratuity Act, 1972 would apply. Appellate authority has relied upon decision of this Court reported in case of Jayaben Suryakant Modi and Ors. v. Gujarat Labour Welfare Board and Ors. 1997 Lab IC 2581 wherein it has been held that provisions of Gratuity Act are applicable to Labour Welfare Board considering it a commercial establishment as per Section 2(4) of the Act. Considering activity of Petitioner establishment of construction of house and sale thereof on hire purchase basis, Petitioner establishment has been held to be commercial establishment.

7. This Court had an occasion to consider same question in group of petitions being Special Civil Application No. 2138 of 2002 and other allied matters decided by this Court on 27.2.2002. Relevant discussion made by this Court in para 14 to 21 of said decision of this Court dated 27.2.2002 is quoted as under:

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 Gujarat, 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 33C(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 (Andh Pra) 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 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-s. (3) Cl.(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., 1990 2 LLJ 156 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 2 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 KHRI and CE 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.

8. Aforesaid decision was challenged before Division Bench of this Court by Bilimora Nagarpalika by filing Letters Patent Appeal No. 379 of 2008 which is reported in 2008(2) GLH 448. Division Bench of this Court decided group of appeals and observed as under in para 5,6 and 7:

5. We are unable to accept the contention raised by Ms. Jhaveri. Section 2(f) of the Act of 1972 defines "employer." Sub-clause (ii) of the said Clause (f) expressly includes the "local authority" within the meaning of the word employer. Section 4(1) of the Act of 1972 enjoins the employer to pay gratuity to its employee on termination of employment after he renders continuous service for not less than five years, inter alia, on his superannuation or on his retirement. Thus, the Municipality is under obligation to pay gratuity to its retired employees in accordance with the Act of 1972.

6. Section 5 of the Act of 1972 empowers the appropriate Government to exempt any establishment, etc. to which the Act applies, from the operation of the provision of the Act of 1972. In other words, unless an establishment is expressly exempted by the appropriate Government by notification issued u/s 5 of the Act of 1972, such establishment would be liable to pay gratuity to its retired employees in accordance with the Act of 1972. It was not the case of the Municipality before the controlling authority or before the learned Single Judge or before us that the Municipality is exempted from the operation of the provisions of the Act of 1972 as envisaged by Section 5 of that Act. In absence of the exemption specifically granted u/s 5, the Municipality is duty bound to pay its employees gratuity in accordance with the Act of 1972.

7. In above view of the matter, the order of the learned Single Judge does not warrant interference. The Appeals are dismissed in limine. Civil Applications stand disposed of.

9. Learned Advocate Mr. Munshaw has relied upon decision of apex court in case of Beed District Central Co-operative Bank Ltd. Vs. State of Maharashtra and Others, Relevant para 14 which is relied upon by learned Advocate Mr. Munshaw is reproduced as under:

14. Applying the 'Golden Rule of Interpretation of Statute', to us it appears that the question should be considered from the point of view of the nature of the scheme as also the fact that the parties agreed to the terms thereof. When better terms are offered, a workman takes it as a part of the package. He may volunteer therefor, he may not. Sub-section (5) of Section 4 of the 1972 Act provides for a right in favour of the workman. Such a right may be exercised by the workman concerned. He need not necessarily do it. It is the right of individual workman and not all the workmen. When the expression "terms" has been used, ordinarily it must mean "all the terms of the contract". While interpreting even a beneficent statute, like, Payment of Gratuity Act, we are of the opinion that either contract has to be given effect to or the statute. The provisions of the Act envisage for one scheme. It could not be segregated. Sub-section (5) of Section 4 of the 1972 Act does not contemplate that the workman would be at liberty to opt for better terms of the contract, while keeping the option open in respect of a part of the statute. While-reserving his right to opt for the beneficent provisions of the statute or the agreement, he has to opt for either of them and not the best of the terms of the statute as well as those of the contract. He cannot have both. If such an interpretation is given, the spirit of the Act shall be lost. Even in *Shin Satellite* (supra), this Court stated:

The proper test for deciding validity or otherwise of an agreement or order is "substantial severability" and not "textual divisibility". It is the duty of the court to sever and separate trivial or technical parts by retaining the main or substantial part and by giving effect to the latter if it is legal, lawful and otherwise enforceable. In such cases, the court must consider the question whether the parties could have agreed on the valid terms of the agreement had they known that the other terms were invalid or unlawful. If the answer to the said question is in the affirmative, the doctrine of severability would apply and the valid terms of the agreement could be enforced, ignoring invalid terms. To hold otherwise would be "to expose the covenantor to the almost inevitable risk of litigation which in nine cases out of ten he is very ill-able to afford, should he venture to act upon his own opinion as to how far the restraint upon him would be held by the court to be reasonable, while it may give the covenantee the full benefit of unreasonable provisions if the covenantor is unable to face litigation.

10. Recently, this aspect has been examined by apex court in case of *Allahabad Bank and Another Vs. All India Allahabad Bank Retired Emps. Assn.*, Identical question has been examined and it has been held that pension and gratuity are two separate elements of retirement benefits. Apex court considered same aspect of interpretation of statutes, liberal construction to be given having regard to directive principles of State Policy and Payment of Gratuity Act, 1972 held to be welfare legislation deserving liberal interpretation as discussed in para 13 to 22. Therefore, para 13 to 22 are quoted as under:

13. Section 5 confers power upon the appropriate Government to exempt any establishment, factory, mine, oilfield, plantation etc. from the operation of the

provisions of the Act, if, in its opinion, the employees in such establishment, factory etc. are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act. The power to exempt conferred upon the appropriate Government is not an unconditional power. The appropriate Government is required to hear all the persons concerned who are likely to be affected by the decision to be taken and the exemption itself is subject to the conditions mentioned in the provisions of the Act namely that employee or class of employees in the opinion of the government are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act.

14. A plain reading of the provisions referred to herein above makes it abundantly clear that there is no escape from payment of gratuity under the provisions of the Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government.

15. Notwithstanding the subsequent improvements and embellishments the stand taken by the bank was and is before us that the members of the Association had accepted the Contributory Provident Fund Scheme and they opted for pension in lieu of gratuity which was being paid and therefore are not entitled to payment of gratuity under the provisions of the Act.

16. We shall proceed to examine the point urged by the learned Counsel for the Appellant. Remedial statutes, in contra distinction to penal statutes, are known as welfare, beneficent or social justice oriented legislations. Such welfare statutes always receive a liberal construction. They are required to be so construed so as to secure the relief contemplated by the statute. It is well settled and needs no restatement at our hands that labour and welfare legislation have to be broadly and liberally construed having due regard to the Directive Principles of State Policy. The Act with which we are concerned for the present is undoubtedly one such welfare oriented legislation meant to confer certain benefits upon the employees working in various establishments in the country.

17. Krishna Iyer, J in *Som Prakash Rekhi v. Union of India* stated the principle in his inimitable style that benignant provision must receive a benignant construction and, even if two interpretations are permissible, that which furthers the beneficial object should be preferred. It has been further observed: (SCC pp.483-84, para 66) "We live in a welfare State, in a "socialist" republic, under a Constitution with profound concern for the weaker classes including workers (Part IV). Welfare benefits such as pensions, payment of provident fund and gratuity are in fulfilment of the Directive Principles. The payment of gratuity or provident fund should not occasion any deduction from the pension as a "set-off". Otherwise, the solemn statutory provisions ensuring provident fund and gratuity become illusory. Pensions are paid out of regard for past meritorious services. The root of gratuity and the foundation of provident fund are different. Each one is a salutary benefaction statutorily guaranteed independently of the other. Even assuming that by private treaty parties had otherwise agreed to deductions before the coming into force of these beneficial enactments they

cannot now be deprivatory. It is precisely to guard against such mischief that the non obstante and overriding provisions are engrafted on these statutes.

18. Interpreting the provisions of the said Act this Court in *Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd.* observed that pension and gratuity coupled with contributory provident fund are well recognised retiral benefits governed by various statutes. These statutes are legislative responses to the developing notions of the fair and humane conditions of work, being the promise of Part IV of the Constitution. It was observed: (SCC p.380, para 15) "15...the fundamental principle underlying gratuity is that it is a retirement benefit for long service as a provision for old age. Demands of social security and social justice made it necessary to provide for payment of gratuity. On the enactment of Payment of Gratuity Act, 1972 a statutory liability was cast on the employer to pay gratuity.

19. Gratuity payable to an employee on the termination of his employment after rendering continuous service for not less than 5 years and on superannuation or retirement or resignation etc. being a statutory right cannot be taken away except in accordance with the provisions of the Act whereunder an exemption from such payment may be granted only by the appropriate Government u/s 5 of the Act which itself is a conditional power. No exemption could be granted by any Government unless it is established that the employees are in receipt of gratuity or pension benefits which are more favourable than the benefits conferred under the Act.

20. In *Union of India v. All India Services Pensioners' Association And Anr.*, this Court explained that there is always a distinction between the pension payable on retirement and the gratuity payable on retirement.

8. While pension is payable periodically as long as the pensioner is alive, gratuity is ordinarily paid only once on retirement.

21. No decision of this Court which has taken a view contrary to the decisions referred to herein above has been brought to our notice.

22. In our considered opinion pensionary benefits or the retirement benefits as the case may be whether governed by a Scheme or Rules may be a package consisting of payment of pension and as well as gratuity. Pensionary benefits may include payment of pension as well as gratuity. One does not exclude the other. Only in cases where the gratuity component in such pension schemes is in better terms in comparison to that of what an employee may get under the Payment of Gratuity Act the government may grant an exemption and relieve the employer from the statutory obligation of payment of gratuity.

10. In view of aforesaid decision of apex court and considering contentions raised by learned Advocate Mr. Munshaw, according to my opinion, such contentions cannot be accepted by this Court because there is no exemption given to Petitioner establishment by appropriate Government from operation of Payment of Gratuity Act, 1972 and Respondent No. 1 is an employee as defined u/s 2(e)

of said Act. There is no dispute raised by Petitioner before controlling authority or appellate authority or before this Court about applicability of said Act and pension and gratuity both are separate and independent scheme for retirement benefits and it cannot be considered to be one package policy as contended by learned Advocate Mr. Munshaw and, therefore, in view of that, contentions raised by learned Advocate Mr. Munshaw are rejected. View taken by controlling authority and appellate authority is perfectly justified and therefore, this petition does not call for any interference in exercising power under Article 227 of Constitution of India by this Court. Therefore, according to my opinion, there is no substance in this petition and same is therefore dismissed.

8. He also relied upon decision of this Court in case of Bilimora Nagarpalika reported in 2008 (2) GLH 448. In substance, submissions made by learned advocate Mr. Raval is that controlling authority has rightly relied upon award which is based on settlement arrived at, which settlement and award is applicable to Safai Kamdar and both Respondent workmen are Safai Kamdar and therefore, they are entitled the benefits of award which has been rightly granted in favour of Respondent workmen. For that, no interference is required.

9. I have considered submissions made by learned advocates appearing on behalf of respective parties. According to my opinion, controlling authority as well as appellate authority have rightly relied upon award passed by labour Court which based on settlement and said award is not terminated so far by Petitioner - Municipality and it is binding to Municipality and it is not the case of Municipality that said award is not binding to Municipality and same has been terminated by Petitioner - Municipality. The Gratuity Act is applicable to Municipality and it is not case of Petitioner - Municipality that Gratuity Act is not applicable. In light of this background and considering reasoning given by both authorities, according to my opinion, either of authorities have not committed any error. On the contrary, right and proper order has been passed by both authorities granting appropriate relief of amount of gratuity as per award, for which both Respondents are entitled to it. For that, contentions which are raised before this Court by learned advocate Mr. Purohit cannot be accepted and same are rejected.

10. This Court is having limited jurisdiction under Article 227 of Constitution of India while considering order in question. This Court cannot interfere with award while exercising power under Article 227 of Constitution of India. This Court cannot exercise powers as an appellate court. This Court cannot disturb finding of fact as examined by authorities. This view has been taken by Apex Court in case of Jai Singh and Ors. v. Municipal Corporation of Delhi and Anr. With Municipal Corporation of Delhi v. Sh. Jai Singh and Ors. AIR 2010 SCW 5968. Relevant para 25 of said judgment is quoted as under:

25. Undoubtedly, the High Court has the power to reach injustice whenever, wherever found. The scope and ambit of Article 227 of the Constitution of India had been discussed in the case of M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., wherein it was observed as follows:

The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to. In our opinion, the High Court committed a serious error of jurisdiction in entertaining the writ petition filed by MCD under Article 227 of the Constitution of India in the peculiar circumstances of this case. The decision to exercise jurisdiction had to be taken in accordance with the accepted norms of care, caution, circumspection. The issue herein only related to a tenancy and subletting. There was no lis relating to the ownership of the land on which the superstructure or the demised premises had been constructed. The whole issue of ownership of plot of land No:2, Block-B, transport area of Jhandewalan Estate, Desh Bandhu Gupta Road, Karol Bagh, New Delhi is the subject matter of a civil suit being Suit No: 361 of 1980 in the High Court of Delhi. The High Court, therefore, ought not to have given any opinion on the question of ownership.

10.1. In *M.A. Azim v. Maharashtra State Road Transport Corporation* 2011 I CLR 283, it has been observed by Bombay High Court as under in para 11 and 12:

11. At this stage, it would be appropriate to refer to few important judgments of Hon"ble Supreme Court and this Court laying down therein the scope to entertain petition under of Article 226 and 227 of the Constitution of India. The Hon"ble Supreme Court in a case of " *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, in para No. 30 held thus:

30. the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the powers under Article 226 of the Constitution. Under Article 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its

authority.

Yet in another case, in a case of " Surya Dev Rai Vs. Ram Chander Rai and Others, the Hon"ble Supreme in its conclusion held:

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

And in a case of Babulal S/o. Navalmal Pipada v. Dropadbai W/o. Manohar Gore and Ors. reported in 2010(5) Mh. LJ, this Court has held thus:

One cannot be oblivious of the parameters required to be observed for the purpose of exercising supervisory jurisdiction under Article 227 of the Constitution of India. Unless it is demonstrated that the impugned judgment suffers from vice of perversity, arbitrariness or is rendered without considering material evidence or is rendered on the basis of no material interference with the finding of Courts/Tribunals is impermissible. The writ jurisdiction cannot be invoked for reappreciating of the evidence or for the purpose of rectification of

minor errors committed by the Tribunals. Unless it is demonstrated that the view taken by the MRT is per se against the settled principles of law, it is difficult to interfere with the findings recorded by the Tribunals below.

12. Therefore, it is clear from the pronouncements of Supreme Court and this Court which are referred supra that the Writ Jurisdiction cannot be invoked for reappreciating the evidence or for the purpose of rectification a minor errors committed by the Tribunals. Supervisory jurisdiction under Article 227 cannot be invoked unless it is demonstrated that the impugned judgments suffers from the vice of perversity, arbitrariness or is rendered without considering material evidence or is rendered on the basis of no material evidence or is rendered on the basis of no material, interference with the findings of Courts/Tribunals is impermissible. Therefore, in light of above, it is relevant to summarized here in below the findings recorded by the Labour Court on the basis of evidence brought on record by the parties.

11. Recently, similar aspect has been examined by Punjab & Haryana High Court in case of Managing Director, the Punjab State Co-operative Bank Ltd. v. Manjit Singh Sodhi and Ors. reported in 2011 Lab IC 708. Relevant observations are in Para.26 to 35 which are quoted as under:

26. This Act is, thus, a beneficial legislation primarily aimed at protecting the rights of the employees and was to lay down minimum standard of payment. This would further be evident from the provisions of Section 4(5) of the Gratuity Act, which provides that this enactment would not effect the right of an employee to receive better terms of gratuity under any award or agreement or a contract. If the aim was to make this enactment have an over-riding effect over the other rules, regulations governing the payment of gratuity, though having beneficial terms, then there was no need to make a provision like Section 4(5) of the Gratuity Act. This provision rather will give out the clear legislative intent to give preference to beneficial terms over the Gratuity Act. The obvious aim of this Sub-section is that employee entitled to the better terms of gratuity, either by way of award or agreement or a contract would not have to be paid gratuity under the Gratuity Act. That being so, it would be difficult to accept the submission that this provision would not apply to other enactment or rules or statutes when it has given preference to even terms of agreement, award or contract. The plea that enactment would apply only when exemption is asked for and is granted would mean that even less beneficial enactment could prevail which may lead to a contradiction of a sort between Section 5 and Section 4(5) of the Gratuity Act. Thus, the submission by Appellant's counsel that this Sub-section would only operate in the case of award, agreement or contract and would not apply where the gratuity is payable either by way of rules or statute would amount to negating the very purpose and object behind the enactment of the Gratuity Act.

27. The counsel for the Appellant would urge that better terms would be payable in terms of any other enactment, rules or regulations only if appropriate

Government grants exemption by way of notification, which would be subject to such conditions as may be specified in the notification. The submission on these lines would even amount to misreading the provisions of Section 5 of the Gratuity Act. No doubt, this provision empowers the appropriate Government to exempt any establishment, factory, mine, oil field, plantation, port, railway company or shop from the operation of the provisions of this Act but this can be done only when the appropriate Government is of the opinion that employee in such establishments are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. Thus, the aim of this Section is to grant exemption for the benefit of the employees and not to curtail or curb their rights to receive better terms for payment of gratuity under any other enactment.

28. Section 5(1) of the Gratuity Act talks of exempting establishment as such whereas Sub-section (2) regulates the exemption of any employee or class of employees. The reason behind the grant of exemption under both the Sub-sections is same and is that when such employee or class of employees or establishments are in receipt of Gratuity or pensionable benefits not less favourable than the benefit conferred under this Act. This Section can not read to mean that unless exemption is granted to either the establishment, employees or class of employees, they could be paid gratuity which is less favourable or less beneficial to them. If the plea as raised about the over-riding effect is accepted, it would defeat the very purpose expressed in these provisions of the Gratuity Act. In this regard, the observations made by Allahabad High Court in the case of Bank of Baroda (supra) can be noticed. It is rightly viewed that the Act will be attracted ipso-facto in the absence of exemption notification and will have over-riding effect over any scheme, which is less favourable to employees. The converse would be equally true and if any other Scheme is favourable, then it would prevail. In fact, the observations of Hon'ble Supreme Court in EID Parry (I) Ltd.'s case (supra) can be referred here for benefit, which are:

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 coexist and can operate where one Act or the other is not available then we find no difficulty in making the State Act applicable to 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.

29. The ratio which can be culled out from the above observations is that if the State Act is more beneficial than the Central Act, then even the argument of repugnancy or otherwise of the State Act would not arise at all. It has been very aptly observed that both the enactments can co-exist.

30. In order to wriggle out of this proposition that more beneficial enactment has to prevail, the counsel for the Appellant contends that these observations were made in the fact situation of that case which would not apply to the present case.

He submits that the Gratuity Act and the Common Cadre Rules both are applicable and so the Gratuity Act would prevail in view of Section 14 of the Gratuity Act. While so stating the counsel is missing out a basic point regarding the aim, object and purpose of the Gratuity Act and that more beneficial provisions to prevail, being the object of the legislation behind the enactment. If any support is needed in this regard, then the same can be had from The workmen of Metro Theatre Ltd., (supra), where it is observed that the Scheme envisaged by the Gratuity Act secures the minimum for the employees in that behalf and expressed provisions are found under the Gratuity Act under which better terms of gratuity, if already existing, are not only preserved but better terms could be conferred on an employee in future. Following observations will further clarify the position:

Counsel for the Appellant Union urged before us that no standardisation of any gratuity scheme was contemplated by the Act as was clear from the express provisions contained in Section 4(5) and Section 5 of the Act and that enactment being a beneficial piece of legislation Section 4(5) should be construed in favour of the employees and that, therefore, the Tribunal's view that it could not grant anything beyond the scheme contemplated by the Act was erroneous. In support of such construction reliance was placed upon this Court's decision in Alembic Chemical Works Co. Ltd. Vs. The Workmen, where a similar provision under the Factories Act was construed as conferring power on the Tribunal to fix the quantum of leave on a scale more liberal than the one provided by the act. We find considerable force in this submission.

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This also becomes amply clear from the provisions of Section 5 which confer power upon the appropriate Government to exempt any establishment to which the Act applies from the operation of the provisions of the Act if in its opinion the employees in such establishment are in receipt of gratuity benefits not less favourable than the benefits conferred under the Act. Therefore, on rue construction we are clearly of the view that the expression "award" occurring in the above provision does not mean and cannot be confined to "existing award" but includes any award that would be made by an adjudicator wherein better terms of gratuity could be granted to the employees if the facts and circumstances warrant such grant. It is true, as has been observed, by this Court in State of Punjab Vs. Labour Court Jullunder and Others, that the Act enacts a complete Code containing detailed provisions covering all essential features of the scheme for payment of gratuity. But it is also clear that the scheme envisaged by the enactment secures the minimum for the employees in that behalf and express provisions are found in the Act under which better terms of gratuity if already existing are not merely preserved but better terms could be conferred on the employee in future. In other words the view taken by the Tribunal that it could not go beyond the scheme of gratuity contemplated by the Act is clearly erroneous.

31. Reference here only can be made to Parry and Co. Ltd. v. Second Addl. Labour Court and Ors. (1996) 89 FJR 288, where it is observed that act is not intended to do away with other retiral benefits already existing and available to the employees and that this Act confers extra benefits on the employees. It is observed as under:

With this background, and the factual concept set clear as above, we proceed to consider the contention of the management that the pension scheme stood statutorily scrapped after the coming into force of the Act. The Act is a piece of legislation forming a milestone in the annals of labour welfare schemes in this country. Gratuity, as the term itself suggests, is a gratuitous payment given to an employee on discharge or retirement. The Act is not intended to do away with other retiral benefits already existing and available to the employees. In brief the Act, the legislation clearly intended to confer extra benefits on the employees. The court, while construing the provisions of the Act, which is a piece of social legislation, must construe them so as to help achieving the object of the legislation. The retiral benefits which stood conferred already on the employee do not militate against the benefit of gratuity. The endeavour must be to see that the retiral benefit schemes already existing and the scheme of gratuity under the Act co-exist in a concern.

32. Reference here can be made to the case of M.C. Chamaraju v. Hind Nippon Rural Industrial (P) Ltd. 2007 (4) SCT 195 to observe that liberal view should be taken, the act being beneficial legislation. The Hon''ble Supreme court has observed in this case that the act has been enacted with a view to grant benefits to the workers, a weaker section, in industrial adjudicatory process. In interpreting the provision of such beneficial legislation, liberal view should be taken. Similar view will emerge from the observations made in Bank of Baroda''s case (supra), where the Gratuity Act was held to have an over-riding effect over any scheme which is less favourable to the employee. On the other hand, if the employees are entitled to better terms under any Scheme, the same would be protected by Section 4(5) of the Gratuity Act. In Transport Manager, Kolhapur Municipal Transport Undertaking v. Pravin Bhabhutlal Shah 2004 (4) SCT 833, the Court has observed that workman and employer are free to enter into contract of payment of gratuity at a higher rate and if the settlement does not impose any ceiling limit to the gratuity receivable by an employee, the Act can not impose any limit. It is, thus, clear that what is for the benefit of an employee is to be preferred rather than the over-riding effect of the Gratuity Act. In Beed District Central Co-op. Bank Ltd. v. State of Maharashtra and Ors. JT 2006 (9) 260, Hon''ble Supreme Court negated the prayer of the employees to seek some benefits under the Gratuity Act and other under contract by declining to apply 'doctrine of 'blue pencil'. Court has held that Sub-section (5) of Section 4 of the 1972 Act does not contemplate that the workman would be at liberty to opt for better terms of the contract, while keeping the option open in respect of a part of the statute. If such an interpretation is given, the spirit of the Act shall be lost.

33. From the above discussion, it is clear that the Gratuity Act is a beneficial legislation. It is to be construed in favour of the employees. It would be erroneous to say that one can not go beyond the scheme of gratuity contemplated under the Gratuity Act. As held in D.T.C. Retired Employees Association and Others Vs. Delhi Transport and Others etc. etc., Sub-section (5) of Section 4 is an exception to the main section under which gratuity is payable to the employee. The employer, who is more concerned with the industrial peace and better employer employee relations, can always give benefit to the employees irrespective of any statutory minimum prescribed under law in respect of such reliefs. In all welfare legislation, the amount payable to the employees or labourers is fixed at minimum rate and there will not be any prohibition for an employer to give better per-requisites or amount then what is fixed under law. It is also clear that the Gratuity Act is not intended to do away with other retiral benefits already existing and available to the employees. It is to confer extra benefits. This is a social piece of legislation and the Court has to construe the provision to help in achieving the object of the legislation. The endeavour has to be to see that the beneficial schemes already existing and the scheme of gratuity under the Gratuity Act co-exist in a concern.

34. Let us examine this from another angle. Perusal of Section 14 of the Gratuity Act would show that what this Section provides is that the provision of this Act or any Rules made under the Act shall have effect notwithstanding anything which is inconsistent therewith in any other enactment or any other instrument or contract etc. The Section, thus, lays down that the provisions of this Act would prevail in the case of inconsistency with another enactment. The counsel for the Appellant has not been able to point out any inconsistency between the provisions of the Gratuity Act and the Common Cadre Rules. Merely because some different gratuity is payable would not mean that there is inconsistency between the provisions of the Gratuity Act and the Common Cadre Rules. It would need appreciation that both the enactments are making provision for payment of gratuity. Inconsistency would have been if there was no provision made for payment of gratuity under the Common Cadre Rules. The reason and purpose behind enacting Section 14 of the Gratuity Act again is for the benefit of the employees. The provisions of the Gratuity Act apparently are given an over-riding effect in case of inconsistency to ensure payment of better gratuity to an employee and not to curtail the better terms. It is only with this aim that this provision has apparently been enacted so that no employer is able to deny his liability to pay a better gratuity by invoking the provisions of any award, contract, agreement or instrument. The provisions of this Section are, thus, to be read in conjunction with Sub-section (5) of Section 4 and also with Section 5 of the Gratuity Act. The combined effect of all these provisions would REGULAR SECOND APPEAL No. 69 OF 2005:{ 27 }: be to ensure better terms for payment of gratuity to the employees and this enactment, thus, can not be put to use to decline better terms by making it to operate in the manner as is being urged by counsel for the Appellant.

35. All the judgments that were cited before me would clearly indicate that observations made were only to the effect that beneficial provisions are to prevail. Where the payment of gratuity is more beneficial under the Gratuity Act then the provisions of this Act would prevail and vice-versa if some other provisions enacted in respect of an employee would entitle him to better terms, then those would prevail. The employer can not take shelter under the provisions of the Gratuity Act to pay less gratuity than is otherwise payable under the statute, rules, regulations, contract, agreement or award. The contention of the counsel that the provisions of the Gratuity Act would have an over-riding effect in view of Section 14 of the Gratuity Act would amount to doing injustice and would be contrary to the basic aim and objects of this enactment and in a way would lead to nullifying or stultifying the very purpose behind enacting the Gratuity Act. Accordingly, this submission of the counsel deserves to be rejected. In fact, the very act of the Registrar to apply the provisions of Gratuity Act may be open to question if the Act is less beneficial as it would then violate the mandate laid down in Section 5 of the Gratuity Act. I am, thus, clear in my mind that Section 14 of the Gratuity Act can not be read in the manner to give an over-riding effect even in these cases where other enactments are beneficial.

12. In view of above discussion and observations made by Apex Court, Punjab & Haryana High Court and Bombay High Court, according to my opinion, no error found apparent on face of record has been committed by controlling authority as well as appellate authority in both cases and therefore it would not require any interference of this Court in exercise of powers under Article 227 of Constitution of India. Therefore, contentions raised by learned advocate Mr. M.K. Purohit for Petitioner cannot be accepted. Same are, therefore, rejected. Hence, there is no substance in this petition and same is required to be dismissed.

13. For reasons recorded above, both petitions are dismissed. Rule is discharged. Interim relief, if any, shall stand vacated forthwith. There shall be no order as to costs.

14. The Registry is directed to pay amount which is lying and deposited by Petitioner - Municipality by account payee cheque in name of Sonaben Bhagabhai - Respondent No. 1 in SCA No. 21759 of 2005 and widow of Bhurabhai Mangabhai - Respondent No. 1 in SCA No. 24723 of 2005 after proper verification.