

(2010) 01 RAJ CK 0007
In the Rajasthan High Court
Case No : C.W.P. No. 5681 of 2009

Municipal Council

APPELLANT

Vs

Mohd. Safi and Others

RESPONDENT

Date of Decision : 20-01-2010

Acts Referred:

Payment of Gratuity Act, 1972 — Section 3A, 5, 7(4)

Citation : (2010) 125 FLR 310 : (2010) 4 LLJ 17

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant writ petition has been filed by the Municipal Council, Udaipur assailing the order passed by the Controlling Authority under Payment of Gratuity Act, 1972, awarding payment of gratuity to respondent-employee in terms of Section 7(4)(c) and computation u/s 3A of the Act, along with interest at the rate of 12 percent per annum.

2. Counsel for the petitioner submits that, however, the issue raised in the instant petition has been considered by this Court in judgment Municipal Board and Another Vs. Salim Khan and Another, , holding that employees of the Municipal Board/Council are entitled to payment of gratuity under the Act of 1972 but submission, which he wants to make before this Court has not been considered and that requires examination by this Court.

The bone of contention of Counsel for the petitioner is that, however, there is a provision for exemption of the establishment under notification issued by the appropriate government in exercise of powers u/s 5 of the Act of 1972, which indisputable has not been published so far; but once the State Government has framed "Rajasthan Municipalities (Contribution to Provident Fund & Gratuity) Rules, 1969", it may be considered to be a deemed exemption u/s 5 of the Act of 1972 and in such circumstances, the employees are entitled to payment of

gratuity as held under Rules of 1969.

3. In the opinion of this Court submission of the Counsel is without merit, for the reason that very Rules, on account of which exemption from payment of gratuity is sought to be deemed, are of 1969 while the Central Act came into force in the year 1972 and after it has come into force, if the appropriate government wants to grant any exemption notification is required to be issued in exercise of powers u/s 5; in absence whereof no deemed presumption by legal fiction can be claimed.

4. So far as other questions are concerned, since they are already considered by this Court in the judgment of which reference is made supra, this Court finds no substance in present petition.

The petition stands dismissed.