
(2001) 11 MP CK 0058
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4360 of 1999

Municipal Council

APPELLANT

Vs

The Controlling Authority and Another

RESPONDENT

Date of Decision : 05-11-2001

Acts Referred:

Payment of Gratuity Act, 1972 — Section 1(3), 14, 2, 5

Citation : (2002) 3 CGLJ 394

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : A.K. Chaurasia, for the Appellant; S.K. Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.—The question involved in the instant writ petition is whether provisions of Payment of Gratuity Act, 1972 are applicable to Municipal Council, Panna, the Petitioner, and the order of Controlling Authority directing Municipal Council to pay the gratuity amounting to Rs. 14,507/- along with interest at the rate of 10% simple interest with effect from 1 -9-96 is proper.

2. The Petitioner was employed as Time-keeper. He was appointed on 1 -1 -1975 and was removed from the service on 31 st August, 1996. He served for a period of 21 years and 8 months. His last pay was Rs. 1,143/-p.m. Petitioner claimed entitlement for gratuity amounting to Rs. 15,840/-.

3. Controlling Authority issued notice to the Municipal Council, Panna. The Petitioner herein, reply contended that Respondent No. 2 was appointed as muster roll employee. Initially his services were terminated on 12-3-85. Thereafter he was employed on temporary basis for 89 days. Since Respondent No. 2 completed the age of 65 years, he was removed from the service. Additionally it was contended that since Respondent No. 2 was not in regular employment, hence provisions of Payment of Gratuity Act are not applicable. The

Controlling Authority under Payment of Gratuity Act, 1972 (for short the Act of 1972) Asstt. Labour Commissioner, Sagar Division, Sagar as per order dated 30-7-98 held that Respondent No. 2 served with effect from 1-1-1975 till 31 st August, 1996. On completion of five years service Respondent No. 2 was entitled for payment of gratuity. Respondent No. 2's last wages was found to be Rs. 1,143/- per month, and on claculation it was found that gratuity amounting to Rs. 14,507/- was payable. Since there was failure to pay the amount within thirty days as per Notification of the Govt, of India, Ministry of Labour, dated 1-10-87, Respondent No. 2 was entitled to claim 10% simple interest.

4. In the present writ petition only sub-mission raised is that provisions of the Act of 1972 are not applicable to Municipal Council. This is a local authority and is not an establishment within the meaning of Section 1(3)(a)(b) of the Act of 1972.

5. Counsel for the Respondent No. 2 refutes the submission and submits that the provisions of the Act of 1972 are applicable to local authorities. He has placed reliance on a notification dated January 8th 1982 of Govt. of India, Ministry of Labour, which is reproduced hereunder:

G.S.R. 239. In exercise of the powers conferred by Clause (c) of Sub-section (3) Section 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies "local bodies" in which ten or more persons are employed, on any day of the preceding twelve months, as a class of establishments to which the said Act shall apply with effect from the date of publication of this notification in the Official Gazette.

6. From a bare reading of the above quoted notification, it is clear that Municipal Council is a local body and more than ten persons were in the employment as required under the notification. The Petitioner/municipal Council cannot escape the observance of the provision of the Act of 1972. An "employee" has been defined in Section 2(e) of the Act of 1972 to mean that 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.

7. Thus, person working on daily wages or monthly wages is not excluded from the purview of the Act of 1972. It is not necessary that he should be in permanent employment. Respondent No. 2 was clearly an employee within the ten of definition of "employee" in Section 2(e) of the Act of 1972.

8. The question is no more res integra. In Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and Another, , the Supreme Court held that:

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 Section 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 Section 14 of the Payment of the Gratuity Act, the provision for gratuity under Pension Rules will have no effect. Possibly for this reason, Section 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 u/s 5 of the Payment of Gratuity Act. In the aforesaid premises, we are of the considered opinion that the employee 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.

9. Thus, it is held that Respondent No. 2 is clearly entitled for amount of gratuity. He had served for 21 years and 8 months, and the gratuity was so calculated along with interest at the rate of 10%. Rate of interest is as per notification dated 1-10-87, issued by the Govt. of India. No error is found in the order passed by the Controlling Authority.

10. Resultantly, the writ petition is without any merit. The same is dismissed. Cost on parties.