
(2020) 05 MP CK 0017

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 890 Of 2018

Municipal Council, Damoh

APPELLANT

Vs

Poonam Chand Jain & Another

RESPONDENT

Date of Decision : 01-05-2020

Acts Referred:

Payment of Gratuity Act, 1972 — Section 5, 14

Citation : (2020) 05 MP CK 0017

Hon'ble Judges : Vishal Dhagat, J

Bench : Single Bench

Advocate : Anshuman Singh, R.S.Thakur

Final Decision : Allowed

Judgement

1. Petitioner i.e. Municipal Council of the Damoh has filed the present miscellaneous petition challenging the order passed by Controlling Authority under Payment of

Gratuity Act, 1972 dated 31.5.2016 and the order dated 29.8.2017 passed in Gratuity Appeal No.104/2016 by the Appellate Authority.

2. The respondent was working as Moharir in Municipal Council, Damoh. He was appointed on 1.4.1968 and he was superannuated from service on 31.12.2006 after

attaining age of 60 years. Municipal Council, Damoh granted an amount of Rs.1,36,123/- to the respondent. Later on, pay of the respondent was revised as per

Revision of Pay Rules, 2009. After retirement, respondent was paid arrears of salary arrived at after refixation of pay. Respondent had filed an application before the

Controlling Authority under Payment of Gratuity Act, 1972 claiming that he has been paid less amount of gratuity and he is entitled to get gratuity as per

Payment of

Gratuity Act, 1972. The Controlling Authority vide its order dated 31.5.2016 held that respondent is entitled to the gratuity amount of Rs.2,54,265/-. Respondent was

paid gratuity amount of 1,36,123/- by the Municipal Council. Petitioner was ordered to be paid difference of this amount. The Controlling Authority also held that

respondent is also entitled to get interest due to delayed payment. It was also held by the Controlling Authority that there was delay of nine years & five months and, therefore, 10% interest is also to be paid to the respondent. Total amount of interest comes to Rs.1,23,313/- and the total amount of gratuity to be paid to respondent is Rs.2,54,265/-. The Controlling Authority further held that Section 14 of Payment of Gratuity Act, 1972 will have overriding effect on other laws and rules, which are inconsistent with Payment of Gratuity Act, 1972.

3. Learned counsel for the Municipal Council before Controlling Authority had made arguments that employees of Municipal Council are being paid salary and gratuity as per Municipal Council Pension Rules 1980. Respondent herein cannot claim the benefit of gratuity under Payment of Gratuity Act, 1972. Respondent has

already received pension under Municipal Council Pension Rules, 1980 and gratuity has also been accepted by the respondent under the same rules. Now he cannot

turn around and claim payment of gratuity under Payment of Gratuity Act, 1972 and Municipal Council Pension Rules, 1980. The Controlling Authority did not find the argument attractive. It was held by the Controlling Authority that the issue has already been decided by the Apex Court in the matter of Delhi Municipal

Corporation Versus Dharam Prakash Sharma reported in A.I.R 1999 SC 293. In the said case, it has been held by the Apex Court that as per Section 5 of Payment of

Gratuity Act, 1972, the power has been conferred on appropriate Government to exempt any establishment from operation of the provisions of the Act. Since

Municipal Council of Delhi has not been exempted under section 5 of Payment of Gratuity Act 1972, therefore, the provisions of Section 14 will be applicable and they

will override the other provisions, which are contradictory or inconsistent with the provisions of Payment of Gratuity Act, 1972. It was also held that employee of

Municipal Corporation of Delhi is entitled to get gratuity under Payment of Gratuity Act, 1972 and pension under Pension Rules of Municipal Council, Delhi. In the

light of aforesaid judgment, the Controlling Authority allowed the claim of the respondent. Appellate Authority in appeal has affirmed the judgment passed by the

Controlling Authority and has dismissed the appeal filed by Municipal Council, Damoh.

4. Learned counsel appearing for the petitioner has raised similar arguments before this Court and has argued that respondent will be governed by Municipal Council

Pension Rules, 1980. The Controlling Authority has no jurisdiction to entertain the application filed by the respondent and the order is null & void being without

jurisdiction. On the basis of said argument, learned counsel for the petitioner prayed for allowing this petition and quashing the order passed by Controlling

Authority as well as Appellate Authority.

5. Considered the rival contentions made by learned counsel petitioner as well as respondent.

6. From perusal of Section 14 of Payment of Gratuity Act, 1972, it is clear that the provisions of Payment of Gratuity Act, 1972 will have overriding effect over other

law if they are inconsistent with the Act. The Honâ??ble Apex Court in the matter of Dharam Prakash Sharma (supra) has held that the employee of Municipal

Corporation, Delhi is entitled to get gratuity under Payment of Gratuity Act, 1972. In the present case also, no notification has been issued by the appropriate

Government under Section 5 of Payment of Gratuity Act, 1972 that provisions of Payment of Gratuity Act, 1972 are not applicable on Municipal Council of Damoh. In

view of the aforesaid pronouncement of law rendered in Dharam Prakash Sharma (supra), Section 14 will operate with full force and the employees of Municipal

Council of Damoh are entitled to get gratuity under Payment of Gratuity Act, 1972.

7. Learned counsel for the petitioner has also raised objection that the heavy interest for delayed payment has wrongly been imposed upon the petitioner. Petitioner

had already made payment of gratuity to the private respondent and there is no delay on their part. Private respondent had filed claim application for payment of

gratuity as per Payment of Gratuity Act, 1972. In this case, the private respondent has been retired from service in the year 2006 and he had filed application for

payment of gratuity before the Controlling Authority on 16.11.2012. Interest can only be awarded from the date when the claim is made by the private respondent and

not from the date of superannuation.

8. In view of the above, the interest of 10% will be applicable on the difference of gratuity amount from the date on which the claim application has been filed by the

private respondent and not from the date of superannuation.

9. Petitioner has also raised an issue that there is non-joinder of necessary party in the present petition. The amount of gratuity is to be paid by the State Government

and not by the Municipal Council of Damoh and, therefore, this petition deserves to be dismissed for non-joinder of the necessary party. The private respondent has

neither impleaded the State Government as party before the Controlling Authority nor before the Appellate Authority under Payment of Gratuity Act, 1972 and in this

petition also, The State of Madhya Pradesh has not been impleaded as party.

10. On going through the cause title of the order passed by the Controlling Authority and the Appellate Authority, it is found that the State Government, which has

to pay the gratuity amount, has not been impleaded as necessary party in the case. In view of above, the claim application filed before the Controlling Authority

suffers from defect of non-joinder of necessary party and on this ground alone, this petition deserves to be allowed. The State is a necessary party because the State

has to pay the amount of gratuity as per the pleadings in the petition.

11. Resultantly, this petition filed by the petitioner is allowed for non-joinder of the necessary party by the respondent No.1 herein before the Controlling Authority.

The order dated 31.5.2016 passed by the Controlling Authority and the order dated 29.8.2017 passed in Gratuity Appeal are set aside.