(2020) 05 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No.3340 Of 2018

Municipal Council, Damoh — APPELLANT

Vs

Smt.Sultana Tayar — RESPONDENT

Date of Decision : 01-05-2020

Acts Referred:
Payment of Gratuity Act, 1972 — Section 5, 14

Citation : (2020) 05 MP CK 0021

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 15.6.2017 and the order dated 31.5.2018 passed in Gratuity Appeal No.110/2017 by the Appellate

Authority.

2. The respondent was working as Lower Division Clerk in Municipal Council, Damoh. She was appointed on 1.4.1972 and she was superannuated

from service on 31.5.2009 after attaining age of 60 years. Municipal Council, Damoh granted an amount of Rs.2, 03,742 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 she has been

paid less amount of gratuity and she is entitled to get gratuity as per Payment of Gratuity Act, 1972. The Controlling Authority vide its order dated

15.6.2017 held that respondent is entitled to the gratuity amount of Rs.3,16,051/-. Respondent was paid gratuity amount of 2,03,742/- by the Municipal

Council. Petitioner was ordered to be paid difference of this amount, which comes to Rs.1,12,309/-. 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 eight years and,

therefore, 10% interest is also to be paid to the respondent. Total amount of interest comes to Rs.89,843/- and the total amount of gratuity to be paid to

respondent is Rs.2,02,447/-. 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 she 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. Leaned 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 2009 and she had filed application for payment of gratuity before the Controlling Authority on 24.10.2013. 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 15.6.2017 passed by the Controlling Authority and the order dated 31.5.2018 passed in Gratuity Appeal are set

aside.

