

A NAGAR AYUKT NAGAR NIGAM, KANPUR

v.

SRI MUJIB ULLAH KHAN AND ANOTHER

(Civil Appeal No. 2628 of 2017)

B APRIL 02, 2019

**[MOHAN M. SHANTANAGOUDAR AND
HEMANT GUPTA, JJ.]**

C *Payment of Gratuity Act, 1972 – ss.1(3)(c) and 14 – Retirement and Benefits and General Provident Fund Regulations, 1962 – r.4(1) – Uttar Pradesh Municipal Corporation Act, 1959 – s.548 – Employees of Municipal Corporation claimed gratuity by invoking the jurisdiction of the controlling authorities under the Act, 1972 – Controlling authorities allowed the petition for gratuity in favour of the employees – Appellant contended that gratuity is payable in terms of r.4(1) of the 1967 Regulations published under the Act, 1959 – Therefore, the employees of the Municipalities were entitled to gratuity only in terms of such Regulations and not under the Act, 1972 – High Court held that employees of Municipalities were entitled to the gratuity in terms of the provisions of the Act, 1972 – On appeal, held: Central Government had published a notification dated 8.1.1982 in terms of s.1(3)(c) of the Act, 1972 which made it clear that the Act is applicable to the local bodies i.e. the Municipalities – s.14 of the Act, 1972 has given an overriding effect over any other inconsistent provision in any other enactment – In view of s.14, the provision in the State Act contemplating payment of Gratuity will be inapplicable in respect of the employees of the local bodies – Thus, there is no error in the orders passed by the controlling authorities under the Act and as maintained by the High Court – General Clauses Act, 1987 – s.3(31).*

Dismissing the appeals, the Court

G **HELD: 1. In terms of the Section 1(3)(c) of the Payment of Gratuity Act, 1972, the Central Government has published a notification on 08.01.1982 and specified Local Bodies in which ten or more persons are employed, or were employed, on any**

day of the preceding twelve months as a class of establishment to which this Act shall apply. The notification dated 08.01.1982 was not referred to before the High Court. Such notification makes it abundantly clear that the Act, 1972 is applicable to the local bodies i.e., the Municipalities. Section 14 of the Act, 1972 has given an overriding effect over any other inconsistent provision in any other enactment. In view of Section 14 of the Act, the provision in the State Act contemplating payment of Gratuity will be inapplicable in respect of the employees of the local bodies. [Paras 10, 11 and 12][1032-F; 1033-C; E]

2. The entire argument of the appellant is that the State Act confers the restrictive benefit of gratuity than what is conferred under the Central Act. Such argument is not tenable in view of Section 14 of the Act and that liberal payment of gratuity is in fact in the interest of the employees. Thus, the gratuity would be payable under the Act, 1972. Such is the view taken by the Controlling Authority. In view of the aforesaid, there is no error in the orders passed by the Controlling Authorities under the Act and as maintained by the High Court. [Paras 14, 15] [1033-G-H; 1034-A]

Municipal Corporation of Delhi v. Dharam Prakash Sharma and Another AIR 1999 SC 293: (1998) 7 SCC 221 – referred to.

Case Law Reference

(1998) 7 SCC 221 referred to Para 5

CIVIL APPELLATE JURISDICTION: Civil Appeal No.2628 of 2017

From the final Judgment and Order dated 19.04.2017 of the High Court of Judicature at Allahabad in Writ Petition No.19016 of 2007

With

Civil Appeal No.2629 of 2017.

Anurag Dubey, Satpal Wadhwa, Pramod Kumar, S.R. Setia, Sunil Kumar Verma, Advs. for the Appellant.

Vinay Garg, Sanjay Kumar Visen, Aniruddha P. Mayee, Advs. for the Respondents.

A The Judgment of the Court was delivered by

HEMANT GUPTA J.

B 1. The challenge in Civil Appeal No. 2628 of 2017 is to an order dated 19.04.2007 passed by the learned Single Bench of the High Court of Judicature at Allahabad, whereby an order dated 08.12.2006 passed by the Controlling Authority, Kanpur under the Payment of Gratuity Act, 1972¹ was not interfered with.

C 2. Civil Appeal No. 2629 of 2017 has also been taken up along with present appeal wherein the challenge is to an order dated 02.05.2007 of the High Court of Judicature at Allahabad upholding an order dated 29.04.2006 of Controlling Authority (Additional Labour Commissioner, Gorakhpur, U.P.) passed under the Act allowing the petition for gratuity in favour of the respondent herein.

D 3. The appellant, the Municipal Corporation, Kanpur is governed by the Uttar Pradesh Municipal Corporation Act, 1959², whereas, the respondent is an employee of the appellant. The employees in both cases claimed gratuity by invoking the jurisdiction of the Controlling Authorities under the Act. The argument of the appellant before the learned Single Bench was that the gratuity is payable in accordance with the Retirement Benefits and General Provident Fund Regulations, 1962³ framed under Section 548 of the 1959 Act as amended on 11/01/1988. Such Regulations contemplate payment of gratuity at the rate of 15 days salary per month for 16.5 months. It was found by the High Court that it is the Act which is applicable, whereby, gratuity calculated at the rate of 15 days salary for every completed year without any ceiling of months or part thereof.

F 4. The argument raised by the appellant before the High Court is, that the gratuity is payable in terms of Rule 4(1) of the 1962 Regulations published under Section 548 (1) of the 1959 Act as amended on 11.01.1988. Therefore, the employees of the Municipalities are entitled to gratuity only in terms of such Regulations and not under the Act.

G 5. The High Court relied upon a judgment reported as **Municipal Corporation of Delhi vs Dharam Prakash Sharma and another**⁴ to

¹Act

²1959 Act

³1962 Regulations

⁴AIR 1999 SC293

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hold that only employees of Central Government or the State Government are exempt from the applicability of the Act, therefore, the employees of the Appellants would be governed by the Act and are entitled to gratuity in terms of the scale mentioned therein. It was held that the Act is not applicable only to the Central Government or State Governments in terms of definition of an ‘employee’ under Section 2 (e) of the Act. Therefore, the employees of the Municipalities are entitled to the gratuity in terms of the provisions of the Act. A B

6. The appellant relies upon Section 3 of the U.P Dookan Aur Vanijya Adhishthan Adhiniyam, 1962⁵ which is to the effect that such Act will have no application to the office of Government or Local Bodies. Therefore, on the strength of such statutory provision, it was argued that the Act would not be applicable in respect of the Municipalities. The appellant is not a factory, mine, oilfield, plantation, port and railway company and that there is no notification as stipulated under Clause (c) of Section 1(3) of the Act. Therefore, the employees of the Municipalities are entitled to the gratuity in terms of the Regulations framed in exercise of powers of Section 548 of the 1959 Act and not under the Act. C D

7. On the other hand, learned counsel for the respondent pointed out that the Central Government has published a notification in terms of Section 1(3)(c) of the Act on 08.01.1982 to extend the applicability of the Act to the Municipalities. Thus, the Act is applicable to the Municipalities. The relevant provisions of the Act read as under: E

“1. Short title, extent, application and commencement. -

(1) This Act may be called the Payment of Gratuity Act, 1972.

(2) It extends to the whole of India: F

Provided that in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir.

(3) It shall apply to-

(a) every factory, mine, oilfield, plantation, port and railway company; G

(b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are

⁵1962 Act

- A employed, or were employed, on any day of the preceding twelve months;
- (c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.”
- B

8. A perusal of the above provisions would show that the Act is applicable to (1) every factory, mine, oilfield, plantation, port and railway company; (2) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, the said provision has two conditions, viz. (i) a shop or establishments within the meaning of a State law and (ii) in which ten or more persons are employed; and (3) the establishments or class of establishments which Central Government may notify.

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9. The appellant is not covered by clauses (a) and (b) of Section 1(3) of the Act. Clause (a) is not applicable on the face of the provisions, but even clause (b) is not applicable in view of Section 3 (c) of the 1962 Act as such Act is not applicable to the offices of the Government or local authorities. The Local Authorities means a municipal committee, district board etc or entrusted with the control or management of a municipal or local fund in terms of Section 3(31) of the General Clauses Act, 1897.

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10. In terms of the above said Section 1(3)(c) of the Act, the Central Government has published a notification on 08.01.1982 and specified Local Bodies in which ten or more persons are employed, or were employed, on any day of the preceding twelve months as a class of establishment to which this Act shall apply. The said notification dated 08.01.1982 reads as under:-

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“ New Delhi, the 8th January, 1982

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NOTIFICATION

S.O. No. 239....-In exercise of the powers conferred by clause (c) of sub-section (3) of section 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specified

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‘local bodies’ in which ten or more persons are employed, or were employed, on any day 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. A

Sd/.

(R. K. A. Subrahmanya) B

Additional Secretary

(F. No. S-70020/16/77-FPG)”

11. We find that the notification dated 08.01.1982 was not referred to before the High Court. Such notification makes it abundantly clear that the Act is applicable to the local bodies i.e., the Municipalities. Section 14 of the Act has given an overriding effect over any other inconsistent provision in any other enactment. The said provision reads as under: C

“14. Act to override other enactments, etc. – The 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 this Act.” D

12. In view of Section 14 of the Act, the provision in the State Act contemplating payment of Gratuity will be inapplicable in respect of the employees of the local bodies. E

13. Section 2(e) of the Act alone was referred to in the judgment reported as **Municipal Corporation of Delhi (supra)**. The said judgment is in the context of CCS (Pension) Rules, 1972⁶ which specifically provides for payment of Pension and Gratuity. The Act is applicable to the Municipalities, therefore, it is wholly inconsequential even if there is no reference to the notification dated 08.01.1982. F

14. The entire argument of the appellant is that the State Act confers restrictive benefit of gratuity than what is conferred under the Central Act. Such argument is not tenable in view of Section 14 of the Act and that liberal payment of gratuity is in fact in the interest of the employees. Thus, the gratuity would be payable under the Act. Such is the view taken by the Controlling Authority. G

⁶1972 Rules

A 15. In view of the aforesaid, we find that there is no error in the orders passed by the Controlling Authorities under the Act and as maintained by the High Court. Consequently, the appeals are dismissed.

Ankit Gyan

Appeals dismissed.