

## **Municipal Corporation Of Delhi vs Dharam Prakash Sharma And Anr. on 29 July, 1998**

**Equivalent citations: 1998VIAD(SC)442, AIR1999SC293, [1999(81)FLR867], JT1998(9)SC175, 1998LABLC177, (1998)IILLJ625SC, (1998)7SCC221, AIR 1999 SUPREME COURT 293, 1998 (7) SCC 221, 1998 AIR SCW 3813, 1999 LAB. I. C. 177, 1998 LAB LR 881, 1998 (6) ADSC 442, (1998) 80 FACLR 178, (1998) 2 LABLJ 625, (1998) 3 LAB LN 898, (1999) 2 SCT 297, (1998) 8 SERVLR 761, (1999) 1 CURLJ(CCR) 531, (1998) 2 CURLR 574, (1998) 75 DLT 1, 1998 SCC (L&S) 1800**

### **ORDER**

1. This appeal is directed against the Division Bench judgment of the Delhi High Court dismissing the appellant's writ petition challenging the legality of the order of the authority under the Payment of Gratuity Act, 1972 granting extra amount of gratuity to the respondent who is admittedly an employee of the Municipal Corporation of Delhi (MCD).

2. The short question that arises for consideration is whether an employee of the MCD would be entitled to payment of gratuity under the Payment of Gratuity Act when the MCD itself has adopted the provisions of the CCS (Pension) Rules, 1972 (hereinafter referred to as "the Pension Rules"), whereunder there is a provision both for payment of pension as well as of gratuity. The contention of the learned counsel appearing for the appellant in this Court is that the payment of pension and gratuity under the Pension Rules is a package by itself and once that package is made applicable to the employees of the MCD, the provisions of payment of gratuity under the Payment of Gratuity Act cannot be held applicable. We have examined carefully the provisions of the Pension Rules as well as the provisions of the Payment of Gratuity Act. 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 Gratuity Act, the provision for gratuity under the 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 employees 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 under Section 5 of the

Payment of Gratuity Act. In the aforesaid premises, we are of the considered opinion that the employees 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 the Pension Rules.

3. In the aforesaid premises, we do not find any merit in this appeal which is accordingly dismissed, but, in the circumstances, no order as to costs.