

IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA 496/2008

Date of decision: September 2, 2008

MUNICIPAL CORPORATION OF DELHI Appellant
Through Mr. H.S. Phoolka, Senior Advocate
with Ms. Saroj Bidawat, Advocate

versus

RATI RAM Respondent

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE S.MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGMENT

CM APPL No. 12348/2008 (delay) in LPA No. 496/2008

Having heard learned counsel for the appellant and for the reasons stated in the application, the delay in filing the appeal is condoned.

The application is disposed of.

LPA No. 496/2008 & CM APPL No. 12347/2008 (stay)

1. This appeal is directed against the judgment dated 29th February 2008 passed by the learned Single Judge in WP(C) No. 8800 of 2007.
2. The short question is whether an MCD employee who retired prior to 22nd July 2005 is entitled to gratuity under the Payment of Gratuity Act 1972 ('Act'), in addition to the pension and gratuity under the CCS (Pension) Rules 1972 (CCS Rules) which was made

applicable to the MCD employees.

3. The brief facts are that the respondent was appointed in the MCD on 9th July 1963 and he retired on 31st January 2002 after rendering about 39 years' service. Although the retiral benefits were received by the respondent, no payment was received under the Act. He filed an application before the Controlling Authority ('CA') under the Act claiming the additional amount of gratuity that was payable in terms of the Act. By an order dated 11th October 2006 the CA decided the claim in favour of the respondent and held that the respondent should be paid difference of the gratuity in the sum of Rs.33,348/- together with simple interest at 10% per annum from the date it became payable that is 31st January 2002.

4. Aggrieved by the said order, the MCD preferred an appeal before the Appellate Authority which dismissing the appeal by an order dated 30th July 2007. Thereafter, the MCD filed the aforementioned writ petition in this Court.

5. The learned Single Judge has, after considering the judgment of the Supreme Court in ***Municipal Corporation of Delhi v. Dharam Prakash Sharma (1998) 7 SCC 221***, affirmed the order of the CA as well as the Appellate Authority.

6. It is contended by Mr. H.S. Phoolka, Senior counsel appearing for the MCD that the notification issued by the Central Government on 22nd July 2005 exempting the MCD from the applicability of the Act was in force on the date the CA considered the application of the respondent. He accordingly submits that the application of the respondent ought not to have been entertained by the CA.

7. In our view this submission is misconceived. In ***Dharam Prakash Sharma*** the very question that arises in this appeal was involved. The question was whether an employee of the MCD would be entitled to payment of gratuity under the Act when the MCD itself has adopted the CCS (Pension) Rules, 1972 which contains provisions both for payment of pension as well as gratuity. The contention of the MCD that an employee cannot seek to recover gratuity both under the CCS (Pension) Rules, 1972 as well as the Act was negated by holding that “the Act was a special provision for payment of gratuity” and “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.” It was categorically held that “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.”

8. Earlier a Division Bench of this Court had, in *Municipal Corporation of Delhi v. Padma Devi 1986 (52) FLR 372*, held as under:

“Even if Municipal Corporation of Delhi has certain scheme it is no bar to the applicability of the Act to the employees of the petitioner corporation. It is only common which can be said that an employee cannot have benefit of the regulation/pension framed by the corporation but if he has availed of the benefit under the Payment of Gratuity Act, to that extent benefit will be denied to him under the regulations/pension scheme framed by the corporation. If scheme framed by the corporation gives higher benefit to the extent the employee obtains benefit under the Payment of Gratuity Act, to that extent the those benefits will be adjusted while claiming benefits under the scheme of regulation/pension framed by the corporation. The employee cannot have complete benefit under the both the Payment of Gratuity Act as well as under the Scheme of regulations/ pensions. To the extent the benefit has been granted to him under the Payment of Gratuity Act, only to that extent the benefit will be adjusted while enforcing the scheme of regulations/pension framed by the corporation. Similarly, if under a scheme framed by the corporation the benefit is less than which is available in the Payment of Gratuity Act, the employee will be entitled claim difference under the Payment of Gratuity Act.”

In view of the categorical statement of the law by the Supreme Court it is clear that the exemption granted to the MCD from the applicability of the Act by the Notification dated 22nd July 2005 was

prospective and would not affect the right of a person who retired prior thereto.

9. It was next contended that the interest @ 10% per annum should have been directed to be paid only from the date of the notification dated 22nd July 2005. We are unable to accept this submission as well. It was incumbent on the MCD, after the judgment in 1978 of the Supreme Court in *Dharam Prakash* to have itself made the payment of gratuity under the Act to the respondent on his retirement. It was not necessary for the respondent to make an application for the purpose. The MCD being statutorily bound to do so on its own cannot be heard to say that it is not responsible for the delay in making the payment. Consequently the direction to the MCD to pay interest @ 10% per annum from the date of the retirement of employee till the date of payment under the Act cannot be faulted.

10. Accordingly, we find no merit in this appeal and it is dismissed as such. The pending application also stands dismissed.

CHIEF JUSTICE

S.MURALIDHAR, J

SEPTEMBER 02, 2008
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