

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) No. 11826/2009 & CM No.11856/2009**
% **Date of Decision: 18 September, 2009**

MUNICIPAL CORPORATION OF DELHI PETITIONER
! Through: Ms. Saroj Bidawat, Advocate.

VERSUS

\$ SHRI KRISHAN DASS RESPONDENT
^ Through: None

CORAM:
Hon'ble MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? **NO**
2. To be referred to the reporter or not? **NO**
3. Whether the judgment should be reported in the Digest? **NO**

S.N.AGGARWAL, J (ORAL)

The short question that arises for determination in this writ petition is whether the respondent workman who retired from service of MCD (petitioner herein) from the post of Ex-Moharrier in the Central Establishment w.e.f. 31.12.2000 was entitled to get his gratuity under the Payment of Gratuity Act, 1972 or under the CCS (Pension) Rules.

2. The respondent on his superannuation was paid gratuity of Rs.83,292/- under the CCS (Pension) Rules. He made a claim before the Controlling Authority under the Payment of Gratuity Act, 1972 for payment of difference of the amount due to him under the Payment of Gratuity Act, 1972 and what has already been paid to him under the CCS (Pension) Rules, 1972.

3. The Controlling Authority under the Payment of Gratuity Act, 1972 vide its order dated 07.10.2008 awarded an amount of Rs.35,829/- in

favour of the respondent being the difference of the amount payable to him under the Payment of Gratuity Act, 1972 and that stood already paid to him under the CCS (Pension) Rules. Aggrieved by the said order of the Controlling Authority, the petitioner MCD filed an appeal before the Appellate Authority who vide its order dated 26.03.2009 at pages 16-17 of the Paper Book confirmed the order of the Controlling Authority and directed payment of difference of Rs.35,829/- to the respondent workman.

4. The petitioner is aggrieved by the order of the Appellate Authority dated 26.03.2009 and has filed the present writ petition for setting aside of the above referred orders of the Controlling Authority and that of the Appellate Authority and to hold that the petitioner Corporation is not liable for payment of gratuity under the Payment of Gratuity Act, 1972 to the respondent workman.

5. I have heard Ms. Saroj Bidawat, learned counsel appearing on behalf of the petitioner, who has argued that since a Special Leave Petition arising out of a Division Bench judgment of this Court on the same issue is pending before the Supreme Court, the hearing on this petition may be adjourned till the Special Leave Petition is decided by the Supreme court. I do not find any substance in the argument of the counsel for the petitioner.

6. Ms. Bidawat submits during hearing that the Division Bench of this Court has held against the petitioner Corporation in regard to its liability for payment of gratuity to its employees who have retired prior to 22.07.2005 when it was exempted by the Central Government from the purview of the Payment of Gratuity Act, 1972. In the present case, the respondent workman admittedly retired on 31.12.2000 prior to the date when the petitioner Corporation was exempted from applicability of the

Payment of Gratuity Act, 1972. The exemption was granted on 22.07.2005. Hence, the date on which the respondent workman has superannuated, he was entitled to get his gratuity as per the provisions contained in the Payment of Gratuity Act, 1972. It is not disputed by Ms. Bidawat, counsel appearing on behalf of the petitioner, that in case the respondent was entitled to gratuity under the Payment of Gratuity Act, 1972, then he was entitled to get the difference awarded to him by the impugned orders. In the opinion of this Court, the respondent workman was certainly entitled to get his gratuity under the Payment of Gratuity Act, 1972 on the date he has superannuated and, therefore, I do not find any infirmity in the impugned orders assailed in this writ petition.

7. In view of what has been stated above, I do not find any merit in this petition which fails and is hereby dismissed in limine. Stay application is also dismissed.

SEPTEMBER 18, 2009
'A'

S.N.AGGARWAL, J