

* IN THE HIGH COURT OF DELHI AT NEW DELHI
25.

+ LPA 780/2008

DELHI JAL BOARD Appellant
Through: Mr. Suresh Tripathy, Adv.

versus

GULSHAN KUMAR OBEROI Respondent
Through: None

26.

+ LPA 784/2008

DELHI JAL BOARD Appellant
Through: Mr. Suresh Tripathy, Adv.

versus

CHANDER BHAN JAIN Respondent
Through: None

27.

+ LPA 785/2008

DELHI JAL BOARD Appellant
Through: Mr. Suresh Tripathy, Adv.

versus

PURAN CHAND CHADHA Respondent
Through: None

28.

+ LPA 786/2008

DELHI JAL BOARD Appellant
Through: Mr. Suresh Tripathy, Adv.

versus

G.N.CHAUDHARY Respondent
Through: None

29.

+ LPA 787/2008

DELHI JAL BOARD Appellant
Through: Mr. Suresh Tripathy, Adv.

versus

Signature Not Verified

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physical file have been compared and
the digital data is as per the physical
file and no page is missing

LPA 780/2008 & connected matters

ZILE SINGH

..... Respondent

Through: None

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

13.01.2009

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These appeals are directed against the common judgment and order dated 21st August, 2007 passed by the learned Single Judge in WP(C) No. 17888/2005 and connected cases.

The short question that falls for consideration is whether Delhi Jal Board employees who retired prior to 12th June, 2003 are entitled to gratuity under the Payment of Gratuity Act, 1972 (hereinafter referred to as the Act), in addition to the pension and gratuity under the CCS (Pension) Rules, 1972 (hereinafter referred to as the CCS Rules) which was made applicable to Delhi Jal Board employees.

The writ petitioners were originally appointed in the service of the Municipal Corporation of Delhi and were engaged in the Delhi Water Supply & Sewage Disposal Undertaking of the Corporation. The petitioners in the WP(C)17888, 17895 & 17914 of 2005 retired from service of the MCD before the constitution of the Delhi Jal Board. The petitioners in the other writ petitions were absorbed in the service of Delhi Jal Board after the enactment of Delhi Water Board Act, 1998 and were retired prior to 12th June, 2003.

In so far as the MCD employees are concerned, the case is covered by a direct decision of the Supreme Court in the case of *Municipal Corporation of Delhi v. Dharam Prakash Sharma* (1998) 7 SCC 221. In that case, 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 contained 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 Rules as well as the Act was negatived 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.”

The Supreme Court held that it was 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.

Earlier a Division Bench of this Court 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 event 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 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 the case of Delhi Jal Board, the exemption was granted on 12th June, 2003. Therefore, applying the ratio of the judgment in *Dharam Prakash Sharma's case* (supra), the employees who were originally employees of MCD and were absorbed in Delhi Jal Board would also be entitled to gratuity under the Payment of Gratuity Act in addition to the gratuity under the CCS Rules, 1972.

The argument of the appellant Delhi Jal Board, however, is that the employees of the Jal Board are State Government's employees and are governed by the CCS Rules and

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therefore they are excluded by the definition of "employee" as defined under Section 2(e) of the Act. In this connection, reliance is placed on Section 51(3) and 52 of the Delhi Water Board Act which deal with the appointment and discipline of the officers and employees of the DJB and states that by virtue of the said provisions of law, the DJB has the power to appoint its own employees and that the service rules as prescribed under and by the CCS (Classification, Control and Appeal) Rules, 1965 apply mutatis mutandis to all officers and employees of the DJB and, therefore, it is contended that the employees of the DJB are in no manner similarly placed as the employees of the Municipal Corporation of Delhi.

The argument is completely fallacious and is rightly rejected by the learned Single Judge as follows:

"Upon a perusal of the aforesaid provisions read in the light of the provisions of Section 2(e) & (f) of the Gratuity Act which defines the words "employee" and "employer" respectively the plea of the DJB that the employees of the DJB are State Government employees and, therefore, the provisions of the Gratuity Act are not applicable to them is found to be unacceptable. Merely because sub-section (3) of Section 51 of the DWB Act stipulates that as far as may be, terms and conditions of service of employee of the Board shall be governed by the terms and conditions of service and rules and regulations applicable to the Government employees, and by the orders and directions issued by the Central Government from time to time, does not mean that the employees of the DJB automatically become State Government employees. The said argument is inherently fallacious for the reasons that had the employees of the DJB been Government employees, there would have been no need for the legislature to have incorporated in Section 51 of the DWB Act, the condition that the employees of the DJB shall be governed by the rules and regulations applicable to Government employees. Instead, the legislature could have simply clarified that the officer and employees of the DJB were in fact Government employees. Nor would there have been any need for adoption of rules and regulations applicable to Government employees for the purposes of considering the terms and conditions of service of an officer and employee of the DJB. This is however not the position. Instead, a clear distinction has been drawn by the statute itself between the officers and employees of the DJB and the Government's employees. Merely because the DJB does not fall within the definition of local authority as contained in Section 2(s) of the DWB Act does not automatically confer the status of State Government employees on the employees of the DJB."

We are in agreement with the learned Single Judge. In our opinion, the exclusionary portion of Section 2(e) of the Act is clearly not attracted in the present case.

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Employees of Delhi Jal Board are not Central or State Government employees. Merely because CCS Rules are applicable does not make them Central or State Government employees.

Learned counsel for the appellant then relied upon the decision of the Supreme Court in *DTC Retired Employees Association & Others v. DTC* reported as (2001) 6 SCC 61. We are afraid that this case is not of any assistance to the appellants inasmuch as the ratio laid down in the case is clearly inapplicable to the present case. In that case, the DTC had introduced a Pension Scheme operated by the Life Insurance Corporation which provided an option to the employees to opt for a pension scheme and the retired employees opting for the said scheme were required to refund the amount of gratuity already received by them, with interest. Also, in the said case, at the time of exit from service, all the employees had received gratuity amount as per the provisions of the Gratuity Act and pension was not payable as a part of their condition of service. In the said background of facts, the Supreme Court had held that there was no illegality or injustice in requiring the retired employees to refund the amount of gratuity before they could take the benefit under the pension scheme.

The learned counsel for the appellant then relied upon a decision of the Supreme Court in *Union of India v. Manik Lal Banerjee* (2006) 9 SCC 643. In that case, respondent was a railway employee. He had retired from service and was paid the gratuity as per the 1993 Rules. One Pritam Singh, who is said to be similarly situated, however, claimed and obtained benefit of gratuity in terms of the provisions contained in the Payment of Gratuity Act. A special leave petition filed in the case of Pritam Singh was dismissed by the Supreme Court observing that this was not a fit case for interference under Article 136 of the Constitution of India. Principally, relying on the said decision, the respondent filed an original application before the Central Administrative Tribunal claiming payment of gratuity on the same terms and conditions and for recovery of purported arrears of the difference in gratuity. The Tribunal had allowed the application. The Supreme Court held that Pritam Singh's case did not

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create any binding precedent. Only because the Supreme Court had dismissed the special leave petition, the same would not mean that any law within the meaning of Article 141 of the constitution was laid down thereby. The Court also observed that Pritam Singh's case was evidently rendered per incuriam as the statutory provisions relevant for determining the issue had not been taken into consideration. We fail to appreciate how this case would be applicable to an employee of DJB who is not a Government employee.

In view of the foregoing reasons, we see no reason to interfere with the order passed by the learned single Judge. The appeals are dismissed.

Apex
CHIEF JUSTICE
3-11-09
SANJIV KHANNA, J

JANUARY 13, 2009
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