

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

+ **W.P.(C.) No. 8293/2008**

% **Date of Decision: 13th August, 2009**

DELHI TRANSPORT CORPORATION PETITIONER
! Through: Mr. J.S. Bhasin. , Advocate.

VERSUS

\$ SH. O.P. NANDWANI RESPONDENT
^ Through: Mr. Mohinder Madan, Advocate.

+ **W.P.(C.) No. 8244/2008**

DELHI TRANSPORT CORPORATION PETITIONER
! Through: Mr. J.S. Bhasin. , Advocate.

VERSUS

\$ SH. KISHAN CHAND SAXENA RESPONDENT
^ Through: Mr. Mohinder Madan, Advocate.

+ **W.P.(C.) No. 8952/2008**

DELHI TRANSPORT CORPORATION PETITIONER
! Through: Mr. J.S. Bhasin. , Advocate.

VERSUS

\$ SH. PRATAP RAI RESPONDENT
^ Through: Mr. Mohinder Madan, Advocate.

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

1. Whether reporters of Local paper 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 the Digest? **YES**

S.N.AGGARWAL, J (ORAL)

All these three writ petitions filed by the Delhi Transport Corporation (in short to be referred as 'DTC') are proposed to be disposed

of by this common order because they all raise similar question to be examined by the Court.

2. These writ petitions have been filed by the DTC aggrieved by an order of the Appellate Authority under the Payment of Gratuity Act, 1972, dismissing its appeal against the order of Controlling Authority directing it to pay the balance amount of gratuity to the respondent as it was illegally withheld by it on account of retention of official accommodation by them.

3. The short question that arise for determination in these petitions is whether the petitioner (DTC) could legally withhold the gratuity payable to the respondent under the Payment of Gratuity Act, 1972 for non-vacation of official accommodation by them.

4. The Controlling Authority vide reasoned order has directed the petitioner (DTC) to pay the balance amount of gratuity to which the respondents in these petitions were entitled as it was illegally withheld on account of non-vacation of official accommodation by them. The petitioner being aggrieved by the order of the Controlling Authority had filed a statutory appeal before the Appellate Authority under the Payment of Gratuity Act, 1972. These appeals filed by the petitioner were dismissed by the Appellate Authority, as barred by limitation. The petitioner being aggrieved by the impugned order of the Appellate Authority has filed these three writ petitions seeking setting aside of the order of the Appellate Authority on the ground that the impugned order suffers from non-application of mind.

5. Mr. J.S. Bhasin, learned counsel appearing on behalf of the petitioner, has argued that the respondent in all these three petitions had given an undertaking that the petitioner could retain their gratuity till they would hand-over and vacate the official accommodation. According

to Mr. Bhasin, the petitioner was justified in retaining a portion of the gratuity payable to the respondent as they had failed to vacate the official accommodation despite show-cause notice for vacation of accommodation given to them. According to the learned counsel appearing on behalf of the petitioner, the Appellate Authority or even the Controlling Authority, has failed to take into account the undertaking given by the respondents that petitioner could retain a portion of their gratuity till the time they would vacate the official accommodation. Mr. Bhasin, has further argued that the Appellate Authority acted wrongly in dismissing the statutory appeal as barred by limitation because, according to him, the delay in filing of the appeal stood explained by the petitioner. The learned counsel, therefore, submits that the impugned order passed by the Appellate Authority is liable to be set aside by this Court and, according to him, the case should be sent back to the Appellate Authority for fresh decision of the appeal by a reasoned order.

6. Per contra, Mr. Mohinder Madan, learned counsel appearing on behalf of the respondent in W.P.(C.) No. 8293/2008, has argued that in view of the provisions contained in Section 14 of the Payment of Gratuity Act, 1972, the petitioner could not have legally retained the gratuity payable to the respondent even if he had given an undertaking for such retention. The learned counsel appearing on behalf of the respondent has further argued that in view of the provisions contained in Section 13 of the Payment of Gratuity Act, 1972, the gratuity payable to the respondent cannot even be attached in execution of any decree or order of any Civil, Revenue or Criminal Court. According to the learned counsel appearing on behalf of the respondent, no useful purpose is likely to be served by remanding the case back to the Appellate Authority because in view of clear statutory provisions, the petitioner is bound to pay the

balance gratuity payable to the respondent under the Payment of Gratuity Act, 1972.

7. I have given my anxious consideration to the above rival arguments advanced by the learned counsel for the parties. On giving my anxious consideration to their arguments, I agree with the submissions made on behalf of the respondent that no useful purpose is likely to be served by remanding the case back to the Appellate Authority for disposal of appeal by a reasoned order.

8. Even if the appeal against the order of the Competent Authority under the Payment of Gratuity Act, 1972, filed by the petitioner was to be decided on merits in stead of dismissing it as barred by limitation, still the petitioner would have no case on merits of the appeal in view of the provisions contained in Sections 13 and 14 of the Payment of Gratuity Act, 1972, which are extracted below:

“13. Protection of gratuity – No gratuity payable under this Act [and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under section 5] shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

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.”

9. A plain reading of the above statutory provisions makes it abundantly clear that gratuity payable to an employee cannot be attached in execution of any decree or order of any Civil, Revenue or Criminal Court. It is further clear from the above statutory provisions that the undertaking, if any, given by the respondent will have no bearing to their legal right to get gratuity to which they are entitled under the

Payment of Gratuity Act, 1972.

10. In **Secretary, ONGC Ltd. and Another Vs. V.U. Warriar** reported in (2005) 5 SCC 245, it was held by the Hon'ble Supreme Court as under:

*“17. Having heard the learned counsel for the parties, in our opinion, the appeals deserve to be allowed. It is no doubt true that pensionary benefits, such as gratuity, cannot be said to be 'bounty'. Ordinarily, therefore, payment of benefit of gratuity cannot be withheld by an employer. In the instant case, however, it is the specific case of the Commission that the Commission is having a statutory status. In exercise of statutory powers under Section 32(1) of the Act, regulations known as the Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity) Regulations, 1969 have been framed by the Commission. In **Sukhdev Singh V. Bhagatram Sardar Singh Raghuvanshi and Anr.**, [1975] 1 SCC 421 the Constitution Bench of this Court held that regulations framed by the Commission under Section 32 of the Oil and Natural Gas Commission Act 1959 are statutory in nature and they are enforceable in a court of law. They provide for eligibility of grant of gratuity, extent of gratuity, etc. Regulation 5 deals with recovery of dues of the Commission and reads thus:*

“5. Recovery of Dues – The appointing authority, or any other authority empowered by the Commission in this behalf shall have the right to make recovery of Commission's dues before the payment of the death-cum-retirement gratuity due in respect of an officer even without obtaining his consent or without obtaining the consent of the members of his family in the case of the deceased officer, as the case may be.”

The above regulation leaves no room for doubt that the Commission has right to effect recovery of its dues from any officer without his consent from gratuity.....”

11. It is clear from the above judgment of the Hon'ble Supreme Court in V.U. Warriar's case (supra) that ordinarily payment of benefit of gratuity cannot be withheld by an employer but if in a particular case such withholding of payment of gratuity is permissible by any statutory provision in Act or Regulation, in that event only such payment could be withheld. The judgment of the Hon'ble Supreme Court in V.U. Warriar's case was relied upon by the Division Bench of this Court in **Delhi**

Transport Corporation Vs. Dhanwant Rai & Others, LPA 1086/2004 and LPA No. 1118/2004 decided on 06.09.2007,

wherein also it was held that the gratuity payable to an employee cannot be withheld by an employer for non-vacation of official accommodation.

12. Mr. J.S. Bhasin, learned counsel appearing on behalf of the petitioner, could not show any Regulation which permits the petitioner Corporation to retain the gratuity of its employees for non-vacation of official accommodation. The question whether gratuity payable to an employee can be retained on account of non-vacation of official accommodation or not, is squarely covered by the judgment of the Hon'ble Supreme Court in V.U. Warriar's case (supra) and also by the Division Bench judgment of this Court in Dhanwant Rai's case (supra). This court feels itself bound by these judgments.

13. For the foregoing reasons, I do not find any infirmity, illegality or perversity in the impugned orders of the Appellate Authority that may call for an interference by this Court in exercise of its extraordinary discretionary writ jurisdiction under Article 226 of the Constitution of India. These writ petitions, therefore, fail and are hereby dismissed but in the circumstances, with no order as to costs.

A copy of this order be kept in the files of all the three petitions which have been disposed of by this common order.

AUGUST 13, 2009
'bsr'

S.N.AGGARWAL, J