



Serial No.09
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.104/2024

Reserved on : 03.06.2024

Pronounced on: 08.07.2024

The Shillong Municipal Employees Association, represented by its
General Secretary, Shillong, Meghalaya. **Petitioner**

Vs.

1. The State of Meghalaya, represented by its Commissioner &
Secretary, Urban Affairs Department, Shillong.

2. The Chief Executive Officer, Shillong Municipal Board, Shillong.

..... **Respondents**

Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance

For the Petitioner : Mr. A.S. Siddiqui, Sr.Adv with
Mr. R.D. Hynniewta, Adv

For the Respondents : Ms. S. Ain, GA with
Mr. E.R. Chyne, GA
Mr. Philemon Nongbri, Adv for R/2

ORDER

(Made by Hon'ble, the Chief Justice)

The present writ petition has been filed for the following
prayer.

“In the premises aforesaid it is most respectfully prayed that
your Lordship would be graciously pleased to issue Rule, call
for the record and after hearing the parties be pleased

(i) to direct the Respondent No.2 to comply with its order
passed on 19.01.2021 and provide the payment of gratuity to



the Shillong Municipal Employees under section 4(5) of the Payment of Gratuity Act 1972 and

(ii) to direct immediate payment of Gratuity to the retired employees of the Shillong Municipal Board and to the next of kin of the deceased employees.

(iii) to quash the Shillong Municipal Board (Gratuity) Rules, 1980.

(iv) to direct the Respondent No.2 to make reimbursement of medical bills to the Municipal employees.

And to pass any order/orders as your Lordship deem fit and proper.

And for which act of kindness your humble petitioners shall every pray.”

2. As the Shillong Municipal Board (Gratuity) Rules, 1980 is challenged, the writ petition is listed before Division Bench. The case of the petitioner is that the petitioner’s Union is registered with the Registrar of Society, Shillong and is affiliated to the Indian National Trade Union Congress bearing registration No.63/1986. According to the petitioner, the workers through all Assam Civic Bodies Workers’ Federation raised an industrial dispute when it was in the composite State of Assam and the dispute was referred to the Industrial Tribunal at Guwahati for adjudication and the same was taken up for hearing as Reference No.21 of 1969. The following issues were referred for adjudication:

“(i) Whether the pay scale of the Municipal Employees should be brought at par with the Government employees?



(ii) Whether the Municipal employees are entitled to Gratuity at the rate of one month's pay on the basis of last pay drawn for each complete year of services with immediate effect?

(iii) Whether the Rule governing the services of the Government employees should be made applicable to the Municipal employees?

(iv) Whether medical facilities and other facilities as available to the State Government employees should be granted to the civic employees?"

3. During the pendency of the dispute before the Tribunal, there was a settlement arrived at between the parties with regard to all the issues that were referred to for adjudication including gratuity, the Tribunal had rendered an award on 23.08.1971 which was published in the Assam Gazette on 01.09.1971. While passing an award, the Tribunal has recorded the settlement in the award and for the sake of convenience, the gratuity payable to the employee is based on one month's pay on the basis of last drawn pay should be granted for each completed year of service and the relevant clause is extracted below:

"2. Gratuity at the rate of one month's pay on the basis of last pay drawn should be granted for each completed year of service with immediate effect."

4. According to the petitioner, once a Tribunal has passed an award which was published in the Gazette on 01.09.1971, it has come into effect in terms of Section 17 and Section 17A of the Industrial



Disputes Act, 1947. Section 17 and Section 17A of the Industrial Disputes Act, 1947 are extracted below:

“17. Publication of reports and awards.—(1) Every report of a Board or Court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.

(2) Subject to the provisions of section 17A, the award published under sub-section (1) shall be final and shall not be called in question by any Court in any manner whatsoever.

“17A. Commencement of the award.—(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under section 17:

Provided that—

(a) if the appropriate Government is of opinion, in any case where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party; or

(b) if the Central Government is of opinion, in any case where the award has been given by a National Tribunal, that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

(2) Where any declaration has been made in relation to an award under the proviso to sub-section (1), the appropriate Government or the Central Government may, within ninety days from the date of publication of the award under section 17, make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State, if the



order has been made by a State Government, or before Parliament, if the order has been made by the Central Government.

(3) Where any award as rejected or modified by an order made under sub-section (2) is laid before the Legislature of a State or before Parliament, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid; and where no order under sub-section (2) is made in pursuance of a declaration under the proviso to sub-section (1), the award shall become enforceable on the expiry of the period of ninety days referred to in sub-section (2).

(4) Subject to the provisions of sub-section (1) and sub-section (3) regarding the enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under sub-section (1) or sub-section (3), as the case may be.”

5. According to the petitioner, the award of the Tribunal is binding on the parties and it should be extended to all the employees who were present at the time of raising the dispute, the past members and future recruits. After the separation of the State of Meghalaya from the composite State of Assam, it has been stated that except the Payment of Gratuity Act, 1972, there is no Centre enactment to regulate the payment of gratuity to the industrial workers. The Gratuity Act was amended from time to time in view to meet the escalation of price index. It is stated that the payment of Gratuity Act is applicable to the employees of the Municipality. It has been stated that once the Act is applicable to the Municipality and that those employees who were



completed five years of continuous service would be entitled to gratuity on attainment of his superannuation, retirement or resignation, on his death or disablement due to accident or disease for every completed year of service or part thereof in excess of six months, the gratuity will be calculated at the rate of 15 days wages based on the last drawn wage of the employee concerned. It is contended that in terms of Section 4(5) of the Payment of Gratuity Act, 1972, the employees are entitled to receive better term of gratuity as per the award or agreement or contract with the employer. Section 4(5) of the Payment of Gratuity, 1972 is extracted below:

“4(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.”

6. It is further contended that instead of paying gratuity at the rate of one month's pay on the basis of last pay drawn for every completed year of service, the respondent No.2 arbitrarily paying gratuity at the rate of 30 days' pay to some of the employees and to other at the rate of 15 days' pay for each completed years thereby creating artificial division. There are about 171 employees who retired between 1990 to 2019 were paid their gratuity as per the Tribunal award of 1971 and 118 employees who retired from 1992 to 2012 were paid their gratuity as per the provision of the Shillong Municipal Board



(Gratuity) Rules, 1980, which is at par with the Gratuity Act which stipulates every 15 days wages for every completed year of service. It also contended that contracting out is impermissible in terms of Section 14 of the Payment of Gratuity Act, 1972 and the said Section is extracted below:

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.”

7. Learned counsel argued that Section 50 of the Meghalaya Municipal Act (Assam Act), 1956 provides that the Municipal Board at a meeting may, with the sanction of the State Government, make Rules for Gratuity or Pension to be granted and paid out of its fund. The Shillong Municipal Board with the approval of the Government of Meghalaya, the Municipal Administration Department made Rules which is called the Shillong Municipal Board (Gratuity) Rules, 1980 which is said to have come into effect from 18.02.1980. In terms of Rule 3(4) of the Rules of 1980, the amount of gratuity will be one fourth of the emoluments of an officer for every completed six months period of qualifying service subject to a maximum of 16½ times of his emoluments and in the case of death of an employee while in service,



the gratuity will be subject to a maximum of twelve times of the emoluments of the officer at the time of his death. In no case, the amount shall exceed Rs.30,000/-. However, on 19.06.2018, the Government of Meghalaya has amended the Rules with the approval of the Governor of Meghalaya and enhanced the maximum amount of Rs.7 lakhs and the provisions of the Municipal Gratuity Rules is in conflict with Section 4(5) of the Payment of Gratuity Act, 1972 which provides that nothing in this Section shall affect the right of an employee to receive better terms of gratuity on any award or agreement or contract with the employer.

8. As stated supra, in terms of Section 14 of the Gratuity Act of 1972, notwithstanding anything contained in any instrument or contract having effect by virtue of any enactment other than the Gratuity Act of 1972, gratuity can be deprived. According to the petitioner, the Rules are inconsistent with Section 4(5) of the Payment of Gratuity Act, 1972, hence it is not enforceable. Unfortunately, the employer without implementing the award in letter and spirit is adopting different yardstick with regard to the payment of gratuity and that in terms of the award, the employee should be treated on par with the employees of the State Government of Assam, and the Municipal employees cannot be



denied the benefits of the rights conferred under the award by the successor of the State of Assam namely, the Shillong Municipality. According to the petitioner, the non-payment of gratuity in terms of the award is violative of Articles 14, 16 and 21 of the Constitution of India and hence, the relief sought for by the petitioner needs to be granted.

9. The respondent No.2 has contended that the petitioner has come forward with the similar relief in the earlier round of litigation and on 18.12.2020 in WP (C) No.318 of 2017 and WP (C) No.371 of 2014, this Court has categorically upheld the Shillong Municipal Board (Gratuity) Rules, 1980, read with the notification dated 04.08.2016 and that pursuant to the order of the Court, the gratuity is paid to the employees of the Shillong Municipal Board in accordance with the Payment of Gratuity Act, 1972. The Division Bench of this Court has disposed of the writ petitions on 08.12.2020 and the relevant paragraph is extracted below:

“In such circumstances as stated above, we dispose of both the writ petitions with a direction to the Chief Executive Officer, Shillong Municipal Board, to take a decision in the matter with regard to payment of gratuity to those employees of Shillong Municipal Board, being represented by its Employees’ Association in Writ Petition (C) No. 318 of 2017 as well as the writ petitioners in Writ Petition (C) No. 371 of 2014, invoking the provisions of Payment of Gratuity Act, 1972, in the light of section 14 of the Payment of Gratuity Act, 1972, read with the observations of the Hon’ble Supreme Court in *Nagar Ayukt*



Nagar Nigam, Kanpur (supra). Such a decision shall be taken by the Chief Executive Officer, Shillong Municipal Board, as expeditiously as possible, preferably within a period of six weeks, but not later than eight weeks from date of communication of a photostat certified copy of this order.”

10. After the order of this Court dated 08.12.2020, a decision was taken to extend the Payment of Gratuity Act, 1972 to all the employees retrospectively w.e.f. 30.06.2012.

11. Heard the parties.

12. The employees are demanding the payment of gratuity in terms of the award dated 23.08.1971 published in the Gazette and it should be 30 days wages for every completed year of service. The employees further stated that the notification dated 22.12.1980 issued pursuant to Section 50(3) of the Meghalaya Municipal Act (Assam Act 1956 as adopted by Meghalaya), it needs to be interfered with and that the maximum gratuity payable, more so, in the light of Rule 4 of the Meghalaya Municipal Act, would make it very clear that it would be one-fourth of the emoluments of an officer for each completed six monthly period of qualifying service subject to a maximum of 16½ times of his emoluments. After the order of this Court, a decision dated 19.01.2021 has been taken extending the Payment of Gratuity Act to the employees. A glance of the pleadings is very clear that the employees who were in service on the date of the award were extended the benefits



of the award of the Industrial Tribunal and the number of employees was 1671. The employees who were retired from 1992 to 2012 were given the benefits of gratuity as per the Shillong Municipal Board (Gratuity) Rules, 1980. Pursuant to the order dated 19.01.2021, as per the order of this Court, the Shillong Municipal Board has extended the gratuity to all the employees who have retired since 30.06.2012 and by the notification dated 22.12.1980, the provision of the Rules pertaining to gratuity has come into effect. For the sake of convenience, Section 18(3) of the Industrial Disputes Act, 1947 is extracted below:

“18(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on—

- (a) all parties to the industrial dispute;
- (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;
- (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”



13. In terms of the award, the employer will have to extend the benefits of gratuity to the employees, who were in service at the time raising a dispute and continue to give the same till the award is modified by means of a subsequent award or a settlement. In case of alteration by means of amendment to the Act or introduction of new enactment, the employer is entitled to follow the new procedure prescribed in the latest enactments or Rules.

14. A reading of the pleadings would make it very clear that those employees who were in service at the time of raising a dispute based on the settlement which incorporated by the Tribunal in its award mentioned supra were given the benefit of 30 days' pay on the basis of last pay drawn for each completed year of service with immediate effect. Consequently coming into force of the Municipal Rules, the employees who were retired from 1992 till 2012 were given the benefit of gratuity as per the Rules. After the orders of this Court dated 08.12.2020 passed in WP (C) No. 371 of 2014 and WP (C) No. 318 of 2017 which is extracted supra, more so, which has been accepted by the Municipal Board, the employees have been extended the benefit of gratuity in terms of the Payment of Gratuity Act, 1972.



15. The Rules have already been challenged which has attained finality. The benefits to the employees having been deprived by this Court, challenging the very same Rules is not permissible, by the very same petitioner against the same management is hit by res judicata. The employer has extended the benefit of the Payment of Gratuity Act and that the employees would be governed only by the said enactment. The award passed in the year 1971 was superseded by means of a Rule and that Rule has become final due to unsuccessful challenge by the employees. Question of reopening it again by means of another writ petition is not permissible. Even assuming that the employees are entitled to get the relief of better gratuity under Section 4(5) of the Payment of Gratuity Act, the writ petition is not an alternate remedy, more so, in the light of the judgment of the Supreme Court reported in the case of *Allahabad Bank v. All India Allahabad Bank Retired Employees Association* reported in (2010) 2 SCC 44. Paragraphs 44 and 45 of the judgment are extracted below:

“44. Sub-section (7) of Section 7 provides for an appeal against the order of the Controlling Authority. The Act nowhere confers any jurisdiction upon the Controlling Authority to deal with any issue under sub-section (5) of Section 4 as to whether the terms of gratuity payable under any award or agreement or contract is more beneficial to employees than the one provided for payment of gratuity under the Act. This Court’s order could not have conferred any such jurisdiction upon the Controlling



Authority to decide any matter under sub-section (5) of Section 4, since Parliament in its wisdom had chosen to confer such jurisdiction only upon the appropriate Government and that too for the purposes of considering to grant exemption from the operation of the provisions of the Act.

45. Even on merits the conclusions drawn by the Controlling Authority that the Pension Scheme (Old) offered by the Bank is more beneficial since the amount of money the pensioners got under the pension scheme is more than the amount that could have been received in the form of gratuity under the provisions of the Act is unsustainable. The Controlling Authority failed to appreciate that sub-section (5) of Section 4 of the Act protects the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer than the benefits conferred under the Act. The comparison, if any, could be only between the terms of gratuity under any award or agreement or contract and payment of gratuity payable to an employee under Section 4 of the Act. There can be no comparison between a pension scheme which does not provide for payment of any gratuity and right of an employee to receive payment of gratuity under the provisions of the Act.”

16. The decision of the Supreme Court has already been followed by the Madras High Court, in which one of us is a party both in the Division Bench holding that even the authority under the Payment of Gratuity Act cannot decide the issue. The only remedy to get the relief under Section 4(5) of the Payment of Gratuity Act, 1972 is before the Labour Court. This Court is not giving liberty to the employees to approach the Labour Court, more so, the challenge to the Rules have already been in the negative and a finding has been rendered against the employees. The employees should have challenged the order of the



Division Bench dated 08.12.2020 before the Supreme Court but they cannot re-agitate the same issue as stated supra. The reference to Section 14 of the Payment of Gratuity Act, 1972 may not be applicable to the facts of this case. In case the award and the Rules are *pari materia* then depriving employees the gratuity of 30 days' for each completed year may be illegal. The award has been modified due to the introduction of the Shillong Municipal Board (Gratuity) Rules, 1980. Hence, on all counts, the writ petition needs to be dismissed. That apart, in the affidavit it has been stated by the petitioner that the petitioner association is registered with the Registrar of Societies. A registered trade union alone is empowered to file a writ petition provided there is no disputed question of fact.

17. In this case, the writ petition has been filed by an association, which is not registered under the trade unions Act claiming service benefits and on that score also the writ petition has got to be dismissed. An unregistered trade union can challenge the award of the Tribunal or the Labour Court or the Authorities, but cannot maintain a writ petition. Five men Committee is also on the same footing.

18. Even assuming that the registration of the petitioner union is under the Trade Unions Act, 1926, still the writ petition is not



maintainable on the ground as it is hit by *res judicata* apart from disputed question of fact. Claiming the benefits under Sections 4(5) of the Payment of Gratuity Act, 1972 cannot be entertained by this Court, and each and every individual will have to get their grievance redressed. As stated supra, we are not granting any relief in this writ petition and also not permitting the employees to approach the authority or the Labour Court as the case may be, and there should be finality to the litigation. Regarding the reimbursement of medical amount if any payable to the employees, liberty is given to the members of the petitioner to work out in accordance with law.

19. In view of the above, the writ petition is dismissed.

(W. Diengdoh)
Judge

(S. Vaidyanathan)
Chief Justice

PRE-DELIVERY JUDGMENT IN
WP (C) No.104 of 2024