

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 20049 of 2011 (O&M)

Date of Decision : 28.9.2016

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Municipal Committee, Gharaunda,
District Karnal through its Secretary

.....Petitioner

vs.

The Appellate Authority under the Payment
of Gratuity Act/Deputy Labour Commissioner,
Panipat and others

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Suvir Sehgal, Advocate with
Mr. Daman Dhir, Advocate for the petitioner

Mr. Madan Pal, Advocate for respondent No.2.

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P.B. Bajanthri, J.

In the instant writ petition, the petitioner - Municipal Committee, Gharaunda, questioned the validity of the award dated 18.8.2011 (Annexure P-4) passed by Appellate Authority, Payment of Gratuity Act, 1972/Deputy Labour Commissioner, Panipat.

2) The 2nd respondent was appointed as a Clerk in the petitioner's Municipality on 13.6.1967. He has attained the age of superannuation and retired from service on 30.9.2004. Employees of the Municipal Committee, Gharaunda, District Karnal, are governed by Punjab Civil Services Rules (as applicable to Haryana), for the purpose of service conditions, including grant of retiral benefits like pension, gratuity etc.

3) On 19.3.2001, State of Haryana invoked sub-section (1)

read with sub-section (3) of Section 5 of the Payment of Gratuity Act, 1972 (Act 39 of 1972) by which exempting all the Municipalities in the State of Haryana from the operation of the provisions of the Payment of Gratuity Act, 1972, with effect from 16.4.1992.

4) Having regard to the fact that employees of the Municipalities were exempted from the operation of the provisions of the Payment of Gratuity Act, 1972 w.e.f. 16.4.1992, the 2nd respondent who retired on 30.9.2004, is not governed by the Payment of Gratuity Act, 1972 from 16.4.1992 i.e. prior to his date of retirement. Thus the 2nd respondent has been paid retiral benefits including gratuity amount under the Punjab Civil Services Rules (as applicable to Haryana). The 2nd respondent dissatisfied in not extending gratuity amount under the Payment of Gratuity Act, 1972, which was more beneficial to him than the gratuity paid under the Punjab Civil Services Rules (as applicable to Haryana), therefore, he filed an application under Section 4 (1) of the Payment of Gratuity Act, 1972, before the competent authority. On 17.1.2011, the 2nd respondent's application was rejected by the Controlling Authority, under the Payment of Gratuity Act, 1972, vide Annexure P-3.

5) The 2nd respondent, feeling aggrieved by the order of the Controlling Authority preferred an appeal before the Appellate Authority. The Appellate Authority vide order dated 18.8.2011, allowed the claim of the 2nd respondent and held that the 2nd respondent is entitled to the amount of Rs.57,078/- claimed as difference of gratuity paid less by the petitioner. Thus, a direction has

been given to the petitioner to pay an amount of Rs.57,078/- to the 2nd respondent alongwith interest @ 12% per annum. The petitioner, aggrieved by the order of the Appellate Authority vide Annexure P-4 dated 18.8.2011, presented this petition.

6) Learned counsel for the petitioner submitted that the 2nd respondent is not entitled to any gratuity amount under the Payment of Gratuity Act, 1972, for the reasons that on 19.3.2001, the State of Haryana, while invoking sub-section (1) read with sub-section (3) of Section 5 of the Payment of Gratuity Act, 1972, issued a notification exempting all the Municipalities in the State of Haryana from the operation of the provisions of Payment of Gratuity Act, 1972 w.e.f. 16.4.1992. Since the 2nd respondent retired on 30.9.2004, therefore, he is not entitled to any monetary benefits, under the Payment of Gratuity Act, 1972. Therefore, the Appellate Authority failed to appreciate the fact that the operation of the Payment of Gratuity Act, 1972, is exempted to all the Municipalities w.e.f. 16.4.1992. Thus the Appellate Authority erred in directing the petitioner to pay the difference of gratuity paid less by the petitioner to the extent of Rs.57,078/- alongwith interest @ 12% per annum.

7) Learned counsel for the petitioner relied on decision of the Apex Court reported as **Allahabad Bank and another vs. All India Allahabad Bank Retired Employees Association 2010 (2) SCC 44**. He relied on para 9 of the judgment, which reads as under :-

“9. A plain reading of the provisions referred to herein above makes it abundantly

clear that there is no escape from payment of gratuity under the provisions of the Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government.”

8) Per contra, the learned counsel for 2nd respondent submitted that having regard to Section 14 of the Payment of Gratuity Act, 1972, the 2nd respondent is entitled to the benefit of gratuity amount under the Payment of Gratuity Act, 1972, irrespective of notification dated 19.3.2001, passed under sub-section (1) read with sub-section (3) of Section 5 of the Payment of Gratuity Act, 1972, which exempts all the Municipalities in the State of Haryana from the operation of the Payment of Gratuity Act, 1972, w.e.f. 16.4.1992 for the reasons that Section 14 overrides all the regulations, statutes etc. Learned counsel for 2nd respondent relied on the decision of the Apex Court passed in Allahabad Bank's case (Supra), to contend that Payment of Gratuity Act, overrides other enactments. Thus the provisions of the Payment of Gratuity Act, prevail over all other enactments or instruments of contract, so far as the Payment of Gratuity Act, is concerned. He has also relied on another reported decision of the Supreme Court, reported as Allahabad Bank vs. A.C. Aggarwal (2013) 4 SCC 141. Para 15 of the judgment reads as under :-

15. In our view, the High Court's

interpretation/understanding of the judgment of this Court is correct and there is no merit in the argument of Shri Nariman that the respondent, who had received gratuity under the 1972 Act, is not entitled to pension or that he must refund the amount of gratuity as a condition for payment of pension.”

Heard learned counsel for the parties.

9) The question for consideration in the present petition is whether the 2nd respondent is entitled to gratuity benefit under the Payment of Gratuity Act, 1972, or not. The 2nd respondent is an employee of the petitioner – Municipal Committee, Gharaunda, District Karnal, State of Haryana, On 19.3.2001, State Government invoked sub-section (1) read with sub-section (3) of Section 5 of the Payment of Gratuity Act, 1972 (Act 39 of 1972) while exempting all the Municipalities in the State of Haryana from the operation of the provisions of the Payment of Gratuity Act, 1972, w.e.f. 16.4.1992. Whereas the 2nd respondent retired on 30.9.2004. As on the date of 2nd respondent's retirement, the State of Haryana invoked sub-section (1) read with sub-section (3) of Section 5 of the Payment of Gratuity Act, 1972, for the purpose of exempting all the Municipalities in the State of Haryana from the operation of provisions of Payment of Gratuity Act, 1972, and the 2nd respondent is entitled to retiral benefits, as well as, gratuity only under the Punjab Civil Services Rules (as applicable to Haryana). The same has been granted. Therefore, the 2nd

respondent is not entitled to any gratuity amount under the Payment of Gratuity Act, 1972. Learned counsel for 2nd respondent submitted that Section 14 of the Payment of Gratuity Act, 1972, is a Central Act, which overrides all the enactment. However, State of Haryana is empowered to invoke sub-section (1) read with sub-section (3) of Section 5 of the Payment of Gratuity Act, 1972, for the purpose of exemption of all the Municipalities in the State of Haryana from the operation of the Payment of Gratuity Act, 1972. Therefore, the State of Haryana has not issued separate regulations, so as to contain that Section 14 of the Payment of Gratuity Act, 1972, overrides other regulation. In fact sub-section (1) read with sub-section (3) of Section 5 of the Payment of Gratuity Act, 1972, has been invoked for the purpose of exemption of all the Municipalities in the State of Haryana from operation of the Payment of Gratuity Act, 1972. Therefore, contention of the 2nd respondent, Section 14 would come in aid of 2nd respondent's claim, is incorrect.

10) Similar case was the subject matter before the Supreme Court wherein Section 5 of the Payment of Wages Act, 1972 was not invoked by the Municipality/Government, in such circumstances, it is held as under in the reported decision **Municipal Corporation of Delhi vs. Dharam Prakash Sharma and another (1998) 7 Supreme Court Cases 221**, para 2 :-

“2. The short question that arises for consideration is whether an employee of the MCD would be entitled to payment of

gratuity under the Payment of Gratuity Act when the MCD itself has adopted the provisions of the CCS (Pension) Rules, 1972 (hereinafter referred to as "the Pension Rules"), whereunder there is a provision both for payment of pension as well as of gratuity. The contention of the learned counsel appearing for the appellant in this Court is that the payment of pension and gratuity under the Pension Rules is a package by itself and once that package is made applicable to the employees of the MCD, the provisions of payment of gratuity under the Payment of Gratuity Act cannot be held applicable. We have examined carefully the provisions of the Pension Rules as well as the provisions of the Payment of Gratuity Act. The Payment of Gratuity Act being a special provision for payment of gratuity, 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. The only

provision which was pointed out is the definition of "employee" in Section 2 (e) which excludes the employees of the Central Government and State Governments receiving pension and gratuity under the Pension Rules but not an employee of the MCD. 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. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Possibly for this reason, Section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act, if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. Admittedly MCD has not

taken any steps to invoke the power of the Central Government under Section 5 of the Payment of Gratuity Act. In the aforesaid premises, we are of the considered opinion that the employees of the MCD would be entitled to the payment of gratuity under the Payment of Gratuity Act notwithstanding the fact that the provisions of the Pension Rules have been made applicable to them for the purpose of determining the pension. Needless to mention that the employees cannot claim gratuity available under the Pension Rules.”

Whereas in the present case, State of Haryana invoked Section 5 of the Payment of Gratuity Act, 1972.

11) Having regard to the factual aspects of the present petition, the cited decisions by the 2nd respondent do not assist for the present case. The petitioner has made out a case, so as to interfere with the Appellate Authority's order dated 18.8.2011 vide Annexure P-4 and order dated 18.8.2011 is set aside.

12) Hence, the writ petition stands allowed.

13) No order as to costs.

(P.B. Bajanthri)
Judge

September 28th, 2016
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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No