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

% *Date of decision: 26th September, 2018*

\+ **W.P.(C) 9383/2018**

NORTH DELHI MUNICIPAL CORPORATION..... Petitioner
Through: Ms. Namrata Mukim, Adv.

versus

SHASHI WIFE & L.R. OF LATE SH. NARESH KUMAR ..... Respondent
Through: Mr. Rajiv Aggarwal, Mr. Sachin Kumar and Ms. Tanya Tiwari, Advs.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (ORAL)

1. This writ petition challenges an order, dated 9th April, 2018, passed by the Controlling Authority under Section 7(4)(c) of the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act") read with Rule 11(4) of the Payment of Gratuity (Central) Rules, 1972. The said order adjudicates a claim application filed by the respondent, who was the wife of a daily rated employee of the North Delhi Municipal Corporation, seeking gratuity, under the Act, purportedly due to her deceased husband. The, Controlling Authority allowed the claim, by the impugned order dated 9th April, 2018, and directed the petitioner to pay, to the respondent, Rs.42,162/- as gratuity, alongwith interest at the rate of 10% per annum, as per Section 7(3) and 8 of the Act, from 14th July, 2005 till the date of actual payment.

2. In the present writ petition, the only ground canvassed by learned counsel appearing for the petitioner, is that the deceased husband of the respondent, being a "daily wager", was not an "employee" within the meaning of Section 2(e) of the Act, so as to entitle him to the benefit thereof. Additionally, she submits that, in fact, the Act itself is inapplicable to the petitioner establishment, i.e. the North Delhi Municipal Council.

3. This submission was also advanced before the Controlling Authority, who answered it by observing that the definition of "employee", as contained in the Act, was omnibus in nature and could not be so interpreted as to exclude, from its purview, daily wagers.

4. At this juncture, it would be advantageous to reproduce the definition of "employee", as contained in clause (e) of Section 2 of the Act, thus :

> '(e) "employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, (and whether or not such person is employed in a managerial or administrative

capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity).'

5. On the last date of hearing, Mr. Rajiv Aggarwal, learned counsel for the respondent, had also drawn my attention to Section 4(2) of the Act, which reads as under :

> "(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned: Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account: Provided further that in the case of [an employee who is employed in a seasonal establishment and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days' wages for each season.
> [Explanation. —In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.]"

It is the submission of Mr. Aggarwal that the first proviso to the said sub-section itself refers to "piece rated employees", employed on daily wages, which indicates that daily wagers are not statutorily excluded from the province of the Act.

6. To the reliance, by Mr. Aggarwal, on Section 4(2) of the Act, Ms. Mukim would reply that there is a distinction between "piece rated employees" and daily wagers. According to her, piece rated employees are employees who are paid on the basis of the number of pieces manufactured, or dealt with, by them, and are a concept totally different from daily rated employees.

7. This distinction, insofar as the issue of the applicability of the Act is concerned, is, in my view, a distinction without a difference. Section 4(2) refers "to piece rated employees" *who are paid on daily wages.* I do not see any reason why, if piece rated employees who are paid on daily wages are covered by the provisions of the Act, other daily wagers should be excluded therefrom. After all, all statutory provisions are required to be interpreted, and understood, in a manner complaint with Article 14 of the Constitution of India. The Act, being in the nature of a welfare legislation, is required to be interpreted in an expansive, and not a restrictive manner, keeping in mind, at all times, the preambles identity of Bharat as a "socialist" republic.

8. Ms. Mukim also seeks to rely on notification SO 2800 dated 22nd July, 2006, issued by the Ministry of Law and Justice, which reads thus :

> " New Delhi the 22nd July, 2006
>
> S.O. 2800 – Whereas the Municipal Corporation of Delhi as applied for exemption under Sub-section (2) of the Section 5 the Payment of Gratuity Act, 1972 (39 of 1972) (hereinafter referred to as the said Act)
>
> And whereas in the opinion of the Central Government the gratuity benefit receivable by the regular employees who are covered under the CCS(Pension) Rules of the said

> establishment are not less favourable than the benefit conferred under the said Act,
>
> Now, therefore, in exercise of the powers conferred by sub-section (2) of section 5 of the said Act the Central Government hereby exempts the regular employees who are covered under the CCS(Pension) Rules of Municipal Corporation of Delhi from the operation of the provisions of the said Act."

9. Mr. Aggarwal points out that this Standing Order was issued only on 22nd July, 2006, prior to which date the husband of the respondent had expired.

10. That apart, it is apparent at a plain glance, that the afore-extracted Standing Order would not exclude daily wagers, employed by the MCD, from the benefits available under the said Act. The SO specifically excludes the applicability of the Act to "regular employees who are covered under the CCS (Pension) Rules of MCD" from the applicability of the Act. The very basis of the case set up by the petitioner being that the husband of the respondent was not a regular employee, but a daily wager, it is impossible to understand how the afore-extracted SO, dated 22nd July, 2006, is being sought to be pressed into service.

11. Ms. Mukim, thereafter, drew my attention to Regulation 3 of the Delhi Municipal Corporation Service Regulations, 1959, which reads thus :

> "**3. To whom applicable** – Unless otherwise provided in the Act or these regulations shall apply to all municipal officers and other municipal employees and is rechargeable to the 'General Account' of the Municipal Fund.
>
> Provided that nothing in these regulations shall apply to such municipal officers and other municipal employees as per appointed under any contract or render part-time service or are in receipt of daily wages."

12. Ms. Mukim would seek to place reliance on the proviso to Regulation 3 *(supra)*, to contend that the provisions of the Act stand excepted in the case of daily wagers employed by the MCD.

13. Needless to say, there is nothing, in the proviso to Regulation 3 of the Delhi Municipal Corporation Service Regulations, 1959, which deals with the applicability of the Payment of Gratuity Act at all. Indeed, it is axiomatic that the effect of parliamentary legislation cannot be curtailed, or limited, by any subordinate legislation, such as a Regulation. In any case, Regulation 3, on which Ms. Mukim relies, also does not indicate that the provisions of the Act stand excluded to the deceased husband of the respondent.

14. Ms. Mukim thereafter relies on an order, dated 4th November, 2009, issued by the Municipal Corporation of Delhi, which reads thus:

> "Municipal Corporation of Delhi
> OFFICE OF THE COMMISSIONER
> Town Hall, Chandni Chowk, Delhi
>
> No.PSC/1066/2009 Dated 01/11/2009

<u>O R D E R</u>

Whereas MCD has been granted exemption from payment of Gratuity under the payment of Gratuity Act with immediate effect vide notification dated 22/07/2005 and not with retrospective effect the Gratuity claims under the Payment of Gratuity Act, 1972 may be implemented by the concerned DDOs immediately on receipt of application of Gratuity as prescribed under Tule 7 of Payment of Gratuity Rules, 1972. While doing so department should also ensure that the gratuity claim as submitted by the applicant(s) is genuine claim and not based on frivolous grounds.

It may also be noted that an employee or nominee who is eligible for payment of Gratuity under Gratuity Act is required to apply within thirty days from the date of Gratuity becomes payable in terms of Rule 7(1) of Gratuity Act and the employer is liable to pay interest in case of delay in payment of Gratuity. Therefore it may be ensured that all Gratuity cases are settled as expeditiously as possible so that there may not be any additional burden on MCD on account of interest payment. Before making the payment the concerned officers i.e. the DDOs must ensure that the payment of gratuity has not already been recovered by the claimant through attachment of Commissioner's account/by way of Court Orders."

15. It is obvious that the applicability of the Act has to depend on terms of the Act itself, and cannot be decided by reference to any executive order.

16. For these reasons, I am totally unconvinced with the submission, of the petitioner, that the provisions of the Act, are not available to daily wagers employed by the North DMC. Indeed, as the Controlling Authority has rightly observed, the definition of "employee", in section 2(e) of the Act, is omnibus in nature and does not exclude, from its purview, daily wagers. A reading of the said definition makes it clear that it covers, "any person ....who is employed for wages....." in any establishment, to which the Act applies. Regular employees of the MCD, who are beneficiaries of pension under the CCS (Pension) Rules, would alone stand excluded from the applicability of the Act. Daily wagers, such as the deceased husband of the respondent, are, unquestionably, persons "employed for wages" (which proposition Ms. Mukim, too, fairly does not dispute) and there is nothing which excludes the provision, of the Act, to such daily wagers.

17. Resultantly, the sole ground on the basis of which the impugned award has been challenged by the petitioner, in the present proceedings, fails.

18. After his judgment was dictated, Ms. Mukim again drew my attention to Section 2(e) of the Act, to point out that any person who "who holds a post under the Central or the State Government" is, per definition, excluded from the ambit of the expression employee". Needless to say, a daily wager cannot be treated as the "holder of a post", either under the Central or the State Government, so as to justify the reliance by Ms. Mukim, on the exception to the definition of "employee" as contained in the afore-extracted clause. This submission of Ms. Mukim, too, therefore, does not hold water.

19. Resultantly, this writ petition is dismissed, with no orders as to costs.

20. All pending applications stand disposed of.

Dasti.

C.HARI SHANKAR, J

SEPTEMBER 26, 2018/kr