

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4145/2017

Chief Executive Officer, Zilla Parishad, Yavatmal

..Vs..

Tulshiram Nathmal Toshniwal and another

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri S.C. Bhalerao, Advocate for the petitioner.

Shri R.D. Hajare, Advocate h/f Shri G.K. Mundhada, Advocate for
 respondent No.1.

Ms. T.H. Khan, A.G.P. for respondent No.2.

CORAM : Z.A. HAQ, J.

DATED : 29.7.2019.

Heard.

2] The Zilla Parishad / employer has challenged the orders passed by the subordinate Authorities under the Payment of Gratuity Act 1972, concurrently upholding the claim of the respondent / employee for gratuity. The contention of the petitioner / employer is that while calculating the amount of gratuity receivable by the respondent / employee, the Controlling Authority has taken into account the dearness allowance also, and the Appellate Authority has also committed the same mistake. To support the submission that the amount of dearness allowance receivable by the employee cannot be taken into account for the purposes of calculating the amount of gratuity, the petitioner relies on the Government Resolution dated 30th October, 2009 particularly Clause (4) of it which explains the term “basic salary”.

3] Learned Advocate for the respondent / employee has pointed out the definition of “wages” under Section 2(s) of the Payment of Gratuity Act, 1972 which is as follows:

“Section 2(s) - "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.”

Therefore, it cannot be said that the Controlling Authority and the Appellate Authority have committed any error by taking into account the dearness allowance which was receivable by the respondent / employee, while calculating the amount of gratuity.

Learned Advocate for the respondent / employee has relied on the judgment given in the case of *Municipal Corporation of Delhi V/s. Dharam Prakash Sharma* reported in **1998 (7) SCC 221** and has argued that the respondent / employee is entitled for gratuity as per the Payment of Gratuity Act 1972, notwithstanding the fact that the provisions of Pension Rules are applicable and the service conditions of employee are governed by the Pension Rules.

I find that the Controlling Authority and the Appellate Authority have examined this aspect and their conclusions are in consonance with the legal position.

Hence, I see no reason to interfere with the impugned order. The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs. The amount deposited by the petitioner before the Appellate Authority alongwith interest on it, if any, be given to the respondent / employee.

JUDGE

Tambaskar.