Serial No.05
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.318/2017
With MC [WP(C)] No.72/2019
MC [WP(C)] No.167/2016
WP (C) No.371/2014

Date of Order: 08.12.2020

The Shillong Municipal Employees Association	Vs.	State of Meghalaya & ors
Smti. Amity Kyndiah & ors	Vs.	State of Meghalaya & ors

Coram:

Hon'ble Mr. Justice Biswanath Somadder, Chief Justice
Hon'ble Mr. Justice H.S. Thangkhiew, Judge

Appearance: WP (C) No.318/2017

For the Petitioner/Appellant(s) : Mr. A.S. Siddiqui, Adv
For the Respondent(s) : Mr. K. Khan, Sr.GA with
Mr. S. Sen Gupta, Addl.Sr.GA for R/1
Mr. K. Baruah, SC, SMB for R/2

Appearance: WP (C) No.371/2014

For the Petitioner/Appellant(s) : Dr. N. Mozika, Sr.Adv with
Mr. J. Nongrum, Adv
For the Respondent(s) : Mr. K. Khan, Sr.GA with
Mr. S. Sen Gupta, Addl.Sr.GA for R/1&2
Mr. K. Baruah, SC, SMB for R/3

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

Two writ petitions are before us. One writ petition has been filed by Smti. Amity Kyndiah and 5 (five) others, being WP (C) No.371 of 2014 and another writ petition, being WP (C) No.318 of 2017, has been filed by the Shillong Municipal Employees Association.

The issues raised in both the writ petitions are more or less identical, which is why the Court had earlier directed that both the writ petitions to be clubbed and heard together.

In Writ Petition No. 371 of 2014, the petitioners are seeking directions upon the respondent authorities to release all retiral benefits namely, Death-cum-Retirement gratuity, leave encashment and arrear revised pay along with interest. The writ petitioners retired on different dates during the year 2012-2013. From the orders passed earlier, it appears that the respondent No.3 in Writ Petition (C) No. 371 of 2014, namely, the Shillong Municipal Board, has paid an amount of Rs.30,000/- towards gratuity to each of the writ petitioners, whereas, according to the writ petitioners, they are entitled to more amount. From one of the annexures of the writ petition it appears that the writ petitioners have claimed that they are entitled to gratuity as per the Industrial Tribunal Award dated 23rd August 1971.

In so far as writ petition, being WP (C) No. 318 of 2017, is concerned, it appears that the same has been filed by the Shillong Municipal Employees Association, which is a registered association of the employees of Shillong Municipality. In this writ petition, the writ petitioner is essentially seeking an order of this Court to quash and set aside the Shillong Municipal Board (Gratuity) Rules, 1980, read with notification dated 4th August, 2016, with a further direction upon the concerned respondent authorities to make payment of gratuity to the employees of the Shillong Municipal Board in accordance with the Payment of Gratuity Act, 1972. In this writ petition, the writ petitioner has also referred to the same order of the Industrial Tribunal Award dated 23rd August 1971.

During pendency of both the writ petitions, it appears that the question as to whether the provisions of the Payment of Gratuity Act, 1972,

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HIGH COURT OF MEGHALAYA

would prevail in respect of payment of gratuity to the employees of local bodies – notwithstanding any provision made in a State Act or Rule contemplating such payment of gratuity – has been considered by the Supreme Court in a decision rendered in the case of ***Nagar Ayukt Nagar Nigam, Kanpur v. Mujib Ullah Khan & anr***, reported in ***(2019) 6 SCC 103***. The Supreme Court, while looking at section 3 of the U.P. Dookan Aur Vanijya Adhisthan Adhiniyam, 1962, (a State Act of U.P.) in the backdrop of the provisions as contained under the Retirement Benefits and General Provident Fund Regulations, 1962, which was framed under section 548 of the Uttar Pradesh Municipal Corporation Act, 1959, took into consideration the provisions of the Payment of Gratuity Act, 1972 and came to the following conclusion in paragraph 12 of its judgment, which reads as follows:-

> "12. In view of Section 14 of the Act, the provision in the State Act contemplating payment of gratuity will be inapplicable in respect of the employees of the local bodies."

For convenience, section 14 of the Payment of Gratuity Act, 1972 is set out hereinbelow:-

> "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."

It is palpably evident that in view of the clear language of section 14 of the Payment of Gratuity Act, 1972, which contains a non-obstante clause, read with the observations of the Supreme Court in ***Nagar Ayukt Nagar Nigam, Kanpur*** (supra), the Shillong Municipal Board (Gratuity) Rules, 1980, read with the notification dated 4th August, 2016, shall have no

manner of application at all in so far as payment of gratuity is concerned to the employees of the Shillong Municipal Board, who are sought to be represented in the writ petition filed by its Employees' Association, being Writ Petition (C) No. 318 of 2017, as well as the writ petitioners in Writ Petition (C) No.371 of 2014.

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.

Both the writ petitions stand disposed of along with the connected applications, accordingly.

(H.S. Thangkhiew)
Judge

(Biswanath Somadder)
Chief Justice

Meghalaya
08.12.2020
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