

WRIT PETITION NO. 1309 OF 2021

 $V_S.$

Parashram Ashru Nile -- Respondent

Court's or Judge's orders

CORAM: MANISH PITALE, J.

DATE : 26th SEPTEMBER, 2022

This petition filed by the Municipal Council, Chikhli, raises an issue identical to the issue that fell for consideration before this Court in a bunch of six writ petitions i.e. Writ Petition No.1307/2021 (Chief Officer, Municipal Council, Chikhali Vs. Sheikh Javed Sheikh Wahad and connected writ petitions). In the said judgment, while recording the contentions raised on behalf of the Municipal Council Chikhli, it was held as follows :

“10. In this light, when the rival submissions are appreciated, it appears that according to the learned counsel for the petitioner – Municipal Council, payment of gratuity and payment of pension under the MCSR (Pension) Rules, 1982, is a package deal and if the respondent – employees claim pension, they cannot

claim gratuity under the Act of 1972 and they must necessarily be held entitled only to gratuity under the MCSR Pension Rules, 1982. The said contention is stated only to be rejected.

11. A perusal of the MCSR (Pension) Rules, 1982, would show that Rule 110 pertains to calculation of the amount of pension payable to an employee of the Municipal Council, as the said Rules are admittedly applicable and Rule 111 of the MCSR (Pension) Rules, 1982, pertains to the scheme of gratuity payable to the employees. These are two separate and distinct Rules, which pertain to distinct and separate benefits of pension and gratuity, as contemplated under the MCSR (Pension) Rules, 1982. The mixing of the same and claiming the same to be a package deal on behalf of the Council is nothing but a desperate attempt to wriggle out the Act of 1972 and the position of law laid down by the Hon'ble Supreme Court in the aforesaid judgments in that regard.

12. A perusal of the aforesaid judgments would show that the position of law is very clear. It is absolutely clear that unless an establishment is exempted by the appropriate Government under Section 5 of the Act of 1972, the provisions of the said Act would be applicable. It is also clear that only when the payment of gratuity under the scheme formulated by the establishment is found to be more beneficial for the employee as compared to the amount of gratuity payment under the Act of 1972, the establishment could claim that the provisions of the Act of 1972, would not be applicable. This clearly indicates the beneficial nature of the Act of 1972 and hence, it has been interpreted accordingly by the Hon'ble Supreme Court in the aforesaid judgments.

13. This Court is of the opinion that the Municipal Council cannot claim that the respondent – employees are faced with an either or situation, where they would have to choose gratuity with pension under MCSR (Pension) Rules, 1982, on the one hand or only

gratuity without pension under the Act of 1972. Such an interpretation would be in the teeth of the provisions of the Act of 1972, the MCSR (Pension) Rules, 1982, as also the law clarified by the Hon'ble Supreme Court in the above referred cases.

14. In view of the above, it is found that the only contention raised on behalf of the petitioner – Municipal Council in all these petitions is unsustainable and accordingly, there is no merit in the present writ petitions.

15. In view of the above, the writ petitions are dismissed.”

2. It is undisputed that the very same issue is raised in the present writ petition and, therefore, for the above quoted reasons recorded in the judgment and order dated 12/09/2022, passed by this Court in Writ Petition No. 1307/2021 and connected petitions, the present petition is also dismissed.

JUDGE