

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

WRIT PETITION NO. 1307 OF 2021

(Chief Officer, Municipal Council Chikhli Vs. Sheikh Javed Sheikh Wahad)

WITH

WRIT PETITION NO. 1308 OF 2021

(Chief Officer, Municipal Council Chikhli Vs. Bhupendra Eknath Jadhav)

WITH

WRIT PETITION NO. 1310 OF 2021

(Chief Officer, Municipal Council Chikhli Vs. Mohd. Sadik Mohd. Rafik)

WITH

WRIT PETITION NO. 1311 OF 2021

(Chief Officer, Municipal Council Chikhli Vs. Bhagwan Narayan Bharad)

WITH

WRIT PETITION NO. 1312 OF 2021

(Chief Officer, Municipal Council Chikhli Vs. Kundlik Shenfad Shelke)

WITH

WRIT PETITION NO. 1313 OF 2021

(Chief Officer, Municipal Council Chikhli Vs. Vijay Chhogalal Kachwal)

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

Court's or Judge's orders

Mr. Pramod N. Varma, Advocate for Petitioner in all petitions
Mr. U.J. Deshpande, Advocate for Respondent in all petitions

CORAM : MANISH PITALE, J.

DATE : 12th SEPTEMBER, 2022

In these petitions, the Municipal Council – Chikhli, District Buldhana, has challenged orders passed by the Controlling Authority and the Appellate Authority under the

provisions of the Payment of Gratuity Act, 1972 (hereinafter referred to as “the Act of 1972”). The Appellate Authority in all these cases has confirmed the orders passed by the Controlling Authority, except stating that the interest on the amount payable to the respondent – employees is granted from the date of the application.

2. In Writ Petition No. 1310/2021, the petitioner – Municipal Council has moved an application for bringing on record legal representatives of the respondent – employee. In the interest of justice, the said application, bearing Civil Application (CAW) No. 1372/2022, is allowed. The amendment in the cause title be carried out forthwith.

3. Mr. U.J. Deshpande, learned counsel waives notice on behalf of legal representatives of the said deceased respondent – employee in WP No. 1310/2021.

4. The Writ petitions were taken up for final disposal.

5. Mr. Pramod N. Varma, learned counsel appearing for the petitioner – Municipal Council in all these petitions submitted that the authorities below ought not to have granted gratuity to the respondent – employees in terms of the provisions of the aforesaid Act of 1972 and that the gratuity ought to be held as payable to the respondent – employees under the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as “MCSR (Pension)

Rules, 1982”) which are applicable to the employees of the petitioner – Municipal Council.

6. On the other hand, Mr. U.J. Deshpande, learned counsel appearing for the respondent – employees submitted that the issue arising in the present petitions is covered in terms of the provisions of the Act of 1972 and the law laid by the Hon’ble Supreme Court in that regard in the cases of **Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and another** reported in (1998) 7 SCC 221 and **Allahabad Bank and another Vs. All India Allahabad Bank Retired EMPS. ASSN.** reported in 2010 (124) FLR 192 and judgment dated 02/04/2019 in Civil Appeal No. 2628 of 2017 in the case of **Nagar Ayukt Nagar Nigam, Kanpur Vs. Sri Mujib Ullah Khan and another.**

7. It is submitted that admittedly the payment of gratuity under the Act of 1972, is more beneficial to the respondent – employees, as compared to the gratuity payable under the MCSR (Pension) Rules, 1982 and, therefore, by operation of Section 4(5) of the Act of 1972, the orders passed by the authorities cannot be found fault with. It is also submitted that admittedly, the Municipal Council has not sought exemption under Section 5 of the Act of 1972, from the appropriate Government and, therefore, the Act of 1972, is clearly applicable, being more beneficial for the employees.

8. At this stage, Mr. Varma, learned counsel appearing for the petitioner – Municipal Council submitted that,

according to him, a proper interpretation of the relevant provisions of the MCSR (Pension) Rules, 1982, would show that payment of pension and payment of gratuity run hand in hand for the respondent – employees and, therefore, if the two benefits are taken together they are clearly more beneficial. On this basis, applying Section 4(5) of the said Act of 1972, it is contended that the impugned orders deserve interference.

9. Having considered the rival contentions, it needs to be appreciated that certain facts are admitted. It is an admitted position that the quantum of gratuity payable under Rule 111 of the MCSR (Pension) Rules, 1982, is less beneficial as compared to the gratuity payable to the respondent – employees under the provisions of the Act of 1972. Therefore, by applying Section 4(5) of the Act of 1972, the petitioner – Municipal Council cannot claim that the scheme of gratuity under Rule 111 of the MCSR (Pension) Rules, 1982, would override the payment of gratuity to the respondent – employees of the petitioner – Council under the Act of 1972. It is also an admitted position that the petitioner – Council has not been granted any exemption from the applicability of the provisions of the Act of 1972, under Section 5 of the said Act by the appropriate Government.

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.