



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

WRIT PETITION NO. 6339 OF 2022

Municipal Council, Pusad, Dist. Yavatmal and anr.
Vs.
Sau. Kusum w/o Vijay Ubale

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. P.P. Deshmukh, Advocate for petitioners.
Mr. Tejas Patil, Advocate for respondent.

CORAM : N.R. BORKAR, J.

DATE : 04.10.2024.

The respondent herein, who was the employee of the petitioner-Municipal Council, had filed an application under the provisions of the Payment of Gratuity Act, 1972. The Controlling Authority under the Act by order dated 18.09.2019 directed the petitioners to pay Rs.1,91,184/- towards gratuity.

2. By the order impugned, the learned Appellate Authority has dismissed the appeal filed by the petitioner against the order of Controlling Authority.

3. I have heard the learned counsel for the petitioners and the learned counsel for the respondent.

4. The learned counsel for the petitioners submits that the Payment of Gratuity Act is not applicable to the employees of the petitioner-Municipal Council as their services are governed by the Maharashtra Civil Services (Pension) Rules, 1982. It is submitted that all the retiral benefits were paid to the respondent in accordance with the said Rules. It is submitted that the Controlling Authority therefore, erred in entertaining the application filed by the respondent. In the alternative, it is submitted that the application was barred by limitation as the same was filed after one year of the retirement.

5. On the other hand, the learned counsel for the respondent submits that the issue involved in the present petition is no more *res-integra* and is covered by the decision of the Hon'ble Supreme Court in ***Nagar Ayukt Nagar Nigam, Kanpur Vs. Mujib Ullah Khan and anr. reported in (2019) 6 SCC 103.*** It is submitted that no interference is thus called for in the impugned orders.

6. In *Nagar Ayukt Nagar Nigam, Kanpur Vs. Mujib Ullah Khan and anr.*, the Hon'ble Supreme Court has considered the similar issue and held as under:

“10. In terms of the above said Section 1(3)(c) of the Act, the Central Government has published a notification on 08.01.1982 and specified Local Bodies in which ten or more persons are employed, or were employed, on any day of the preceding twelve months as a class of establishment to which this Act shall apply. The said Notification dated 08.01.1982 reads as under:-

“New Delhi, the 8 th January, 1982

NOTIFICATION

S.O. No. 239....In exercise of the powers conferred by clause (c) of sub-section (3) of section 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specified ‘local bodies’ in which ten or more persons are employed, or were employed, on any day preceding twelve months, as a class of establishments to which the said Act shall apply with effect from the date of publication of this notification in the Official Gazette.

Sd/-

(R. K. A. Subrahmanya)

Additional Secretary

(F No. S-70020/16/77-FPG)

11. We find that the Notification dated 08.01.1982 was not referred to before the High Court. Such notification

makes it abundantly clear that the Act is applicable to the local bodies i.e., the Municipalities. Section 14 of the Act has given an overriding effect over any other inconsistent provision in any other enactment. The said provision reads as under:

“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.”

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.

*13. Section 2(e) of the Act alone was referred to in the judgment reported as **Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and anr. (1998) 7 SCC 221**. The said judgment is in the context of CCS (Pension) Rules, 1972 which specifically provides for Payment of Pension and Gratuity. The Act is applicable to the Municipalities, therefore, it is wholly inconsequential even if there is no reference to the Notification dated 08.01.1982.*

14. The entire argument of the appellant is that the State Act confers restrictive benefit of gratuity than what is conferred under the Central Act. Such argument is not tenable in view of Section 14 of the Act and that liberal

payment of gratuity is in fact in the interest of the employees. Thus, the gratuity would be payable under the Act. Such is the view taken by the Controlling Authority.”

7. In view of the above, submission of the learned counsel for the petitioner that the Payment of Gratuity Act is not applicable to the employees of the petitioner-Municipal Council can not be accepted.

8. I am also not inclined to accept the submission of the learned counsel for the petitioner on the point of limitation in view of the decision in ***Dnyanoba Vishnu Sawant and Ors. Vs. M/s. Sitaram Mills Unit of National Textile Corporation and anr. reported in 2017 II CLR 414.***

9. The writ petition is dismissed.

10. The amount deposited by the petitioners before this Court shall be paid to the respondent with accrued interest, if any.

(N.R. BORKAR, J.)