



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

WRIT PETITION NO.2951/2021

Akola Municipal Corporation, Akola .Vs. Smt. Savita Chandrakant Shinde and anr.

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

Court's or Judge's orders

Mr. Apurv De, Advocate for petitioner.

Mr. U. J. Deshpande, Advocate for respondents.

CORAM : **ANIL L. PANSARE, J.**

DATE : **MARCH 25, 2025**

Having heard for some time, it appears that the issue involved in the present case is covered by judgment passed by Coordinate Bench of this Court in **Chief Officer, Municipal Council, Chikhli Vs. Sheikh Javed Sheikh Wahad, [Writ Petition No.1307/2021 and connected matters]**.

2. Contention before the High Court was that the authorities below ought not to have granted gratuity to respondent-employee in terms of provisions of the Payment of Gratuity Act, 1972 (For short, "Act of 1972") and that the gratuity ought to be held as payable to the respondents – employees under the Maharashtra Civil Services (Pension) Rules, 1982 (For short, "Rules of 1982") which were applicable to the employees of the Municipal Council.

3. Identical is the argument in the present case and identical are the facts here.

4. The Coordinate Bench, in the above referred judgment, taking note of the various provisions of the Act of 1972, so also Rules of 1982 and the judgment passed by Supreme Court, held thus:

"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.”

5. As could be seen, the Coordinate Bench rendered a categorical finding that contentions put forth by Municipal Council are unsustainable and accordingly dismissed the writ petitions. There appears no reason why should different approach be adopted in the present case. Rather, the same recourse should be taken, meaning thereby that the petition should be dismissed. Accordingly, the writ petition is dismissed. No order as to costs.

6. At this stage, learned counsel for the respondents submits that respondent No.1 is bed ridden and accordingly makes a request to direct the petitioner to disburse the amount within two weeks. However, considering the condition of respondent No.1, the petitioner shall take necessary steps to disburse the amount of gratuity, as expeditiously as possible, preferably within four weeks from today.

(Anil L. Pansare, J.)