

(2008) 09 DEL CK 0162

Delhi High Court

Case No: Writ Petition (Civil) 3837 of 2008

Municipal Corporation of Delhi

APPELLANT

Vs

Partap Singh

RESPONDENT

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**Date of Decision:** Sept. 19, 2008**Acts Referred:**

- Payment of Gratuity Act, 1972 - Section 5(2), 7(3A)

**Hon'ble Judges:** Siddharth Mridul, J**Bench:** Single Bench**Advocate:** Saroj Bidawat, for the Appellant; None, for the Respondent**Final Decision:** Dismissed

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### Judgement

Siddharth Mridul, J.

These fourteen petitions are filed on behalf of Municipal Corporation of Delhi(Corporation) assailing the order passed by the Appellate Authority under the Payment of Gratuity Act, 1972 (Act). Since the fourteen petitions raise a common question of law in respect of applicability of the Act to the employees of the Corporation, I propose to dispose the petitions by this common judgment.

2. Counsel appearing on behalf of the corporation, firstly asserted that in similar matters notices have been issued and the next date of hearing in those similar matters is 22nd October, 2008. It was further urged that the present petitions be listed and heard with those petitions. However, in view of the fact that this issue is no longer res integra in terms of decision of Supreme Court as well as of this Court cited hereinbelow, I am proceeding to dispose of these petitions at this stage.

3. The short question that arises for consideration requires a narration of brief facts which are adumbrated as follows:

(i) The respondent/employee in each of these petitions is a retired employee of the Corporation. Each of them received retirement benefits including gratuity payable in

terms of CCS Pension Rules 1972 (Pension Rules) adopted by the Corporation.

(ii) Each of them filed an application before the Controlling Authority (C.A.) under the Act claiming additional amount of gratuity that was payable in terms of the Act.

(iii) By separate orders the C.A. held that provisions of the Act were to apply to employees of the Corporation regardless of the application of the Pension Rules till the time when the Central Government being appropriate Government has granted exemption u/s 5(2) of the Act to the Corporation.

(iv) By separate orders the C.A. thereby computed the gratuity payable under the Act and directed the Corporation to pay each of the retired employee an additional amount of gratuity together with simple interest thereon at the rate of 10% per annum under the provisions of Section 7(3-A) of the Act for the period commencing from the date of retirement.

(v) (1) Sh. Partap Singh S/o Sh. Kundan Singh, respondent in Writ Petition (Civil) 3837/08 was directed to be paid a sum of Rs. 18,159/- together with interest thereon @ 10% from 31st October, 1999.

(2) Sh. Murlidhar S/o Sh. Sohan Lal, respondent in Writ Petition(Civil) 3838/2008 was directed to be paid a sum of Rs. 29,075/- together with interest thereon with rate of interest @ 10% per annum from 31st October, 2000.

(3) Sh. Balbir Singh S/o Late Pyarelal, respondent in Writ Petition(Civil) 3840/2008 was directed to be paid a sum of Rs. 13,616/- together with interest thereon with rate of interest @ 10% per annum from 30th June, 2000.

(4) Sh. Vishnu Dayal S/o Sh. Gopal Dass, respondent in Writ Petition(Civil) 3841/2008 was directed to be paid a sum of Rs. 31,810/- together with interest thereon with rate of interest @ 10% per annum from 31st January, 2001.

(5) Sh. Fateh Singh S/o Sh. Chattar, respondent in Writ Petition(Civil) 3842/2008 Singh was directed to be paid a sum of Rs. 20,522/- together with interest thereon with rate of interest @ 10% per annum from 31st March, 2002.

(6) Sh. Mahander Singh S/o Sh. Jag Ram, respondent in Writ Petition(Civil) 3843/2008 was directed to pay a sum Rs. 7,560/- together with interest thereon with rate of interest @ 10% per annum from 9th November, 2004.

(7) Sh. Dayanand S/o Sh. Sher Singh, respondent in Writ Petition(Civil) 3844/2008 was directed to be paid a sum of Rs. 23,733/- together with interest thereon with rate of interest @ 10% per annum from 31st May, 2000.

(8) Smt. Mishri Devi W/o Sh. Chattar Singh, respondent in Writ Petition(Civil) 3845/2008 was directed to be paid a sum of Rs. 8,601/- together with interest thereon with rate of interest @ 10% per annum from 30th June, 98 till the date of actual payment of the same.

(9) Sh. Badlu Ram S/o Late Sh. Bansi Ram, respondent in Writ Petition(Civil) 3846/2008 was directed Rs. 14,962/- together with interest thereon with rate of interest @ 10% per annum from 31st January, 2005.

(10) Sh. Chiranji Lal S/o Sh. Lal Chand, respondent in Writ Petition(Civil) 3847/2008 was directed to be paid a sum of Rs. 39,946/- together with interest thereon with rate of interest @ 10% per annum from 30th June, 2001.

(11) Sh. Duleh Ram S/o Late Sh. Chet Ram, respondent in Writ Petition(Civil) 3848/2008 was directed to be paid a sum of Rs. 22,008/- together with interest thereon with rate of interest @ 10% per annum from 31st August, 1999.

(12) Sh. Hukum Chand S/o Sh. Ganga Dutt, respondent in Writ Petition(Civil) 3849/2008 was directed to be paid a sum of Rs. 37,988/- together with interest thereon with rate of interest @ 10% per annum from 31st March, 2002.

(13) Sh. Des Raj S/o Late Sh. Lal Chand, respondent in Writ Petition(Civil) 4014/2008 was directed to be paid a sum of Rs. 37,322/- together with interest thereon with rate of interest @ 10% per annum from 31st December, 2004 till the date of actual payment of the same.

(14) Sh. Heera Lal S/o Sh. Badri Nath, respondent in Writ Petition(Civil) 4185/2008 was directed to be paid a sum of Rs. 39,025/- together with interest thereon with rate of interest @ 10% per annum from 31st December, 2000.

(vi) Corporation filed an appeal against the order of CA before the Appellate Authority. The appeals filed by the Corporation before the Appellate Authority were dismissed vide a separate order which are subject matter of challenge in these fourteen writ petitions.

4. It is an admitted position that the relevant notification under the Act was issued by the appropriate Authority subsequent to the retirement of each of the respondents in these Writ Petitions. It is fairly conceded by counsel appearing on behalf of the Corporation that the said notification could operate only prospectively and not retrospectively. It is submitted, however, that notification was applicable as on the date of consideration of the applications filed by the respondents. In other words, since the notification was in force on the date when the C.A. determined the applications on the respondents those applications were not maintainable at all. Counsel submits that on the date of notification C.A. was functus officio and could not entertain applications under the Act. I am unable to accept this submission of the Corporation.

5. I am unable to accept the submissions of the counsel for the Corporation. It is apparent that till the date of the subject notification namely 22nd July, 2005, the Corporation was statutorily obliged to comply with the obligations under the Act. It is seen, that this question has been determined against the Corporation by the decision of the Supreme Court in [Municipal Corporation of Delhi Vs. Dharam](#)

[Prakash Sharma and Another](#), In that case the question that arose for consideration was whether an employee of the Corporation would be entitled to payment of gratuity under the Act when the Corporation itself adopted the Pension Rules, particularly when the latter contains provision for payment of pension as well as gratuity. The supreme Court held that:

The Act was a special provision for payment of gratuity." and

Unless there is any provision therein which excludes its applicability to an employee who is otherwise governed by the provisions of the Pension Rules, it is not possible for us to hold that the respondent is not entitled to the gratuity under the Payment of Gratuity Act.

It was categorically held that:

The MCD employee, therefore, would be entitled to the payment of gratuity under the Payment of Gratuity Act. The mere fact that the gratuity is provided for under the Pension Rules will not disentitle him to get the payment of gratuity under the payment of gratuity Act.

6. The above decision of the Supreme Court has been followed by this Court in Writ Petition (Civil) No. 9318 of 2007, Writ Petition (Civil) No. 6280 of 2008, Writ Petition (Civil) No. 6282 of 2008, Writ Petition (Civil) No. 6284 of 2008 and Writ Petition (Civil) No. 6288 of 2008. Thus, there can be no manner of doubt that employees of the Corporation who retired till the date when the notification came into force would be entitled to be paid gratuity in terms of the Act. However, since they would not be entitled to derive a double benefit they would be entitled to receive only the differential amount between the gratuity calculated under the Act and that paid to them pursuant to the Pension Rules.

7. It is also observed that the pronouncement of law by this Court in *Municipal Corporation of Delhi v. Nand Kishore* 102 2003 DLT 518, is to the effect that "the denial of the payment of the gratuity under the Act is a continuing wrong and there is no question of any delay in approaching the Controlling Authority and the claim of gratuity cannot be resisted on the ground of delay". Therefore, it is axiomatic that it was not necessary for the employee to make an application for the purpose since the denial of the payment of gratuity under the Act is a continuing wrong and the Corporation was statutorily bound to do so on its own. Resultantly, there is no question of any delay in approaching the CA and the claim of gratuity cannot be declined only on that account. In the circumstances, it is not open to the Corporation to deprive any of its employee who retired before the issuance of the subject notification of the payment of gratuity under the Act. Also it was neither necessary for the employee to seek condonation of delay, if any, which they did, nor requisite for the CA or the Appellate Authority to condone the delay, which was done, since the non-receipt of gratuity was a continuing wrong, grant of which could not be precluded only on the question of delay.

8. Finally the submission on behalf of the Corporation that the CA was functus officio on the date of consideration of the applications, does not hold water, for the reason that the notification issued by the appropriate Government exempting them from the operation of the Act was subsequent to the retirement of the respondent-employees, and no such notification can have retrospective operation, so as to, extinguish substantial rights already vested in the employees by virtue of the operation of provisions of law. No other point was raised on behalfs of the Corporation.

9. In the facts and circumstances no infirmity is discerned in the impugned orders, insofar as, they directed payment of balance gratuity under the provisions of the Act. Therefore, I find no merit in any of these petitions and they are consequently dismissed, however, without any order as to costs.