

[2019] 6 S.C.R. 1028

NAGAR AYUKT NAGAR NIGAM. KANPUR

v.

SRI MUJIB KHAN ULLAH KHAN AND ANOTHER

(Civil Appeal No. 2628 of 2017)

APRIL 02, 2019

[MOHAN M. SHANTANAGOUDAR amasung

HEMANT GUPTA, JJ]

Payment of Gratuity Act, 1972 – ss.1(3)(c) amasung Section 14 – Retirement and Benefits amasung General Provident Fund Regulations, 1962 – r.4(1) – Uttar Pradesh Municipal Corporation Act, 1959 – s.548 –Municipal Corporation gi employee singna 1972 gi Act ki makhada Controlling Authority na piba ngamba hak ki matung inna gratuity piyu haibagi dabi toukhiba –Controlling authority na darkhast adubu employee singgi dabi adubu ayaba pikhi – Appellant oiribana yetkhi madudi gratuity haibasi 1959 gi Act ki makhada fongkhiba 1967 ki Regulation asigi matung inna r.4(1) piba yai – maram aduna municipality gi employee singna gratuity asi 1959 ki Act ki makhada fagfam thokte madudi asigumba Regulation asida piriba chatna kanglon adukhak ki matung inna fangfam thok-ee – High Court na lepki madudi Municipality adugi employee sing asi 1972 Act ki makha ponna gratuity fangfam thok-ee – High Court na lepkhiba wafam asibu kaknaba thanggatlakhiba darkhast asida areppa pikhi madudi Central Government na 8.1.1982 ta notification ama 1972 ki Act asigi s.1(3)(c) da piriba chatna kanglongi matung inna notification ama fongkhi, notification asida sigaina piri madudi masigi Act asi local body haibadi Municipality singda chatnagani- 1972 ki Act asigi s.14 na karigumba atoppa ee-duna thamlaba/semlaba leibakki aign sing ga tu-nana chatpa yaroidaba oirabadi Section asina mamang thana chatnahanbagi ayaba adu piri– s.14 asigi maikei da yengbada, State ki Act amagi manung da piriba chatna kanglon singna karigumba Gratuity pibagi matangda ee-duna thamlabadi madu local body gi employee singda di chatnaroi- maram aduna Act asigi makhada Controlling Authority na pikhiba Order amadi madu gi Order adubu chummi haina High Court na lepkhiba wafam adu da aranba amata yaokhide/toukhide – General Clauses Act, 1987 ki s.3(31).

Makhagi wayelsanggi yathangbu kaknaba tharakkhiba darkhast adubu kakladuna LEPKHI: 1. Payment of Gratuity Act, 1972 ki Section 1(3)(c) da piriba chatna kanglonsinggi matung inna Central Government na 08.01.1982 ta fongkhiba notification amadi maduda chatkhriba chahi amagi manungda oiningba numit amada mi-oi tara nattrga taradagi henna thabak piriba nattraga pikhiba establishment amani haina khangnaba mafam amada Act asi chatnagani. Date 08.01.1982 ki notification asi High Court na mamangda khannanabagidamak puthokkhide. Asigumba notification asina mayek sengna piri madui q972 gi Act asi local body sing haibadi Municipality sing da chatnagani. 1972 ki Act asigi Section 14 na mamang thana chatpa ngambagi sakti adu karigumba atoppa ee-duna thamlaba aign chatnabisingga tu-nana chatpa yadrabadi

Section 14 ki matung inna chatkani. s.14 asigi maikei da yengbada, State ki Act amagi manung da piriba chatna kanglon singna karigumba Gratuity pibagi matangda ee-duna thamlabadi madu local body gi employee singda di chatnaroi [Paras 10, 11 and 12][1032-F; 1033-C; E]

2. Appellant ki apumba marei di State ki act na Central Act gi makhada piriba aduga yengnabada athingba kharaga loinana gratuity gi kannaba adu pibani. Mahak ki marei asi Section 14 gi matung inna yengbada maram chaba amadi chatnaba yaba gratuity asi mayek ki oina employee singgi kannanaba yenglaga pifam thok-ee. Maram aduna 1972 ki Act asigi makhada gratuity asi pifam thok-ee. Hairibasing asi ni Controlling authority gi mityeng. Mathakta palliba asigi matung inna Controlling Authority na pikhiba Order amadi madu gi Order adubu chummi haina High Court na lepkhiba wafam adu da aranba amata yaokhide/toukhide [Paras 14, 15][1033-G-H; 1034-A]

Municipal Corporation of Delhi v. Dharam Prakash

Sharma and Another AIR 1999 SC 293: (1998) 7 SCC

221 – referred to.

Case Law Reference

(1998) 7 SCC 221 Para 5 ta yengkhida

CIVIL APPELLATE JURISDICTION: Civil Appeal No.2628 of 2017

Allahabad ta leiba High Court of Judicature na pikhiba 19.04.2017 gi Order dagi lakkhiba Writ Petition No.19016 of 2007

loinana

Civil Appeal No.2629 of 2017.

Anurag Dubey, Satpal Wadhwa, Pramod Kumar, S.R. Setia, Sunil Kumar Verma, Advs. Appellant ki maikeida.

Vinay Garg, Sanjay Kumar Visen, Aniruddha P. Mayee, Advs. Respondent sing gi maikeida.

Court ki Judgement asi Justice Hemant Gupta pikhi.

1. Civil Appeal No. 2628 of 2017 asida Allahabad ta leiba High Court of Judicature na pikhiba date 19.04.2007 gi Order adubi challenge toubani, hairiba Order asina Controlling Authority Kanpur na Payment of Gratuity Act, 1972 gi makha da pikhiba date 18.12.2006 ki Order ama bu chummi haiba lepkhi.
2. Mangda tariba Darkhast asiga loinana Allahabad ta leiba High Court of Judicature na date 02.05.2007 ta pikhiba Order amabu challenge toukhiba Civil Appeal No. 2629 of 2017 ga punna loukhatkhi. Hairiba date 02.05.2007 gi Order asina date 29.04.2006 ta

Controlling Authority (Additional Labour Commisisoner, Gorakhpur, U.P) na Act asigi makhada tharakhiba darkhast amada mangda tariba Appeal asida Respondent oiriba mioi asigi wafambu ayaba pikhi.

3. Appellant oiriba, Municipal Corporation, Kanpur asi Uttar Pradesh Municipal Corporation Act, 1959 na ngaklou piduna chatnabani, amaromda Respondent oiriba mioi asi Appellant oiriba Municipality gi makha da thabak toubu mioini. Case animak ta employee singna Act asigi makhada piba Controlling Authority gi toubu ngam sakti bu chingsinduna makhoigi gratuity pibiyu haibagi dabi ni. Single bench ki mangda Appellant na yetkhiba wafam di gratuity asi Retirement Benefits amadi 11/01/1988 ta semdokhraba 1959 gi Act asigi Section 548 ki makhada semkhiba General Provident Fund Regulations, 1962 gi matung inna pigadabani. Asigumba regulation na haininglibadi gratuity asi numit 15 gi tolop ki chang da tha 16.5 gi oina pibani. High court na khngkhi madudi Act asi da piriba chatna kanglon asi oina chatnagani madudi numit 15 gi tolop ki changda pagadouriba chahi adugi hisap asi akaknaba thabum ama natraga thabum machet khaina piroi.
4. Appellantna High Court ki mangda yetkhiba wafamdi gratuity asi 11/01/1988 ta semdokhraba 1959 gi Act asigi Section 548 ki makhada semkhiba General Provident Fund Regulations, 1962 ki Rule 4(1) gi matung inna pigadabani. Maram aduna Municipality singgi employee khudingmakta gratuity asi mathakta palliba Rule asigi matung inna pigani.
5. High Court na **Corporation of Delhi vs Dharam Prakash and another** Judgement amabu thajaba thamduna lepkhi madudi Central government natraga State Government ki Employee khaktamak Act asina konsilloi maram aduna Appellant ki employee khudingmak Act asigi makhada fangfam thokpa gratuity adu fanggani. Act asigi Section 2(e) da sugaina takliba “employee” haibasi kanano haibagi matung inna Act asina Central Government natraga State Government khaktamak konsilloi. Maram aduna Municipalitising gi employee khudingmak Act asida piriba niti kanglongi matung inna Gratuity fanggani.
6. U.P. Dookan Aur Vanijya Adhistan Adhinyam, 1962 gi Section 3 ta piriba Government ki loisang natraga Local Body singbu konsilloi haiba wafamsida thajaba thamduna Appellant na yetkhi. Eeduna thamlaba niyom gi mapanggal da yumfam oiduna yetkhi madudi hariba Act asi Municipaliti singda chatnahalloidani. Appellant asi factory, mine, oilfield, plantation, port natraga railway company oide amasung Act asigi Section 1(3) gi clause (c) gi matung inna notification amata thokkhiba su leite. Maram aduna Municipaliti singgi employee singda 1959 gi Act asigi Section 548 gi matunng inna piriba sakti adu sijinnaduna makhoibu gratuity pigani.
7. Amaromda, respondent ki maikei da lepkhiba learned Counsel na thinduna takkhi madudi Central Government na Act asigi Section 1 (3)(c) gi matung inna 08.01.1982 da fongkhiba notification amana Act asina Municipality sing su konsingani. Makha tarakpada Act asi Municipality singda chatnagani. Mari leinaba Act asigi niyom sing adu makhada piri:-

“1. Short title, application and commencement:-

(1) Masigi Act asi Payment of Gratuity Act, 1972 haina kounagani.

(2) Masi India apumbada chatnagani:

Plantation natraga port ka mari leinaba mafamdadi Jammu and Kashmir hairiba State asi khaktada chatnagani.

- (3) Masi chatnagadaba mafamsing:-
- (a) Factory, mine, oil field, plantation, port natruga railway company khudingmak.
 - (b) Shop natruga establishment sing gi matang dadi mangda chatkhriba tha 12 asida mioi tara natruga tara dagi henna thabak piriba natruga pikhraba matam matamgi matung chatnariba Law na Shop natruga **establishment** sing.
 - (c) Central Government na notification amada tangdangna piraba mang da chatkhriba tha 12 asida mioi tara natruga tara dagi henna thabak piriba natruga thabak pikhraba establishment natruga establishment makhal sing.
8. Mathakta palliba niyom naina pirab wafamsing asi cheksinna yengbada Act asi gi makha da piriba mafam sing asida chatnagani. (1) factory, mine, oilfield, plantation, port natruga railway company khudingmak; (2) matam matam gi matung ee-duina thamlaba chatnagadaba niyom gi matung inna mioi tara natruga tara dagi henna thabak piriba Shop natruga establishment sing, hairiba niyom asina chatnagadaba wafam ani piri, madudi (i) State law gi matung inna Shop natruga establishment oigadabani amasung (ii) mioi tara natruga tradagi henna thabak piba oigadabani; amasung (iii) Central Government na establishment natruga establishment makhalsing asi masi oigani haina notification amada fongbasing.
9. Appellant asi Section 1(3) gi Clause (a) amasung (b) na konsinde. Clause (a) asi niyomdu khak ta damak yenglabadi Appellant ta chatnaroi touwigumasung clause (b) asi 1962 gi Act ki Section 3(c) gi matung inna yenglabadi chatnaroi adum oina Act asi Government ki loisang natruga Local Authoriti sing da chatnaroi. Local Authority hairagadi Municipal Committee, District Board, atei ateising natruga General Clauses Act, 1897 ki section 3 (31) ki matung inna Municipal **fund** singgi chuk li pairiba natruga madubu yengsilliba authority.
10. Mathak ta palliba Act asigi Section 1(3)(c) ta piriba chatna kanglongi matung inna, Central Government na 08.01.1982 da notification ama fongkhi amadi maduda hairibadi mang da chatkhriba tha 12 asigi manung da oiningba numit amada hekta mioi tara natruga tara dagi henna thabak piba natruga pikhraba local body amabu Act asina konsingadaba establishment ki makhal amani. Hairiba 08.01.1982 gi notification adu makha gi asigumna piri:-

“New Delhi, 8th January, 1982

NOTIFICATION

S.O. No. 239.....-Payment of Gratuity Act, 1972 (39 of 1972) gi Section 1(3) gi clause (c) na piriba sakti sijinnaduna Central Government na piri madudi mangda chatkhriba tha 12 asigi oiningba numit amada hekta mi-oï tara natruga taradagi henna thabak piriba natrag pikhrab ‘local body’ amabu Act asina konsingdaba establishment ama oina notification asina Gazzette ta fonglaba numittagi chatnaba hougadaba Act asina local body amagum na konsingdaba establishment makhal aduni.

Sd/-

(R.K. Subrahmanya)

Additional Secretary

(F. No. S-70020/16/77-FPG)”

11. Eikhoina fangee madudi 08.02.1982 ki notification asi High Court ki mamangda khannaba puthokkhide. Asigumba notification asina mayek sengna sugaina takli madudi Act asina local body sing haibadi municipality singbu konsingani. Act asigi Section 14 na piri madudi Act asiga mannana/tu-nana chatpa ngamdaba atei atoppa niyom/chatna-kanglon singbu tung-oinana chatpa ngambagi sakti piri. Hairiba sakti/niyom adudi:

“14. Atoppa semduna thamlaba niyomsing bu tung-oinaduna chatpa gidamak Act, amadi atei atei.- Act asigi makhada piriba chatna-kanglonsing amadi Act asigi matung inna semba Rule sing asi karigumba Atei atoppa masigi Act asi nattaba atoppa Law oina pass toukhraba Act natraga atoppa makhalgi oiningba dalil amada natraga Contract amada piriba chatnagadaba mawongsing aduga mata chanaba oidrabadi, Act amadi Rule asi da piriba chatna-kanglon/niyomsing adu suksoi soidana chatnagani.”

12. Act asigi Section 14 gi matung inna yengbada, State ki Act amagi makhada piriba Payment of Gratuity gi matang da piriba niyom sing adu local body gi employee singda chatnaroi.

13. **Municipal Corporation of Delhi (supra)** gi Judgement asida Act asigi Section 2 (e) khaktamak pu mityeng thamduna khannakhi. Hairiba Judgement asi CCS (Pension) Rules, 1972¹ na akaknana piriba Payment of Pension and Gratuity gi matangda pikhibani. Hairiba Act asi municipality singda chatnagadaba maramna 08.02.1982 gi notification adu bu mang-da thamduna khannakhibra natrag khannakhidrbara haibasi thoidokna maru oidre.

14. Appellant na pukhatlakkhiba natraga yetkhiba apumba wafam adudi State ki Act na gratuity gi matang da Central gi Act siga yengnaba matamda gratuity asi athingba kharaga loinana piri. Yetliba natraga pukhatliba wafam asi Act asigi Section 14 gi maikeidagi yengbada chatnaba yadaba wafamni amadi tasengnamak gratuity asi ikai kaidba mawongda piba haibasi employee singgi yaifanabagidamak ta suksoi soidraba wafamni. Maram asina gratuity asi employee singda Act asigi matung inna pigadabani. Hairiba wafamsing asi Controlling Authorityna thamkhiba miteyngb aduni.

15. Mathakta pankhriba asi da mityeng thamduna yengbada eikhoina u-re madudi High Court na ayaba pikhraba wafam haibadi Controlling authority singna Act asigi matung inna ayaba pikhiba Order sing adu asoiba aranba amata oikhide. Matung tarakpada darkhast asi khannaba loisille.

Darkhast asi makha tana khannararoi

Ankit Gyan

¹ 1972 Rules