**ITEM NO.13 (H-09)**

1. **Name of the subject**

Denial of exemption u/s 5 of the Payment of Gratuity Act 1972 by the Central Govt.

1. **Name of the department**

PERSONNEL DEPARTMENT

1. **Brief history of the subject**

3.1 Prior to 1957, there were Municipal Committees, notified area Committees, District Board, Delhi State Electricity Board, Delhi Transport Undertaking and the Delhi Joint water and Sewerage Board. The local bodies were governed by the Punjab Municipal Act 1911. Among them was also New Delhi Municipal Committee which was earlier known as Riasina Municipal Committee. At the time of creation of the Municipal Corporation of Delhi through the Delhi Municipal Corporation Act 1957, certain portions from the New Delhi Municipal Committee were transferred to the Delhi Municipal Corporation. The said Municipal Corporation of Delhi was established under DMC Act, 1957 and the functions of the following bodies and the local bodies were taken over by the Delhi Municipal Corporation.

**(i) The Municipal Committee, Delhi**

**(ii) The Notified Area Committee, Civil Station**

**(iii) The Notified Area Committee, Red Fort**

**(iv) The Municipal Committee, Delhi-Shahdara**

**(v) The Municipal Committee, West Delhi**

**(vi) The Municipal Committee, South Delhi**

**(vii) The Notified Area Committee, Mehrauli**

**(viii) The Notified Area Committee, Najafgarh**

**(ix) The Notified Area Committee, Narela**

**(x) The District Board, Delhi.**

**(xi) The Delhi State Electricity Board**

**(xii) The Delhi Joint Water and Sewage Board**

3.2 In the MCD, there are Category-‘A’, Category-‘B’, Category-‘C’ posts and were categorized u/s 90(8) of DMC Act, 1957 as under :-

***“In this section and in section-92 –***

1. ***“category ‘A’ post” means any post, which, having regard to its scale of pay or emoluments, would, if such post had been in the Central Government, be classified as a Group ‘A’ post under the Central Government, in accordance with the orders issued by that Government from time to time ;***
2. ***“category ‘B’ post” means any post which, having regard to its scale of pay or emoluments, would, if such post had been in the Central Government, be classified as a Group ‘B’ post under the Central Government in accordance with the orders issued by that Government from time to time ;***
3. ***“category ‘C’ post” means any post, other than a category ‘A’ or category ‘B’ post.”***

3.3 The Delhi Municipal Corporation framed certain regulations and bye-laws and one of the regulations was Gratuity Regulation of 1959. As category ‘A’, ‘B’ and ‘C’ posts had the same scale of pay as Group A, B, and C posts of Central Govt., MCD adopted Central Civil Services (Pension) Rules, 1972. The New Delhi Municipal Committee followed the Delhi Municipal Corporation Regulations, as far as the payment of pension and gratuities were concerned and the said rules were adopted by the Committee in the year 1973.

3.4 In the year 1972, the Payment of Gratuities Act, 1972 was enacted. This was for the payment of gratuity to employees engaged in factories, mines, oil fields, plantations, ports, railway companies and other establishments and for matters connected therewith or incidental thereto. In the year 1982 through, a notification u/s 1 (3)(c) of the Gratuity Act, 1972, local bodies, in which 10 or more persons are employed or were employee on any day of the preceding 12 months were included, as the class of establishments to which the Gratuity Act, 1972 shall apply w.e.f. the date of publication of the notification in the official gazette i.e. 8th January 1982.

3.5 New Delhi Municipal Council, has replaced New Delhi Municipal Committee, through an Act of 1994 and as such is at par with MCD established under DMC Act 1957.

3.6 The employees of MCD claimed payment of gratuity under the 1972 Act which was denied by MCD. However, this was decided by Courts against MCD. Thereafter, MCD sought an exemption u/s 5 of the Gratuities Act. The said exemption was granted by the Labour Ministry of the Central Govt. vide notification dt. 22.07.2005 (Copy enclosed as **Annexure-I See pages 172 - 174**).

3.7 Some of the provisions of the Gratuity Act 1972 are as under :-

***“Section 2(a)- “Appropriate Government” means –***

***(i) in relation to an establishment –***

***(a) belonging to, or under the control of, the Central Government,***

***(b) having branches in more than one State,***

***(c) of a factory belonging to, or under the control of the Central Government,***

***(d) of a major port, mine, oilfield or railway company, the Central Government,***

***(ii) in any other case, the State Government.***

1. ***“employee” means any person (other than an apprentice)***

***who is employed for wages, whether the terms of such employment are express or implied, is any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oil field, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any Rules providing for the payment of gratuity.***

***Section 5- Power to exempt.—***

***(1) The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.***

***(2) The appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act, if, in the opinion of the appropriate Government, such employee or class of employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.***

***(3) A notification issued under sub-section (1) or sub-section (2) may be issued retrospectively a date not earlier than the date of commencement of this Act, but no such notification shall be issued so as to prejudicially, affect the interests of any person.***

***Section 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.”***

3.8 The Delhi Water Supply and Sewerage Disposal Undertaking was a part of the Municipal Corporation of Delhi and after the 1993 amendment, it was decided to have a separate Board, now known as Delhi Jal Board. The Delhi Jal Board (DJB) was established through an Act of 1998 known as Delhi Water Board Act, 1998. The DJB as aforesaid was earlier a part of the MCD and separate Board was created through the Act of 1998 effective from 02nd April 1998. DJB also applied for exemption u/s 5 of the Gratuities Act, 1972. This exemption was granted by the Lt. Governor of Delhi through a notification dt. 12th June 2003. (Copy enclosed as **Annexure-II See pages 175 - 176**)

3.9 On 03rd April 1997, the Gratuities Act was extended to Educational Institutions. The teachers of the educational institutions claimed benefit of the Gratuities Act, 1972, but the Supreme Court held that they are not covered within the definition of term ‘employee’ as defined under the Gratuities Act, 1972 and are not entitled to the benefit of 1972 Gratuities Act. The Govt., thereafter, proposed an amendment in the definition of ‘employee’ through an Act of 2009 and the definition of ‘employee’ was amended to make it wider enough and in the statement of objects of the Bill, it was specifically mentioned that this is as a consequence of the Supreme Court decision holding that the teachers are not covered in the definition of term ‘employee’ under the Gratuities Act of 1972. After the amendment in the definition of term ‘employee’ in 2009 and looking to the case being pursued in the Court by the employees of MCD, in NDMC also, claims were made for the difference of the gratuity payable under the Gratuities Act 1972 and the CCS (Pension) Rules of 1972. The NDMC claimed before the appropriate authority that they are already governed by the CCS (Pension) Rules of 1972 which are more beneficial to the employees as they get in addition to the Gratuity, pension also. However, the authorities insisted that an exemption u/s 5 of the Gratuities Act is necessary. Unless the exemption is granted by the appropriate government, the NDMC is bound to pay the difference to its retired employees as the Payment of Gratuities Act, 1972, is a special legislation and has overriding effect over other statues.

3.10 The NDMC accordingly applied to the Central Govt. for exemption u/s 5 of the payment of Gratuities Act 1972. However, the NDMC’s application was rejected by the concerned Ministry vide their letter dt. 13th Sept. 2011. Copy of the NDMC’s application to the Govt. of India and copy of the rejection letter are at **Annexure-III and Annexure-IV See pages 177 - 182**.

3.11 The NDMC has been established under the NDMC Act 1994 and statement and objects of the establishment of the said Council is annexed in the Bill of 1994. A copy of the statement of objects and reasons is at Annexure-V. As can be seen from the said statement of objects and reasons, the NDMC Act 1994 is a special legislation which has been structured for NDMC area. The principal features of the proposed Bill governing NDMC were contained in the statement of objects and reasons of this Act, which is a special legislation and has been enacted after notifying exemptions and exceptions under Article 243 ZB of the Constitution. The statement of object and reasons also provides the important objectives of the Bill which are at **Annexure-V See pages 183 - 184.**

3.12 One of the reasons for the introduction of this legislation was to bring uniformity, as far as possible between the provisions in the DMC Act and NDMC Act. Thus the object of the Bill was also to bring uniformity, as far as possible in the functioning of the two local bodies, though not in the constitution of the two local bodies.

3.13 It is, therefore, surprising that the Delhi Jal Board which was a part of the MCD has been granted exemption u/s 5 by the Lt. Governor of Delhi and Delhi Municipal Corporation has been granted exemption u/s 5 by the Central Govt. However, in the case of NDMC, whose functions are not only similar but also more important than those of the Delhi Jal Board and Delhi Municipal Corporation, has been denied the exemption.

3.14 Functions of NDMC are more important, as Delhi Municipal Corporation does not have the distribution of electricity and water with them but NDMC, through a special legislation, has been given not only the powers of the normal municipal functions but also distribution of electricity and distribution of water in the NDMC area which is a seat of the Central Govt. The denial of exemption u/s 5 to NDMC is discriminatory under Article 14 of the Constitution.

1. **Detailed proposal on the subject**

4.1 The NDMC has more than 8000 retired employees who had earlier worked in the New Delhi Municipal Committee or now working in the New Delhi Municipal Council who had attained the age of superannuation. There are another about 12,000 employees who are working at present in the NDMC. If exemption is not granted, all these above 20,000 and additional intake of about 600 to 1000 employees per year would be governed by the Gratuities Act, 1972.

4.2 Large number of petitions are being filed before the competent authority claiming arrears of the difference between the Gratuities payment under the 1972 Act and those payable under the CCS (Pension) Rules. As per the Gratuity Act, 1972, they are also entitled to 10% interest on the amount so found payable from the date of the retirement. Large number of petitions are being filed by persons who attained the age of superannuation on or after January 1982 or their legal heirs. NDMC is finding it difficult to locate their personal files to verify their claims, made by the retired employees or their legal heirs. Each of these employees are claiming an estimated amount ranging from Rs.1.0 lacs to Rs.1.50 lac with interest from the date of retirement. If exemption is not granted, it is expected that in respect of persons who had attained the age of superannuation, additional liability would be about Rs.200 crores. There would also be perpetual liability for the persons who are now working in the NDMC.

4.3 As regards the teachers, as per section 11(r) of the NDMC Act 1994, the establishment, maintenance of, and aid to, schools for primary educations subject to such grants as may be determined by the Central Govt. from time to time, is obligatory function of NDMC and for such teachers, if gratuity is required to be paid, the Council will have to approach the Central Govt. for disbursement of gratuity payable to them. This is as per financial memorandum attached to the 2009 Bill where it has been provided that in respect of teachers of schools who are being given grants from the Govt. of India, Central Govt. would be liable to pay amount of the gratuity.

4.4 As per the definition term ‘employee’ in payment of Gratuity Act, 1972, employees of the Central Government and State Government are not covered for payment of Gratuity under 1972 Act. The New Delhi Municipal Council, has been established under the special enactment NDMC Act, 1994. Under this Act, there are four categories of posts Category-‘A’, Category-‘B’, Category-‘C’ and Category-‘D’. The posts of the Category-‘A’,’B’,’C’ & ‘D’ have been specified in section-34(4) of the NDMC Act, 1994 as under :-

*Section-34(4): In this section and in section-36 –*

*(i) “category-‘A’ post” means any post, which having regard to its scale of pay or emoluments, would, if such post had been in the Central Government, be classified as a Group-‘A’ post under the Central Government in accordance with the orders issued by that Government from time to time ;*

*(ii) “category ‘B’ post” means any post which having regard to its scale of pay or emoluments, would, if such post had been in the Central Government, be classified as a Group ’B’ post under the Central Government in accordance with the orders issued by that Government from time to time ;*

*(iii) “category ‘C’ posts” means any post, which having regard to its scale of pay or emoluments would, if such post had been in the Central Government, be classified as a Group ‘C’ post under the Central Government, in accordance with the orders issued by that Government from time to time ;*

*(iv) “category ‘D’ posts” means any post, other than a category ‘A’ or category ‘B’ or category ‘C’ post.*

4.5 In the MCD, there are Category-‘A’, Category-‘B’, Category-‘C’ posts and they had categorized U/s-90(8) of DMC Act, 1957 as under :-

In this section and in section-92 –

(i) “category ‘A’ post” means any post, which, having regard to its scale of pay or emoluments, would, if such post had been in the Central Government, be classified as a Group ‘A’ post under the Central Government, in accordance with the orders issued by that Government from time to time ;

(ii) “category ‘B’ post” means any post which, having regard to its scale of pay or emoluments, would, if such post had been in the Central Government, be classified as a Group ‘B’ post under the Central Government in accordance with the orders issued by that Government from time to time ;

(iii) “category ‘C’ post” means any post, other than a category ‘A’ or category ‘B’ posts.

4.6 Classification of posts in Central Govt. as per notification dt. dated 09th April 2009 as adopted by Council are as under :-

|  |  |  |
| --- | --- | --- |
| **SI.No.** | **Description of Posts** | **Classification of posts** |
| 1. (a) | A Central Civil post in Cabinet Secretary’s scale (Ks. 90000- fixed), Apex Scale (Ks. 80000-fixed) and Higher Administrative Grade plus scale (Ks. 75500-80000); and | - |
| (b) | A Central Civil post carrying the following grade pays Ks. 12000, Rs. 10000, Ks. 8900 and Ks. 8700 in the scale of pay of Ks. 37400-67000 in Pay Band-4, and Rs, 7600, Rs. 6600 and Rs. 5400 in the scale of pay of Rs. 15600-39100 in Pay Band-3 | Group A |
| 2. | A Central Civil post carrying the following grade pays Ks. 5400, Rs. 4800, Rs. 4600 and Ks. 4200 in the scale of pay of Rs. 9300-34800 in Pay Band-2. | Group B |
| 3. | A Central Civil post carrying the following grade pays :— Rs. 2800, Rs. 2400, Ks. 2000, Ks. 1900 and Rs. 1800 in the scale of pay of Rs. 5200-20200 in Pay Band-I. | Group C |
| 4. | A Central Civil post carrying the fo1owing grade pays :—  Rs. 1300, Ks. 1400, Ks. 1600, Rs. 1650 in the scale of pay of Ks. 4440-7440 in iS Scale | Group D  (till the posts are upgraded) |

4.7 Thus, Category-‘A’, Category-‘B’, Category-‘C’ and Category-‘D’ posts in NDMC and Category-‘A’, ‘B’ & ‘C’ posts in MCD have the same scale of pay and draw the same emoluments as the Central Government employees but for the purposes of payment gratuity, they are not been given the same treatment.

4.8 The exemption has to be given from retrospective effect. If exemption is given from a prospective effect, employees who have attained the age of superannuation from 1982 would be entitled to payment of the difference in gratuity. There are several decisions from the Court that such claims for more than three years are barred of limitations but the appropriate authority under Gratuity Act, 1972 are not accepting this plea and have informed our Advocates that whosoever will claim the benefit, they will be giving the benefit from 1982 itself with 10% interest. Their stand is either bring exemption U/s-5 or pay the gratuity alongwith interest.

4.9 The Council is paying pension and gratuity to its employees, as per Central Civil Services (Pension) Rules 1972. the gratuity is calculated at 15 days for each competed year of service. The month is of 30 days. In Gratuity Act 1972 the month is treated as of 26 days. The Gratuity in Pension Rules 1972 and Gratuity Act 1972 are as under:-

1. In Pension Rules Rs.2.5 lacs was payable from 1.4.95, Rs. 3.50 lacs from 1.1.96 and Rs.10 lacs from 1.1.2006
2. In Gratuity Act, 1972, it was Rs. 1.0 lacs upto 23.9.97, Rs.3.50 lacs from 24.9.97 and Rs.10.0 lacs from 10.5.2010.

4.10 Payments in Pension Rules of 1972 are thus more beneficial to NDMC employees. However, if gratuity has to be paid as per Gratuity Act 1972, there would be several cases, where excess payment has been made as per Pension Rules of 1972 as amended from time to time and this excess payment may have to be recovered with interest. Gratuity Act, 1972 cannot be interpreted to give difference, if any, with interest, but not to recover excess paid, if any.

4.11 Municipal Council of New Delhi has been maintaining a balanced budget. For payment of past arrears, from 1982 onwards of estimated amount of over Rs.200 cr., either grants from the government would be necessary or additional taxation would be required to meet the liability which has suddenly arisen under the 1972 Act from 1982 after a gap of about 40 years.

1. **Financial implications of the propoSAL**

If exemption is not granted, it is expected that in respect of persons who attained the age of superannuation, additional liability would be about Rs.200 crores.

1. **Implementation schedule with timeliness for each stage including internal processing**

N.A.

1. **Comments of the Finance Deptt. on the subject**

Finance Deptt. agrees to the proposal to seek Council’s direction in this matter as it involves huge financial implications.

1. **Comments of the department on comments of Finance Deptt. Finance Deptt.**

The matter is being placed before the Council

1. **Legal implications of the subject**

N.A.

1. **Details of previous council resolutions, existing law of parliament and assembly on the subject**

N.A.

1. **Comments of the Law Deptt.**

This is to place before the Council, rejection of application of Council for exemption u/s 5 of the Payment of Gratuity Act, 1972 and seek further direction. If exemption is not granted, it will have huge financial liability.

1. **Comments of the department on the comments of the Law Deptt.**

The matter is being placed before the Council.

1. **Certification by the Department that all the central vigilance commission (cvc) guidelines have been followed while processing the case.**

N.A.

1. **Recommendation**

The matter is brought to the notice of the Council for such directions as may be considered necessary. It is proposed to again approach the Central Govt. for exemption and if exemption is again denied to approach the High Court for discrimination in denying exemption to NDMC while giving the same to MCD and DJB.

1. **Draft resolution**

**COUNCIL’S DECISION**

Council discussed the issue at length and resolved that a Sub-committee be constituted by the Chairperson, NDMC to examine the issue and give its recommendations with one month.