

(2016) 03 GUJ CK 0092

In the Gujarat High Court

Case No : Special Civil Application No. 9464 of 1994.

Ambajimata Devsthan Trust

APPELLANT

Vs

Samaram Bhagaji and Others

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4

Citation : (2016) 149 FLR 685

Hon'ble Judges : K.M. Thaker, J.

Bench : Single Bench

Advocate : J.D. Ajmera, Advocate, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Thaker, J.(Oral) - When the petition is called out and taken up for hearing, learned advocate for the petitioner is not present. Any request for passover or adjournment is also not made. Despite the fact that the petition is pending since 1994, no one has cared to attend hearing.

2. The petition was listed in the Warned List on previous three occasions. Moreover, on 14.3.2016, the Court had put a Notice and intimated learned advocates for the concerned parties that:

"On 16.3.2016, the matters, which were notified in the Warn List (which was earlier notified on 2.3.2016 and 9.3.2016), will be taken up by the Hon'ble Court from 2:30 p.m. onwards."

3. In this view of the matter, the Court is not inclined to adjourn the hearing of present petition and the Court considers it appropriate to decide the petition on merits after considering the material on record, even in absence of learned advocate for the petitioner.

4. The petitioner has brought under challenge the order dated 29.3.1994 passed

by the Appellate Authority appointed under the Payment of Gratuity Act, 1972 in Appeal No.8 of 1993 and the order dated 23.11.1992 passed by the Controlling Authority appointed under the said Act.

5. By virtue of one of the orders impugned in present petition, the Controlling Authority held that the claimant workman is entitled for payment of gratuity and therefore directed the employer to pay amount of Rs. 3,000/- towards gratuity to the workman.

6. After remand of the proceedings on occasions, the Appellate Authority ultimately, in the last round of litigation, confirmed the order of the Controlling Authority and directed the employer to pay amount of gratuity to the claimant workman.

7. The Appellate Authority confirmed the order dated 23.11.1992 passed by the Controlling Authority.

8. Aggrieved by the said order dated 23.11.1992, present petition has taken out present petition.

9. For more than one reasons, the petition does not deserve to be entertained.

10. Firstly, the petition does not deserve to be entertained and this Court is not inclined to exercise discretionary jurisdiction and entertain present petition in view of the fact that the amount involved in this proceeding is petty amount of Rs. 3,000/-.

10.1 Ordinarily, this Court does not exercise discretionary jurisdiction in respect of the petitions which involve petty claim i.e. amount less than Rs. 30,000/-.

10.2 In present case, the claim amount which is directed to be paid towards gratuity, is only Rs. 3,000/- and therefore, the Court is not inclined to exercise discretionary jurisdiction.

11. Secondly, the petition does not deserve to be entertained also for the reason that the petitioner has brought under challenge two orders, wherein concurrent findings of fact are recorded by the Controlling Authority under the Act and the Appellate Authority under the Act.

11.1 When two authorities have recorded concurrent findings of fact and held that the workman is entitled for gratuity, in that event, the Court would not be inclined to entertain the petition unless any substantial issue of law or jurisdiction or material and apparent error in the order/s is shown by the petitioner.

11.2 In present case, the petitioner has failed to demonstrate any material error of law against the said two concurrent orders by the authorities and therefore also the petition does not deserve to be entertained and this Court is not inclined to entertain the petition.

12. The third reason in light of which the Court is not inclined to entertain, is that

the petitioner has sought to challenge two orders recording concurrent findings, wherein the Controlling Authority has, after analyzing and appreciating oral as well as documentary evidence on record, reached to the conclusion and recorded that the concerned workman fulfilled and complied the eligibility condition / criteria.

12.1 The Controlling Authority, on appreciation of evidence, reached to the conclusion that the concerned workman had completed 5 years of service. Having reached such conclusion, the Controlling Authority held that the workman is entitled for gratuity. The said conclusion is recorded on the basis of material on record and after appreciation of evidence. The Controlling Authority has recorded sufficient and cogent reasons, after appreciation of evidence, with regard to the such conclusion and the findings are confirmed by the Appellate Authority.

12.2 Under the circumstances, this Court would not interfere with such conclusion and the Court would not enter into process of re-appreciation of evidence.

13. It is also relevant to take into account that respondent workman has undergone rounds of litigations in view of the appeals filed by present petitioner (against the decision of the Controlling Authority) and in view of the orders remanding the proceedings passed by the Appellate Authority. From the details mentioned by the petitioner in the memo of petition, more particularly in paragraphs No.3 to 6 it has emerged that the respondent workman had to undergo at least four rounds of litigations before the Controlling Authority and the Appellate Authority. Ultimately, the above-mentioned two orders recording concurrent findings of fact came to be passed.

14. Both the authorities have held that the concerned workman is entitled for payment of gratuity to the tune of Rs. 3,000/-.

15. On reading the memo of petition, any ground to interfere with such findings of fact is not made.

16. As mentioned earlier, the petitioner has failed to make out any ground to demonstrate that the order suffers from any error of law or jurisdiction.

17. Consequently, the petition fails and deserves to be rejected and is accordingly rejected. Orders accordingly.