

(2015) 04 GUJ CK 0085

In the Gujarat High Court

Case No : Special Civil Application Nos. 3252 to 3258, 3259 to 3263, 3418, 4070, 4975, 8853 to 8857, 8859 to 8866, 8858 and 8867 of 2014

Ashokbhai Chotabhai Barot

APPELLANT

Vs

Nadiad Nagar Palika and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 19, 19(1), 19(2), 19(4), 19(6)

Citation : (2015) 04 GUJ CK 0085

Hon'ble Judges : N.V. Anjaria, J

Bench : Single Bench

Advocate : Mukesh H. Rathod, for the Appellant; Mehulsharad Shah, Advocates for the Respondent

Judgement

N.V. Anjaria, J.—All the captioned petitions are in group and they are cognate. The first 15 petitions as captioned, are filed by the respective employees wherein they pray for a direction to enforce Recovery Certificates issued by the Controlling Authority under the Payment of Gratuity Act, 1972.

1.1 The other captioned petitions which are virtually cross petitions, are filed by the Municipality in which it has challenged the orders passed by the Controlling Authority in their respective cases, ordering payment of the gratuity to them. That is how all the aforesaid petitions interact and forms a group. For instance, corresponding to the first captioned Special Civil Application No. 3252 of 2014 filed by the petitioner-employee, the petition filed by the Municipality is Special Civil Application No. 8856 of 2014.

2. Since all the petitions involve similar facts and identical issues, they were heard together and are being considered simultaneously by this common judgment.

3. The relevant details in respect of each of the petitions by the employees, the corresponding petitions by the Municipality, the date of order by the Controlling

Authority, date of Recovery Certificate, amount of gratuity, etc., are listed in the tabular form below.

3.1 So as not to unnecessarily burden the judgment, Special Civil Application No. 3252 of 2014 is treated as representative for the purpose of stating relevant facts. In the said petition filed on 28th February, 2014, the petitioner-employee has prayed for direction to recover amount of Rs. 01,61,404/- under Recovery Certificate dated 11th October, 2011 issued by the Controlling Authority pursuant to its order dated 20th June, 2011 in Gratuity Application No. 07 of 2011. The petitioner was working as Driver with the respondent-Municipality from 08th April, 1985 and he stood retired with effect from 31st July, 2009. The respondent-Municipality paid a sum of Rs. 01,21,452/- on 14th October, 2010 to the petitioner. Thereby the Controlling Authority directed the employer-Nadiad Municipality to pay the differential amount of gratuity with interest at 10% from 15th October, 2010. It further directed to pay 10% interest from 01st August, 2009 to 14th October, 2010 on the total amount of admissible gratuity Rs. 02,42,904/-.

3.2 It appears that a settlement award dated 17th February, 1975 was arrived at between the Municipality and its employees and in terms of the settlement, an award was pronounced by the Industrial Tribunal on 18th February, 1975. As per the said award, the employees of the Municipality are to be paid the gratuity equivalent to the amount of one month's salary for each completed years of service subject to 25 months' salary. It further appears that thereafter the employees again raised demands which were referred to, to the Tribunal being Reference (IT) No. 200 of 1977. In that Reference also, a settlement was arrived at between the parties on 09th March, 1978 and on that basis the Industrial Tribunal passed award on 13th March, 1978. As per the said award, the respondent-Municipality agreed to adopt pay-scales as per the Desai Pay Commission.

3.3 The petitioner-employees approached the Controlling Authority under the Payment of Gratuity Act, 1972 by filing Gratuity Application No. 07 of 2001 and other respective Applications. The petitioners claimed the amount of gratuity as per the aforesaid settlement award and prayed for paying differential amount as well as interest on delayed payment. The Controlling Authority allowed those Applications. The Municipality did not file any Appeal before the Appellate Authority against the orders of Controlling Authority. The Recovery Certificate in question came to be issued by the Controlling Authority. The petitioner had to make a representation to the Collector on 19th November, 2011 since the recovery was not being effected. It appears that the Collector addressed a letter dated 29th November, 2011 asking the petitioner to approach respondent No. 3-Mamlatdar, whereupon the petitioner addressed letter dated 21st February, 2012 to the Mamlatdar. Since noting yielded, the petitioner addressed yet another letter dated 01st October, 2013 to the Collector pointing out that even the Letters Patent Appeal filed by the Municipality before the Supreme Court was

dismissed on 04th September, 2013.

3.4 Posing here, in Special Civil Application No. 8856 of 2014 filed by the Nadiad Municipality corresponding to the case in aforesaid Special Civil Application No. 3252 of 2014, what was prayed was to set aside the aforesaid order dated 20th July, 2011 passed by the Controlling Authority under the Payment of Gratuity Act in Application No. 07 of 2011 and to further set aside the Recovery Certificate dated 11th October, 2011. The said petition by the Municipality came to be filed on 16th July, 2014 and the affidavit therein was affirmed on 03rd June, 2014. The other Special Civil Applications filed in the other corresponding cases prayed similar to set aside the respective order passed by the Controlling Authority and to set aside the Recovery Certificate concerned.

3.5 The case of the Municipality in its petitions with the prayers as above, was inter alia that the petitioner had already paid amount of gratuity. In the pleadings the Municipality referred to filing of Special Civil Application No. 799 of 2014 as well as Special Civil Application No. 4236 of 2014 by it. The contention was that the entitlement for gratuity contemplated under the settlement award in Reference (IT) No. 174 of 1974 could not be availed to the employee in as much as the said award was passed in the year 1978 and stood terminated as envisaged in Section 19 of the Industrial Disputes Act, 1947.

4. Learned advocate Mr. Mukesh Rathod submitted that, there is no justification on part of the respondent authorities in not enforcing Recovery Certificates and to recover the amount of gratuity payable to the employees. He submitted that even though statutory appeal was available under the Payment of Gratuity Act, the Municipality did not chose even to file the appeal against the order of the Controlling Authority in the respective cases. Thus, submitted learned advocate, that the order passed by the Controlling Authority was accepted by the Municipality. It was submitted further that now the ground sought to be raised by the Municipality to object the payment as per Controlling Authority's order, is that the settlement award before the Industrial Tribunal reached in the year 1974 on the basis of which gratuity is ordered by the Controlling Authority could not be treated in force. He submitted that this very contention was raised by the Municipality in the group of petitions filed by similarly situated employees which came to be dismissed by this Court; Letters Patent Appeal was also dismissed and the Municipality has failed upto the Apex Court. He relied on those judgments and orders being order dated 18th August, 2010 passed by the learned Single Judge dismissing group of petitions being Special Civil Application No. 21865 of 2007 and others, decision in the Letters Patent Appeal filed thereagainst being Letters Patent Appeal No. 581 of 2011 and others decided by judgment dated 20th April, 2011 and the dismissal of the Special Leave Petition against it. It was submitted that the case of the Municipality having fallen flat and failed upto the highest court, no contention survive or could be raised in the present proceedings. The aforesaid orders relied on by learned advocate for the petitioner-employees are referred to in the later part of this judgment.

4.1 Learned advocate Mr. Mehul Sharad Shah for the respondent-Municipality relied on the facts and contentions stated in the affidavit-in-reply filed by the Chief Officer. Therein it was accepted that the Municipality has adopted the pay-scales of Desai Pay Commission as well as adopted Fourth Pay Commission's recommendation, and the salary of the Municipal employees was revised in accordance with the said Pay Commission recommendations. In the affidavit-in-reply, the following was contended along with raising other contentions.

"The Nagarpalika thereafter requested the government to send Reference (I.T.) No. 174/1974 and 200/1977 to the Industrial Tribunal stating that more than two years have elapsed after passing of the above consent award and thereafter due to implementation of Desai Pay Commission and Fifth Pay commission's recommendations, salaries of the employees have been revised to a great extent and therefore the terms of the reference may be referred to the Government on this particular issue of payment of gratuity @ 16.5 months' salary and a request was also made to send the above terms of the reference to the Tribunal. The government sent the above referred to references to the Assistant Labour Commissioner and the conciliation Officer, Nadiad who in turn by letter dated 09.04.2004 called upon the petitioner as well as the authorised representative of the Union to remain present for hearing on 14.06.2014. On the date of hearing nobody from the Union remained present as it appears that there was no existence of the Union in the year 2004. Thereafter, by a communication dated 17.06.2004 the Assistant Labour Commissioner considering the provisions of Section 19(6) of the Act informed the Nagarpalika that in view of the notice dated 04.12.2003, the award is terminated and therefore, there is no question of shortening or continuing the period of the award and no reference is required to be made. Thus, in view of the above decision dated 17.06.2004 and the provisions of sub-section (6) of Section 19 of the Act, it is abundantly clear that the award was legally terminated and employees retired after 04.12.2003 are not entitled to the benefit of the consent award."

4.2 Learned advocate for the respondent-Municipality made following further submissions-(i) the settlement award in the Reference (IT) No. 174 of 1974 and Reference (IT) No. 200 of 1977 could not be relied on by the employees for determining the gratuity amount on the basis of the said settlement, (ii) on 04th December, 2003, the Municipality had given notice for termination of the said consent award under Section 19 of the Industrial Disputes Act, 1947, (iii) learned advocate relied on provision of sub-Section (2) of Section 19 of the Industrial Disputes Act to submit that once the notice was given with an intention to terminate, after the expiry of the period contemplated, the Municipality would be unbound by the settlement award, (iv) all those employees who retired after 04th December, 2003 are not entitled to be benefited out of the said settlement award and cannot be granted gratuity on that basis, (v) the settlement award does not hold the field and the rights of the parties are not governed thereunder. Learned advocate for the Municipality elaborated his contentions by inviting attention to copy of said notice produced at Page 15, and further pointing out

application made to the competent authority for referring the dispute in respect of the applicability of the settlement award, it was submitted that the award was old and thereafter pay revision took place. He submitted that at that juncture in the year 2004, the competent labour authority did not refer the request for making Reference, however now the appropriate government has even made a Reference to the Industrial Tribunal as per Notification dated 07th May, 2014 and the issue whether the settlement award in question is operative in law or not is a subject matter of Reference before the competent labour forum. In that view it was submitted, that employee could not seek enforcement of Recovery Certificate. Learned advocate for the Municipality further relied on order dated 08th May, 2014 passed by this Court.

4.3 Learned advocate for the Municipality further submitted that Municipality filed Special Civil Application No. 799 of 2014 praying for making Reference in respect whether the award in Reference (IT) No. 174 of 1974 was liable to be terminated. It was submitted that thereupon the appropriate government by order dated 07th May, 2014 referred the dispute to the Industrial Tribunal and subsequently similar dispute in respect of award in Reference (IT) No. 200 of 1997 was also referred to for adjudication by issuing addenda modification. Learned advocate further relied on another order dated 09th May, 2014 in pending Special Civil Application No. 4236 of 2014 in Nadiad Municipality Vs. Kishorbhai Vishnuprasad Desai was adverted to for supporting the contentions raised. It was submitted that in Kishorbhai Vishnuprasad Desai (supra) the Court stayed the order of the Controlling Authority taking note of Notification dated 07th May, 2014 issued by the appropriate government referring the dispute and further that the same was reflected in the order dated 08th May, 2014 passed in Special Civil Application No. 799 of 2014. Learned advocate for the Municipality relied on the said order in Kishorbhai Vishnuprasad Desai (supra) and submitted that in the said case the Court observed that in the facts and circumstances, payment in addition to what is already paid would be contrary to the policy of Government. He submitted that the Court also observed about the undertaking given by the employee concerned to the Municipality.

4.4 The contentions in nutshell coming forth on behalf of the Municipality are that since it has given notice for termination of the settlement award on 04th December, 2003, the settlement award could not be resorted to by the other side to bind the Municipality and in any case, it was submitted that those who retired after 04th December, 2003 could not claim the gratuity on the basis of the providence in the said settlement award. It was the submission that now even the Reference is pending and this Court has taken notice of the said development in the aforesaid two petitions while passing orders therein.

5. Considered the facts, the controversy they encompass and the contentions canvassed by the parties. Therefrom it emerged undeniably that the very issue arise in the present group of petitions and was subject matter of consideration by this Court in previously filed Special Civil Application No. 21865 of 2007 and

cognate matters. They were filed by similarly situated employees of the Nadiad Municipality. In those petitions, they prayed for setting aside of orders of Controlling Authority as well as the Appellate Authority under the Payment of Gratuity Act, 1972, and for directing the Authorities concerned to implement the same consent award dated 18th February, 1975 in Reference (IT) No. 174 of 1974. Those petitioners also had retired after 04th December, 2003 and had claimed their gratuity on the basis of the settlement awards. The Municipality had filed appeals before the Appellate Authority, but failed.

5.1 This Court by common judgment dated 18th August, 2010 dismissed the aforesaid petitions. From the below extracted paragraphs of the aforesaid judgment dated 18th August, 2010, it could be seen that identical contentions were raised.

"Mr. Mehul Sharad Shah and Mr. B.Y. Mankad, learned advocates for the respective respondent-Municipality, have submitted that on the basis of the earlier consent terms dated 17th February 1974, the award dated 18th February 1975 was passed, and therefore, the petitioners are not entitled to the benefit of amount of gratuity; that the moment at which the award is terminated by the respondent-Municipality under Section 19(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), the effect of award is gone and, thereafter the respondent-Municipality is not duty bound to implement the award in question. Thus, they have prayed for dismissal of present petitions. The learned advocates for the respondent-Municipality have relied upon the decisions (1) in the case of Gujarat State Road Transport Corporation Vs. Karsan Meghji Dabhi, (1997) 2 GLR 1396 : (2000) 3 LLJ 1174 and (2) in the case of Master Silk Mills Pvt. Ltd. Vs. Ibrahim Habib, (2000) 3 LLJ 672 .

Having considered the contentions raised by the learned advocates for the respective parties, averments made in the petition as well as reply affidavits and the documentary evidence produced on record, it transpires that the settlement was arrived at between the parties and the consent award was passed accepting the said settlement. It is required to be noted that the said terms of settlement or award have been terminated by the respondent-Municipality in exercise of powers under Section 19(2) of the Act. However, it is required to be noted that an award passed by the Tribunal can be modified or terminated by such Tribunal or its higher forum only and not by the authority like the respondent-Municipality since it has not only terminated the consent terms dated 17th February 1974 but also the award dated 18th February 1975 passed by the Tribunal." (Paras 6 and 7)

5.2 Section 19(2) of the Industrial Disputes Act also pressed into service. The Section provided that the settlement under Section 19(1) shall be binding for the period agreed upon between the parties and in absence of the period agreed upon, for six months and after expiry of the period aforesaid, until the expiry of two months from the date, notice would be required to be given of an intention to terminate by one party to the other parties to the settlement. As is contended

herein, it was submitted in those group of petitions also that the settlement award in question was terminated under Section 19(2) of the Act. The Court negated the contention and held that the said provision would not be applicable. It was held as under,

"It is required to be noted that as per the arguments advanced by the learned advocates for the respondent-Municipality, the respondent-authority has terminated the said terms of settlement in light of aforesaid provision, however, it is required to be noted that in the present case, the said terms of settlement were placed before Tribunal in a pending Reference and the Industrial Tribunal passed the award in terms of the said terms of settlement. In view of aforesaid provision, where the time limit is not prescribed, the respondent-Municipality can terminate the consent terms, however, in the present case the said terms of settlement had taken the shape of an award, which is required to be modified or terminated by the competent Court or the Tribunal itself and the award cannot be terminated by the respondent-Municipality. Further, the contention of the petitioners that the provisions of Section 19(4) of the Act will prevail over the provisions of Section 19(2) of the Act is also required to be accepted. However, in the present case, when the award is passed by the Tribunal accepting the terms of settlement, the said provisions would not be applicable in the present case.

Even this Court while dealing with Special Civil Application No. 10298 of 2004 filed by one of the employees against the respondent-Municipality has negated the contention of the respondent-Municipality that on revision of pay commission, the rights of the employees flowing from the said award are nullified, which itself goes to show that the said award was in existence on the relevant day." (Paras 6.1 and 6.2)

5.2.1 It was further observed,

"The contention of the petitioners that the respondent-Municipality has granted 25 months" gratuity to other similarly situated employees in the years 2007 and 2008 and, therefore, they may also be granted the same on the ground of parity, is required to be accepted. It is pertinent to note that some of the petitioners had made application to the respondent-Municipality under the Right to Information Act, 2005 seeking information as to whether any employee has been granted the benefit of 25 months" gratuity after the year 2002 or not. In pursuance of the said applications, the petitioners received the said information vide communications dated 20th September 2007 as well as 28th August 2008, whereby the respondent-authority has categorically stated that total 16 (sixteen) employees, as stated in the statement made in the said communication dated 28th August 2008, have been granted the benefit of 25 months" gratuity and commuted pension.

So far as the decisions cited by the learned advocates for the respondent-Municipality are concerned, the facts of the present case are completely different from the cited cases. Further, it is not at all held that the application under the

Gratuity Act as is made by the petitioners is prohibited. It is thus required to be noted that the ratio of the said decisions do not help the respondent-Municipality. Here it would be beneficial to reproduce the relevant paragraphs of the decision in the case of Gujarat Agricultural University (supra) relied upon by the petitioners, whereby it has categorically held by the Apex Court that the contract of service or the conditions of service provided in the provided in the settlement holds the field until new lawful settlement is brought into being...." (Paras 6.3 and 6.4)

5.3 Decision in Gujarat Agricultural University Vs. All Gujarat Kamdar Karmachari Union, AIR 2010 SC 2507 : (2009) 123 FLR 377 : (2009) 10 JT 449 : (2009) 15 SCC 335 : (2010) 1 SCC(L&S) 580 : (2009) 11 SCR 875 : (2010) 1 SLR 621 was relied on by the Court in which it was categorically held that the contract of service or conditions of service provided in the settlement holds the field until new settlement is lawfully brought into existence.

5.4 The Letters Patent Appeal No. 581 of 2011 and cognate Appeals against the said common oral judgment came to be dismissed on 20th April, 2011. The Letters Patent Appeal negated the contentions of the Municipality holding as under,

"3. The contention of the appellant Municipality is that they have terminated the said both the Awards on 4th December, 2003 by giving notice to the Union showing their intention to terminate the settlement and Award. The argument of the learned counsel appearing for the appellant is that since the notice for termination of settlement and Award has been given, the Award is no more in existence and the gratuity could not be paid to the respondents in pursuance of the earlier Awards. The learned counsel appearing for the appellant has urged that pursuant to the application made by the Municipality to the Government to refer the matter to appropriate Government, the Reference was not made as in spite of the notice, the respondents were not present. This question cannot be raised by the appellants before us as it was not raised before the learned Single Judge. There were no pleadings before the learned Single Judge and there was no material found before the learned Single Judge and for the first time, this material has been found in these Appeals. It has been repeatedly held by the Apex Court and in case of Rajasthan Pradesh V.S. Sardarshahar and Another Vs. Union of India (UOI) and Others, (2010) 6 JT 306 : (2010) 6 SCALE 107 : (2010) 4 SLR 75 : (2010) 6 UJ 2857 : (2010) AIRSCW 6306 : (2010) AIRSCW 3660 : (2010) 4 Supreme 449 and more particularly in para-15 that in the writ petition or counter affidavit, not only the facts but also evidence in proof of those facts has to be pleaded and annexed to it. In the present case, there was no foundation laid in the counter affidavit and no material was annexed by the Municipality. Therefore, the learned Single Judge was not in a position to appreciate the argument of the learned counsel for the appellant in absence of any material. The material has been filed for the first time in this Appeal and it cannot be considered as it was not placed before the learned Single Judge. The

appellants had not filed any review petition before the learned Single Judge, that any material was ignored by the learned Single Judge and which could not be considered by him. For the aforesaid reasons, we do not find any reason to accept the argument of the learned counsel for the appellant.

5.5 Both learned Single Judge in his common judgment dated 18th August, 2010 as well as the Division Bench while dismissing the Letters Patent Appeals as per the aforesaid judgment, relied on decision of the Supreme Court in Gujarat Agricultural University (*supra*) and quoted the following paragraphs from the said judgment.

"19. The question now to be considered is whether the settlement dated August 22, 1980 became inoperative on expiry of its tenure for which a notice was given by Banaskantha General Workers Union. The answer has to be in the negative. In the case of Life Insurance Corporation of India vs. D.J. Bahadur and Others, this Court held:

"34. The core question that first falls for consideration is as to whether the Settlements of 1974 are still in force. There are three stages or phases with different legal effects in the life of an award or settlement. There is a specific, period contractually or statutorily fixed as the period of operation. Thereafter, the award or settlement does not become non est but continues to be binding. This is the second chapter of legal efficacy but qualitatively different as we will presently show. Then comes the last phase. If notice of intention to terminate is given under Section 19(2) or 19(6) then the third stage opens where the award or the settlement does survive and is in force between the parties as a contract which has superseded the earlier contract and subsists until a new award or negotiated settlement takes its place. Like nature, law abhors a vacuum and even on the notice of termination under Section 19(2) or (6) the sequence and consequence cannot be just void but a continuance of the earlier terms, but with liberty to both sides to raise disputes, negotiate settlements or seek a reference and award. Until such a new contract or award replaces the previous one, the former settlement or award will regulate the relations between the parties. Such is the understanding of industrial law at least for 30 years as precedents of the High Courts and of this Court bear testimony. To hold to the contrary is to invite industrial chaos by an interpretation of the ID Act whose primary purpose is to obviate such a situation and to provide for industrial peace. To distil from the provisions of Section 19 a conclusion diametrically opposite of the objective, intendment and effect of the section is an interpretative stultification of the statutory ethos and purpose. Industrial law frowns upon a lawless void and under general law the contract of service created by an award or settlement lives so long as a new lawful contract is brought into being. To argue otherwise is to frustrate the rule of law. If law is a means to an end--order in society--can it commit functional hara-kiri by leaving a conflict situation to lawless void?"

20. It is an admitted position that no new settlement has been entered between the employer and the workmen subsequently nor any award has replaced the

settlement dated August 22, 1980. In this view of the matter, it has to be held that the settlement dated August 22, 1980 continues to regulate the conditions of service of the workmen covered thereby. The contract of service or the conditions of service provided in the settlement holds the field until new lawful settlement is brought into being. As a matter of fact, the employer was well aware of this legal position and, therefore, the daily rated labourers governed by the settlement were continued to be given only a day off in a week until the change was effected vide circular dated October 3, 1991. Thus, the Industrial Tribunal as well as the High Court cannot be said to have erred in relying upon the settlement dated August 22, 1980."

5.6 It is further not in dispute that the matter was carried before the Supreme Court by filing Special Leave to Appeal (Civil) No. 604 of 2012 which came to be dismissed on 04th September, 2013. Review Application was filed which is also dismissed by the Apex Court on 23rd May, 2014. Learned advocate for the respondent-Municipality could not dispute the factum of dismissal of Special Leave to Appeal as well as Review Application before the Supreme Court.

6. When in respect of group of employees similarly situated, the very issue and the dispute stand finalized upto the Apex Court, where the set of facts involved and the contentions raised were similar, the re-agitation of the very contentions could not be permitted. The present petitioner-employees belong to same class of persons in whose cases, the controversy has finally rested as above on merits. The contentions which are a total repeat could not be countenanced. Learned advocate for the Municipality could raise and re-raise his same contentions harping to be accepted only by becoming blissfully oblivious to fundamentals of judicial discipline and law of precedent.

6.1 What was contended by learned advocate for the Municipality to attempt to persuade the Court to take a different view, was that now as per Notification dated 07th May, 2014, the appropriate government has made a Reference with regard to the afore-mentioned settlement award. The terms of Reference seen from the copy of the Notification produced by learned advocate for the Municipality, is that whether the award in Reference (IT) No. 174 of 1974 and in Reference (IT) No. 200 of 1977 were liable to be terminated as in the implementation thereof several issues relating to salary of the employees have been cropping up; whether the gratuity amount could be determined upon Fifth Pay Commission's recommendation. The argument of learned advocate for the Municipality that because of the said dispute having been referred to for adjudication, the benefit of settlement award cannot be given to the petitioners, in no manner hold good. The very fact that the issue about the terminability of award or whether is required to be terminated is referred to for adjudication, implies that the settlement award in question is in operation. The same is operative and the benefit thereunder could not be denied.

6.2 The contention was sought to be raised before this Court that the facts relating to the notice given by the Municipality in the year 2003 terminating the

consent award were not before the learned Single Judge. Since the said aspect is brought on record in this group of petitions, a different view could be taken. The Division Bench in the judgment of the Letters Patent Appeals dealt with the said contention and did not permit the appellant-Municipality to raise the same. Even on that count, the say of the Municipality could not be accepted. This is for the reason that the said contention of the Municipality has now palled into insignificance and has become irrelevant, since the appropriate government has made a Reference as noted above. It was never relevant, and now hardly left relevant that the Municipality had given notice of termination in the year 2003. Therefore, the said contention has to be rejected outright.

6.3 In placing reliance on Kishorbhai Vishnubhai Desai (supra), learned advocate could only misled and misdirected himself. The order in that case dated 09th May, 2014 which was relied on, was an interim order passed while issuing Rule in the petition. Interim orders do not have precedential value and binding effect. In State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha, AIR 2009 SC 2249 : (2009) 4 JT 127 : (2009) 4 LLJ 279 : (2009) 4 SCALE 355 : (2009) 5 SCC 694 : (2009) 2 SCC(L&S) 109 : (2009) 4 SCR 467 : (2009) 2 SLJ 449 : (2009) 6 SLR 355 : (2009) 3 UJ 1110 : (2009) AIRSCW 5411 the Supreme Court stated that an interim order which does not finally and conclusively decide issue cannot be a precedent. It was observed that any reasons assigned in support of such non-final interim order containing prima-facie findings, are only tentative. Any interim directions issued on the basis of such prima-facie findings are temporary arrangement so that the matter does not become a fait accompli before final hearing. It is also well settled that nor a party can be allowed to take benefit of interim order which was passed pending a final decision in a case. The contention of learned advocate with regard to the order in Kishorbhai Vishnuprasad Desai (supra) is accordingly stated to be rejected.

6.4 Therefore the present petitioner-employees constitute the same class with that of petitioners of aforesaid writ petitions and the decision therein which culminated upto the Supreme Court against the Municipality with re-affirmation of the position that the petitioner-employees are entitled to receive the benefit of gratuity as per the consent award. The order passed by the Controlling Authority directing the payment of gratuity to the petitioners in accordance with the said formula and on the basis of the consent award in question did not book error in any of the case of the petitioners.

7. For the aforesaid reasons and discussion, following order is passed.

(i) Special Civil Application No. 3252 of 2014 is allowed in terms of paragraph 11(A) and it is declared that inaction on the part of respondents authorities in not implementing and enforcing Recovery Certificate dated 11th October, 2011 (Annexure-A to the petition) is hereby declared illegal;

(ii) Special Civil Application No. 3253 of 2014 is allowed in terms of paragraph 11(A) and it is declared that inaction on the part of respondents authorities in

not implementing and enforcing Recovery Certificate dated 21st October, 2011 (Annexure-A to the petition) is hereby declared illegal;

(iii) Special Civil Application No. 3254 of 2014 is allowed in terms of paragraph 11(A) and it is declared that inaction on the part of respondents authorities in not implementing and enforcing Recovery Certificate dated 05th August, 2011 (Annexure-A to the petition) is hereby declared illegal;

(iv) Special Civil Application No. 3255 of 2014 is allowed in terms of paragraph 11(A) and it is declared that inaction on the part of respondents authorities in not implementing and enforcing Recovery Certificate dated 05th August, 2011 (Annexure-A to the petition) is hereby declared illegal;

(v) Special Civil Application No. 3256 of 2014 is allowed in terms of paragraph 11(A) and it is declared that inaction on the part of respondents authorities in not implementing and enforcing Recovery Certificate dated 21st October, 2011 (Annexure-A to the petition) is hereby declared illegal;

(vi) Special Civil Application No. 3257 of 2014 is allowed in terms of paragraph 11(A) and it is declared that inaction on the part of respondents authorities in not implementing and enforcing Recovery Certificate dated 11th October, 2011 (Annexure-A to the petition) is hereby declared illegal;

(vii) Special Civil Application No. 3258 of 2014 is allowed in terms of paragraph 11(A) and it is declared that inaction on the part of respondents authorities in not implementing and enforcing Recovery Certificate dated 05th August, 2011 (Annexure-A to the petition) is hereby declared illegal;

(viii) Special Civil Application No. 3259 of 2014 is allowed in terms of paragraph 11(A) and it is declared that inaction on the part of respondents authorities in not implementing and enforcing Recovery Certificate dated 11th October, 2011 (Annexure-A to the petition) is hereby declared illegal;

(ix) Special Civil Application No. 3260 of 2014 is allowed in terms of paragraph 11(A) and it is declared that inaction on the part of respondents authorities in not implementing and enforcing Recovery Certificate dated 21st October, 2011 (Annexure-A to the petition) is hereby declared illegal;

(x) Special Civil Application No. 3261 of 2014 is allowed in terms of paragraph 11(A) and it is declared that inaction on the part of respondents authorities in not implementing and enforcing Recovery Certificate dated 21st October, 2011 (Annexure-A to the petition) is hereby declared illegal;

(xi) Special Civil Application No. 3262 of 2014 is allowed in terms of paragraph 11(A) and it is declared that inaction on the part of respondents authorities in not implementing and enforcing Recovery Certificate dated 21st October, 2011 (Annexure-A to the petition) is hereby declared illegal;

(xii) Special Civil Application No. 3263 of 2014 is allowed in terms of paragraph 11(A) and it is declared that inaction on the part of respondents authorities in

not implementing and enforcing Recovery Certificate dated 05th August, 2011 (Annexure-A to the petition) is hereby declared illegal;

(xiii) Special Civil Application No. 3418 of 2014 is allowed in terms of paragraph 11(A) and it is declared that inaction on the part of respondents authorities in not implementing and enforcing Recovery Certificate dated 15th December, 2011 (Annexure-A to the petition) is hereby declared illegal;

(xiv) Special Civil Application No. 4070 of 2014 is allowed in terms of paragraph 11(A) and it is declared that inaction on the part of respondents authorities in not implementing and enforcing Recovery Certificate dated 21st October, 2011 (Annexure-A to the petition) is hereby declared illegal;

(xv) Special Civil Application No. 4975 of 2014 is allowed in terms of paragraph 11(A) and it is declared that inaction on the part of respondents authorities in not implementing and enforcing Recovery Certificate dated 21st October, 2011 (Annexure-A to the petition) is hereby declared illegal;

7.1 The respective petitioners in each of the above petition are entitled to interest at the rate of 6% on the amount payable under the respective Recovery Certificates from the date of such Recovery Certificate till actual payment. In other words, the respondent-Municipality shall pay 6% interest as above on the amount of gratuity for each of the petitioner-employee to be recovered from it under the Recovery Certificates issued by the Controlling Authority in the respective cases.

7.2 The respondent Nos. 2 and 3 shall discharge their statutory obligation to enforce the Recovery Certificates in question and take appropriate steps in that regard immediately and without booking any delay.

8. As a necessary corollary to above, all the petitions being Special Civil Application Nos. 8853 of 2014 to 8867 of 2014 filed by the Municipality stand dismissed.

FURTHER ORDER

At this stage, learned advocate Mr. Mehul Sharad Shah for the Municipality prays that this judgment and order may be stayed for some time to enable the Municipality to approach higher forum.

With regard to the aforesaid request of the Municipality, it is observed that the respondent-authorities who are otherwise duty bound to take necessary action to enforce the recovery certificates pursuant to this judgment and order, shall stay their hands for a period of six weeks from today.