

(2008) 05 GUJ CK 0077

In the Gujarat High Court

Case No : Letters Patent Appeal No. 379 of 2008 in Special Civil Application No. 2138 of 2002 to Letters Patent Appeal No. 386 of 2008 in Special Civil Application No. 3993 of 2001, Civil Application No. 4674 of 2008 in Letters Patent Appeal No. 379 of 2008 in Spec

Bilimora Nagarpalika

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 05-05-2008

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2, 4(1), 5

Citation : (2008) 2 GLH 448 : (2009) 1 LLJ 147

Hon'ble Judges : R.M. Doshit, J;K.M. Thaker, J

Bench : Division Bench

Advocate : Jirga D. Jhaveri, for the Appellant; M.L. Shah, Asst. Government Pleader for Respondent 1 and A.K. Clerk, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, J.—Heard the learned advocates.

2. This group of Appeals preferred by the Bilimora Nagarpalika [hereinafter referred to as "the Municipality"] under Clause 15 of the Letters Patent arises from the common judgment and order dated 27th February, 2008 passed by the learned Single Judge in above Special Civil Applications. The respondent in each Appeal is the former employee of the Municipality. On retirement of the said employees on reaching the age of superannuation, the Municipality had paid the amount of gratuity computed in accordance with the prevalent rules of the Municipality.

3. Feeling aggrieved, the said employees approached the controlling authority under the Payment of Gratuity Act, 1972 [hereinafter referred to as "the Act of 1972"] and demanded the difference in gratuity computed in accordance with the Act of 1972. The said applications were contested by the Municipality. The controlling authority upheld the claim of the employees and directed the

Municipality to pay to each employee the difference in the amount of gratuity as claimed by the employees.

4. Feeling aggrieved by the said orders, the Municipality preferred above writ petitions. The said orders have been confirmed by the learned Single Judge in the above writ petitions. Therefore, the present Appeals.

5. Ms. Jhaveri has appeared for the Municipality. She has assailed the judgment of the learned Single Judge. She has submitted that the Municipality has, as far back as in the year 1972, framed rules for payment of gratuity to its employees. The said rules have been approved by the State Government by its Resolution dated 24th November, 1972. Since then, the said rules are implemented and retired employees of the Municipality are paid gratuity according to the said rules.

6. We are unable to accept the contention raised by Ms. Jhaveri. Section 2(f) of the Act of 1972 defines "employer." Sub-clause (ii) of the said Clause (f) expressly includes the "local authority" within the meaning of the word employer. Section 4(1) of the Act of 1972 enjoins the employer to pay gratuity to its employee on termination of employment after he renders continuous service for not less than five years, inter alia, on his superannuation or on his retirement. Thus, the Municipality is under obligation to pay gratuity to its retired employees in accordance with the Act of 1972.

7. Section 5 of the Act of 1972 empowers the appropriate Government to exempt any establishment, etc. to which the Act applies, from the operation of the provision of the Act of 1972. In other words, unless an establishment is expressly exempted by the appropriate Government by notification issued u/s 5 of the Act of 1972, such establishment would be liable to pay gratuity to its retired employees in accordance with the Act of 1972. It was not the case of the Municipality before the controlling authority or before the learned Single Judge or before us that the Municipality is exempted from the operation of the provisions of the Act of 1972 as envisaged by Section 5 of that Act. In absence of the exemption specifically granted u/s 5, the Municipality is duty bound to pay its employees gratuity in accordance with the Act of 1972.

8. In above view of the matter, the order of the learned Single Judge does not warrant interference. The Appeals are dismissed in limine. Civil Applications stand disposed of.

9. Registry will maintain copy of this order in each appeal.