

(2016) 07 GUJ CK 0027

In the Gujarat High Court

Case No : Special Civil Application No. 30761 of 2007

Devraj Shyamrao Deshmukh

APPELLANT

Vs

Ahmedabad Municipal Transport Service

RESPONDENT

Date of Decision : 15-07-2016

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4(1), 7(3-A)

Citation : (2017) 1 CLR 735 : (2016) 150 FLR 1035 : (2016) LabLR 1228

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

Bench : Single Bench

Advocate : Mr. Yogen N. Pandya, Advocate, for the Appellant; Mr. H.S. Munshaw, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. K.M. Thaker, J.(Oral)—Heard Mr. Yogen N Pandya, learned advocate for the petitioner and Mr. Munshaw, learned advocate for the respondent.

2. In present petition very limited issue is involved viz. appropriate rate of interest which should have been awarded by the controlling authority in respect of unpaid gratuity / period of delay in payment of gratuity.

3. In view of the fact that present petition involves and raises said limited issues, it is not necessary to narrate in detail either factual background or advert to any other contentions raised by the parties.

4. The relevant factual background is that on the allegation that the gratuity was not paid, the petitioner herein had taken out Gratuity Application No. 42 of 2006 which was allowed by the Controlling Authority who directed the respondent herein to pay Rs. 4125/- to the petitioner towards interest for the period of delay at the rate of 7.5% from the date of order passed by the High Court.

5. The petitioner has come out with limited grievance that the interest should have been allowed w.e.f. the date when gratuity became payable and the rate of

interest should have been awarded in accordance with the provisions of the Act. i.e. Section 7 (3-A) of the Payment of Gratuity Act, 1972 (hereinafter referred to as the "Act").

6. Therefore, without advertng to other details and / or other aspect related to the petitioner's claim, this petition can be disposed of in light of the provisions under Section 7 (3-A) of the Act. The said Section 7 of the Act reads thus:-

"7. Determination of the amount of gratuity.- (1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under subsection (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify: Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground."

7. According to the said provision the controlling authority should award interest at the prescribed rate in case of delay in payment is established. The aspect of delay is not in dispute.

8. Appropriate Government had prescribed 10% as rate of interest vide notification dated 1.10.1987.

9. The order in question was passed by the Controlling Authority after 1.10.1987 and that therefore the direction to pay interest should have been at the rate of 10% and not @ 7.5% (which is the rate granted by the controlling authority).

10. The said claim of the petitioner is required to be accepted and granted.

11. Besides this the petitioner has also claimed that the interest should have been awarded from the date when the amount became payable and not from the date when the High Court passed order.

11.1. The said claim also cannot be rejected because according to the Act

gratuity is payable on cessation of service by virtue of any of the modes mentioned under Section 4(1) of the Act and any delay in payment imposes liability to pay interest.

12. Therefore, if any delay occurred in payment of gratuity to the employee within 30 days from the date when it became payable then employer is liable to pay interest from the date when gratuity became payable.

13. Under the circumstances, following order is passed:-

The respondent corporation will recalculate the amount payable to the petitioner by taking into account 10% rate of interest and the date on which the service of the petitioner came to an end as relevant date for payment of gratuity as well as interest, and interest shall be calculated from the said date.

14. With the aforesaid clarifications the petition is disposed of. Rule is made absolute to the aforesaid extent.