

(2005) 02 GUJ CK 0050

In the Gujarat High Court

Case No : Special Civil Application No. 14636 of 2003

E.Y. Christian

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 03-02-2005

Acts Referred:

Citation : (2005) 02 GUJ CK 0050

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : K.B. Pujara, for the Appellant; M.R. Mengdey, AGP for Respondent Nos. 1-2, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, J.—Upon joint request and in view of the urgency with regard to the payment of Senior Citizens dues like gratuity, the matter is taken up for final hearing today itself.

2. The learned Advocates appearing for the parties are heard. The factual profile and the Government Resolution dated 13th April, 1988 placed on record in this petition at Annexure "G" on page 19 and two decisions in similar cases of this Court, rendered in (1) Samuel Joseph Vamesha v. State of Gujarat and Anr. reported in 1996 (1) GLH 518 (Coram: M.R.Calla, J.) and (2) Ranchhodbhai Z. Patel v. State of Gujarat and Anr. in Special Civil Application No. 12327 of 2000 rendered on 18/12/2001 (Coram: H.K.Rathod, J.) and upon consideration and evaluation of facts and relevant proposition of law, there is no hesitation, whatsoever in finding that the present case wherein the claim for gratuity is claimed from the respondents on the same grounds of which, the earlier petitions came to be adjudicated in favour of the petitioners being employees of the Respondent No. 4-Gujarat State Bharat Scouts and Guides. The petitioner who joined services of Respondent No. 4 on 9/3/1970 as Peon and retired on 31st October, 2002 on reaching the age of superannuation of 60 years having rendered services for more than 32 years under the Respondent No. 4 who has

not paid any amount towards the gratuity and leave salary. In the opinion of this Court and in the light of the facts and relevant law, the petitioner is entitled to the amount of gratuity and leave salary as claimed, with interest.

3. The proposition of law expounded by this Court in similarly two cases of similarly situated employees of Respondent No. 4 would be fully attracted, which have now admittedly become final as no further challenge has been made in, so far as, the payment of gratuity with the amount of interest on delayed payment is concerned.

4. In both the aforesaid decisions meticulously evaluation has been made. It would not be, therefore, necessary to reiterate the same, once the law has become applicable to the facts of the present case. The contentions which are advanced in the affidavit-in-reply are untenable for the nonpayment of gratuity to the petitioner. Otherwise also in the aforesaid two decisions, this Court has gone to threadbare discussion, the legal profile and the objections raised on behalf of the respondents and directed the respondents to pay the amount of gratuity claimed by the petitioners in respective petitions with the interest @ of 18% p.a. from the date the payment of gratuity becomes due till the interest of payment with the cost of Rs. 5,000/-. There is no reason to make a departure from the earlier proposition of law laid down in the similarly situated employees of the Respondent No. 4. It would be interesting to refer at this juncture that the objection raised against the liability of the payment of the gratuity in the affidavit-in-reply is diametrically opposite to the resolution of the Government dated 13th April, 1988 issued by the Department of Education of the State of Gujarat, wherein it has been made competently clear that the employees of Respondent No. 4 shall be entitled to claim gratuity as if they are the employees of the State of Gujarat.

5. There is no any reasonable ground as to why despite two decisions and despite the Government Resolution in this behalf, the petitioner is allowed to suffer from nonpayment of legitimate dues of gratuity. It is, therefore, undoubtedly a case for delay without any reason for nonpayment of legitimate dues of the employee, in so far as payment of gratuity is concerned. In the aforesaid decisions, the rate of interest for delayed payment is approved and granted at the rate of 18% p.a. with cost of Rs. 5,000/- and this Court is in full agreement with the proposition laid down in two earlier decisions referred hereinabove, so far as, the quantum of interest is concerned and the quantum of cost is concerned.

6. In the result, this petition is allowed and in view of the aforesaid discussions, evident and unambiguous stand and the policy of the Government manifested in the Government Resolution dated 13th April, 1988 referred hereinabove and two decisions, the petition shall stand allowed with cost, which is quantified at Rs. 5,000/-. The respondent No. 1 is also directed to pay the cost of Rs. 5,000/- to the petitioner within a period of one month from the date of receipt of the writ from this Court. The amount of gratuity with interest @ 18% from the date the

amount became due and payable is directed to be paid to the petitioner by the respondents with interest @ 18% thereon with the payment of cost of Rs. 5,000/- directed to be paid on or before 31st March, 2005, failing which, it will be open for the petitioner to move this Court for further direction. In so far as, the payment of leave salary is concerned it will be open for the petitioner to make a separate representation to the respondents and on such representation being made the respondent-authority concerned shall decide in accordance with rules and law within a period of 30 days from the date of receipt thereof. Rule is made absolute accordingly. Direct Service is permitted.