
(1987) 04 GUJ CK 0006
In the Gujarat High Court

Gujarat Electricity Board and Another	APPELLANT
Vs	
Patan Nagarpalika and Others	RESPONDENT

Date of Decision : 27-04-1987

Acts Referred:

Electricity Act, 1910 — Section 42, 7
Payment of Gratuity Act, 1972 — Section 7(7)

Citation : (1987) 2 GLR 858

Hon'ble Judges : P.R. Gokulakrishnan, C.J.;G.T. Nanavati, J

Bench : Division Bench

Judgement

P.R. Gokulakrishnan, C.J.—The petitioners in the above Special Civil Applications want to quash and set aside the order passed by the Deputy Labour Commissioner, Gujarat State, Ahmedabad, dated 21-6-1983 and to direct the Appellate Authority appointed under the provisions of the Payment of Gratuity Act, who is the Respondent No. 4 in these petitions to entertain the appeals filed by the petitioners after condoning the delay in filing the said appeal.

2. The Gujarat Electricity Board, on an application made by the Patan Nagarpalika, revoked the electric licence u/s 42 of the Indian Electricity Act, 1910. In terms of the said revocation order, the Patan Nagarpalika at Patan handed over the distribution of the electrical undertaking to the petitioners on 30th June, 1981. As per Section 7 of the Indian Electricity Act, the undertaking of the 1st Respondent vested with the Board free from any debt, mortgage of similar obligation of the said licence. It is the case of the Board that consequent upon delivering the distribution of assets, the Respondent No. 1 terminated the services of the employees and fresh appointments were given by the petitioner-Board thereafter to such of those employees who were willing to join the services of the Board and who were found suitable at the relevant point of time. Respondent No. 1, after terminating the services of these employees, paid the amount of gratuity to those employees who were terminated by it. The employees, who were terminated by the Respondent No. 1 through Patan Nagarpalika Kamdar Sangh, filed 43 applications before the competent authority

appointed under the Payment of Gratuity Act for difference in the amount of gratuity payable to them and actually paid to them by respondent No. 1. The petitioners were party to the same. The petitioners, in their Written Statement, have, inter alia, contended that it took over the undertaking with a specific condition and stipulation to the effect that the taking over of the assets of the electrical undertaking of the Patan Nagarpalika was done without taking over any liability or obligation of the licensee, i.e. Patan Nagarpalika including those towards the employees and as such any claim whatsoever whether of the consumers, suppliers, creditors or of the employees, who would be discharged by the Patan Nagarpalika and all taxes, debts, dues or compensation to the employees for retrenchment etc., would be the liability and would be discharged by the said Patan Nagarpalika. It was further contended by the petitioners herein before the authority appointed under the Payment of Gratuity Act that the applicants were given employment by the Board as fresh or new employees and by issuing fresh appointment letters and that the employees having been taken up in the employment of the Board as a fresh or new employees by issuing fresh appointment letter, their claim for continuity of service and, or difference in gratuity amount on the basis thereof or otherwise is misconceived and legally not tenable. The petitioners have further contended that the relief claimed for continuity of service before the authority concerned cannot be legally entertained and that the claim of the employees is absolutely misconceived, baseless and legally not tenable and deserves to be rejected.

3. The Controlling Authority before whom such applications were filed by the employees by its order dated 26-7-1982, rejected the application filed by the employees on the ground that the applications were premature. However, the Controlling Authority, by its said order held that the services of the employees of the respondent No. 1 who were taken up with the services of the Board after taking over, had not come to an end and their services were continuous and that there was no break in their services. Aggrieved by the said order, the petitioners herein preferred appeals before the Appellate Authority along with application for condonation of delay in filing the appeals. In the application for condoning the delay in filing the appeal, the petitioners herein have, inter alia, contended that, as certain information and data required to be collected took longer time, the appeal was filed late. The Deputy Labour Commissioner, who is the Appellate Authority, rejected the application to condone the delay in filing the appeal even without hearing the petitioners herein, observing that the appeals were not filed within 60 days as per Rule 7(7) of the Payment of Gratuity Act, that the reasons for condonation of delay are not reasonable, and that as such the petitions have to be rejected. Aggrieved with this order of rejecting the applications for condoning the delay even without hearing the petitioners herein, the Gujarat Electricity Board and the Commercial Manager of the Gujarat Electricity Board have filed the present Special Civil Applications. The learned Counsel appearing for the petitioners reiterated the averments made in the Special Civil Application and contended that the employees who have filed the applications before the

authority constituted under the Gratuity Act, cannot claim any continuity of service as per the Notification and conditions for taking over the undertaking from the Patan Nagarpalika. It was further contended by the learned Counsel appearing for the petitioners that the employees who are agitating for gratuity are fresh entrants with the Electricity Board under new appointment orders and that there is no question of their services being continued as wrongly held by the authority constituted under the Gratuity Act. The petitioners contend that they are not at all liable to pay any gratuity amount and even though the authority concerned dismissed the applications, the specific finding to the effect that there is continuity of service in respect of those employees who have filed the applications for getting the gratuity is an adverse order which has to be set aside.

4. Mr. Vakil, the learned Counsel appearing for the 1st & 2nd respondents, contended that there is absolutely no substance in the points raised by the petitioners in its appeal memo to be filed before the Appellate Authority and that inasmuch as the applications by the employees have been dismissed as premature, there is nothing to be decided in the appeal, nor the petitioners are aggrieved party to invoke the jurisdiction of the Appellate Authority. Mr. Vakil contended that there is absolutely no order, judgment or decree against the petitioners herein to file an appeal, but on the other hand, the applications filed by the employees before the authority constituted under the Payment of Gratuity Act have been dismissed. Hence, the petitioners have no right to file an appeal. When such an appeal is a futile one, since the appeal is not competent on the facts and circumstances of the case, this Court should not use its discretion under Article 227 and interfere with the order of dismissal in respect of the petition for condonation of delay passed by the Appellate Authority. Mr. Vakil, after reading the relevant provision which gives power to condone the delay to the appropriate Appellate Authority, submits that the petitions were filed beyond the prescribed time and as such even the Appellate Authority has no power to condone such a delay. Apart from the above said two contentions, Mr. Vakil has also stated that there is no sufficient cause for condoning the delay and that inasmuch as the main order is in favour of the petitioners, no useful purpose will be served in filing an appeal.

5. We have carefully gone through the contentions raised by Mr. Vakil. It is clear from the order of the authority constituted under the Payment of Gratuity Act, 1972 that there is a specific finding that the service contract which is started during the time of Municipality, as regards its employees continues till this date. After observing so, the authority concerned held that the application against the Municipality and Electricity Board is prematured and that therefore, deserves to be dismissed. The case of the petitioners as respondent in those applications is very clear to the effect that the employees cannot claim continuity of service, that services of the petitioners are by virtue of the fresh appointment given to them, and that no liability will attach to the petitioners either for paying the gratuity. or for any other relief since the taking over of the undertaking from the 1st respondent was free from all such liabilities. Section 7(7) of the Payment of

Gratuity Act, 1972, reads as follows:

Any person aggrieved by an order under Sub-section (4) may within 60 days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by further period of sixty days:

Provided further that, no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under Sub-section (4), or deposits with the Appellate Authority such amount.

6. Section 7 Sub-section (4) reads as follows:

Section 7(4)(a). If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in Clause (a) an employer or employee or any other person raising dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard determine the matter or matters in dispute and if as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount, or as the case may be such amount as reduced by the amount already deposited by the employer.

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under Clause (a), the controlling authority shall pay the amount of the deposit:

(i) to the applicant where he is the employee or

(ii) where the applicant is not the employee, to the nominee or as the case may be, the guardian of such nominee or heir of the employee, if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

7. It is clear from the above said provisions that, any person aggrieved by an

order under Sub-section (4) of Section 7 can prefer an appeal. The authority constituted under the Gratuity Act, while dismissing the applications of the employee has made an order to the effect that there is continuity of service. The petitioners in their written statement before the authority constituted under the Gratuity Act have specifically averred that there is no continuity of service for those employees since their appointment is a fresh one under the petitioners. Even though we do not decide this issue, there is an arguable point as to whether there is an order adversely affecting the petitioners herein. Hence, we are of the view that it is for the Appellate Authority to decide the issue and the said dispute cannot be thrown away without examining the same as if there is no order by which the petitioners are aggrieved.

7.1. It is clear from the facts that the order was passed as early as 26-10-1982 and the appeal was filed only on 7-3-1983. It is the case of the learned Counsel appearing for the petitioners herein that the order was communicated to them only with a covering letter, dated 22-3-1983 even though the appeal was filed on 7-3-1983. The petitioners submit that they had knowledge of the passing of the order only very late and that the order was actually communicated to them by a covering letter, dated 22-3-1983. Hence the question is as to when exactly the petitioners came to know of the order and as to whether the period prescribed u/s 7(7) of the Act is over at the time of filing the petitions is a question which has to be decided by the Appellate Authority after giving sufficient opportunity to the petitioners herein. In this case, no such opportunity was given, nor the petitioners were heard by the Appellate Authority, and hence, the order passed by the said authority, in our opinion, is against the principles of natural justice. Whether the cause is sufficient or not can be decided only after according sufficient opportunity to the petitioners herein to put forth their contentions and inasmuch as no opportunity was given to the petitioners to put forth their contentions by the Appellate Authority the orders as such which are impugned in these Special Civil Application cannot be sustained.

8. For all these reasons, we are of the view that the order passed by the 4th respondent has to be set aside and accordingly the same is set aside with a direction that the 4th respondent will take on file the applications for condonation of delay and dispose them on merit according sufficient opportunity to the petitioners herein to put forth the contentions regarding the reasons for such delay in filing the appeal. With the above said observation, the Special Civil Applications are allowed in terms of the abovesaid directions. Rule made absolute accordingly in each of the petitions. There will be no order as to costs.