(2003) 07 GUJ CK 0030

In the Gujarat High Court

Case No : Special Civil Application No. 8990 of 2003

Gujarat State Road Transport Corporation APPELLANT

Vs

Devendrabhai Mulvantrai Vaidya RESPONDENT

Date of Decision : 15-07-2003

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4, 4(6)

Citation : (2003) 23 GLH 376 : (2003) 3 GLR 2485 : (2004) 1 LLJ 77

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Advocate : Ashish M. Dagli, for the Appellant; Nilay V. Anjaria, for the Respondent

Final Decision : Dismissed

Judgement

P. B. Majmudar, J.—By filing this petition, the petitioner-Corporation has challenged the order passed by the Authority under the Payment of Gratuity Act. The respondent was working with the petitioner-Corporation and after reaching the age of superannuation, he had retired from service with effect from 21st March, 2001. The respondent thereafter preferred an application before the Controlling Authority under the Payment of Gratuity Act, 1972 by way of Gratuity Application No. 4 of 2002 as the petitioner-Corporation failed to pay the gratuity amount of the respondent. The Controlling Authority, by its order, came to the conclusion that without any reason, the said amount is withheld by the Corporation, and accordingly, he came to the conclusion that the respondent is entitled to recover the gratuity amount, quantified at Rs. 3,50,000/-, with 10% interest, which is to be payable from 1-5-2001.

2. The said order of the Controlling Authority was challenged by the petitioner-Corporation by filing an appeal before the Appellate Authority, by way of Gratuity Appeal No. 4 of 2002. The Appellate Authority came to the conclusion that since the respondent has retired from service and since he was allowed to retire by way of superannuation by the employer and since at no point of time his services

were terminated by the employer, the amount of gratuity cannot be forfeited by the employer. On the aforesaid finding, the appeal was dismissed by the Appellate Authority. The said order of the Appellate Authority dismissing the appeal of the employer, is challenged by the petitioner-Corporation, by way of this petition.

3. At the time of hearing of this petition, it is submitted by Mr. Dagli for the petitioner-Corporation that since a criminal case is pending against the respondent, under the Corruption Act, the Corporation is entitled to withhold the gratuity amount. It is also further submitted by Mr. Dagli that even a departmental enquiry is also pending against the respondent on the aforesaid alleged misconduct of taking illegal gratification. He further submitted that since the criminal case is pending, the petitioner has decided not to proceed with the departmental enquiry. Under the circumstances, it is argued by Mr. Dagli that since the criminal case as well as the departmental enquiry are pending against the respondent in connection with corruption charge levelled against the respondent, the Corporation is entitled to withhold the aforesaid gratuity amount till the aforesaid proceedings are terminated.

4. Mr. Anjaria, who is appearing by way of caveat, has submitted that there is no provision in law to withhold the amount, as the respondent was allowed to retire on reaching the age of superannuation.

5. I have heard both the sides, in detail, and I have also gone through the record of the case. In my view, the stand taken by the Corporation is not tenable in law.

6. It is required to be noted that the following points are not in dispute :

(i) That the respondent, after completing about 38 years service, was allowed to retire on reaching the age of superannuation;

(ii) The Corporation has not even informed the respondent that he is allowed to retire subject to continuation of the departmental enquiry;

(iii) Mr. Dagli is not in a position to produce any rules framed by the Corporation that the Corporation is entitled to withhold the gratuity amount even after the retirement of the employee;

And

(iv) It is not in dispute that the services of the respondent were never terminated on the ground of misconduct.

7. At this stage, reference is required to be made to Section 4 of the Payment of Gratuity Act, 1972, which provides as under :

"Sec. 4. Payment of gratuity :- (i) Gratuity shall be payable to an employee on the terminating of his employment after he has rendered continuous service for not less than five years, -

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease;

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement;

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the Controlling Authority who shall invest the same for the benefit of such minor in such Bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation :- For the purposes of this Section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned.

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and for this purpose, the wages paid for any overtime work shall not be taken into account;

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days'' wages for each season.

Explanation :- In the case of a monthly-rated employee, the fifteen days wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

(3) The amount of gratuity payable to an employee shall not exceed three lakhs and fifty thousand rupees.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wage for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this Section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-sec. (1), -

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee may be wholly or partially forfeited -

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

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8. Considering the aforesaid provision, the employer is entitled to withhold the cratuity amount only in the eventualities which are enumerated under the said provision. The service of the respondent were never put to an end by way of termination as provided in sub-sec. (6)(a) or under sub-sec. (6)(b) of Section 4 of the Act. Under the aforesaid circumstances and especially when the respondent was allowed to retire from service on reaching the age of superannuation, the petitioner-Corporation has no power to withhold the gratuity amount and it can be withheld only in the eventualities, as provided in Section 4 of the Act. When the respondent has already retired by reaching the age of superannuation, it is not possible even to accept the say of Mr. Dagli that on conclusion of the enquiry, services of the respondent can be terminated or he can be dismissed from service. Since, the respondent has retired from service and especially when the Corporation itself permitted the respondent to retire from service, on reaching the age of superannuation, it is difficult to uphold the contention of Mr. Dagli that on conclusion of the enquiry, the respondent can be dismissed from service or his services can be terminated on any disciplinary ground. Since, the Corporation has no power to withhold the gratuity amount, and considering the provisions of Section 4 of the Act, in my view, it cannot be said that the Appellate Authority or the Controlling Authority has committed any error of law in reaching the conclusion which they have reached. Accordingly, I do not find any substance in this petition. The petition is accordingly dismissed at the admission stage.