

**(2009) 01 GUJ CK 0014**  
**In the Gujarat High Court**

**Case No :** Special Civil Application No. 16121 of 2005

Jamnaben R. Tavar

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

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**Date of Decision :** 30-01-2009

**Acts Referred:**

**Citation :** (2009) 01 GUJ CK 0014

**Hon'ble Judges :** Jayant M. Patel, J

**Bench :** Single Bench

**Advocate :** K.B. Pujara, for the Appellant; Upadhyay, AGP for Respondent 1, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Jayant Patel, J.—The short facts of the case appears to be that the petitioner was appointed as Assistant State Organizing Commissioner (Guide) by Gujarat State Bharat Scouts and Guides-respondent No. 4 herein, vide appointment order dated 20.6.1974. The petitioner continued in service until reaching the age of superannuation and retired on 29.2.2004 after office hours. The last pay-slip of the petitioner is also produced at Annexure "C" on page 14. It appears that the petitioner applied for payment of gratuity on account of reaching the age of superannuation . However, the same has been declined on the ground that the State Government vide its decision dated 31.3.1993 has declined the admissibility of the grant to the employees of Grant-in-Aid Institution(s) Bharat Scouts and Guides Sang. It is under these circumstances, the petitioner has approached this Court by the present petition.

2. Heard Mr. Pujara, learned Counsel for the petitioner and Mr. Upadhyay, learned AGP for the State Authorities.

3. As such the employment of the petitioner is not in dispute, nor is there any dispute of retirement of the petitioner on reaching the age of superannuation. It is not even the case of the respondents that on account of any other impediment

known to law the payment of gratuity has not been made, save and except the contention raised by the respondents appears to be that the State Government has taken decision not to pay gratuity or not to make the gratuity admissible to the employees like the petitioner by its decision communicated in the year 1993.

4. In order to examine the entitlement of the petitioner to receive gratuity on the basis of the service rendered with respondent No. 4, it appears to the Court that the issue is covered by three decision of this Court; the first one was the decision of this Court (Coram: M.R. Calla, J.) in the case of Samuel Joseph Vamesha v. State of Gujarat and Anr. reported in 1996(1) GLH, 518; the second of this Court (Coram: H.K. Rathod, J.) was in the case of Ranchhodbhai Z Patel v. State of Gujarat and Ors. in Special Civil Application No. 12327 of 2000 dated 18.12.2001 and third of this Court (Coram: J.N. Bhatt, J.) was in the case of E.Y. Christian v. State of Gujarat and Ors. in Special Civil Application No. 14636 of 2003 dated 03.02.2005. Copies of all the aforesaid decisions are produced by the petitioner at Annexure H collectively.

5. In the aforesaid last decision of this Court in case of E.Y. Christian v. State of Gujarat and Ors. (supra) it was, inter alia, observed at para graphs 4, 5, and 6 as under:

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 any 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.

6. It has been submitted on behalf of the respondents that the Letters Patent Appeal No. 1155 of 2005 is preferred against the aforesaid decision before the Division Bench and the LPA has been admitted. However, the order passed by the Division Bench on 5.9.2005 in LPA No. 1155 of 2005 reads as under:

Admit. The appellants are directed to pay the amount of gratuity to non-applicant No. 1 in terms of direction given by the Court. This would be subject to the final adjudication of the appeal.

7. Therefore, the Division Bench has not stayed the operation of the order or view taken by the learned Single Judge in case of E.Y. Christian v. State of Gujarat and Ors. (supra), but on the contrary, has directed to comply with the same, but subject to the proceedings of the LPA.

8. Mr. Pandya, learned AGP has not been able to show any valid reason to take any different view than the one taken by this Court (Coram: J.N. Bhatt, J.) in the matter of E.Y. Christian v. State of Gujarat and Ors. (supra), no further discussion may be required since the matter is as such covered by the aforesaid three decisions of this Court, but subject to the proceedings of the LPA. Therefore, at the most, the condition deserves to be provided is that the payment shall be subject to the orders, if any, passed in the proceedings of LPA No. 1155 of 2005. As the interest prevailing now is lesser than the interest as was prevailing during period of retirement of the petitioner, it deserves to be reasonably reduced.

9. Hence, the respondents are directed to pay the gratuity amount to the petitioner with interest at the rate of 12% p.a. from the date on which the amount became due and payable with the cost of Rs. 5,000/- of the present petition. The amount shall be disbursed to the petitioner by the respondent authority within a period of 30 days from the date of receipt of the order of this Court. However, it is clarified that such payment shall be subject to the view, if any, may be taken by the Division Bench of this Court in LPA No. 1155 of 2005. The petitioner, if desirous, may get himself impleaded as party in the proceedings of LPA by moving suitable application, since the decision of the LPA Bench may affect the rights of the petitioner in the event the LPA Bench reverse the orders passed by the learned Single Judge in Special Civil Application No. 14636 of 2003.

10. The petition is allowed to the aforesaid extent. Rule made absolute accordingly.