

**(2010) 10 GUJ CK 0063**  
**In the Gujarat High Court**

**Case No :** Special Civil Application No's. 17105 to 17111 of 2003

Jehangir Textile Mills

APPELLANT

Vs

Sahebsingh Chotesingh and Another

RESPONDENT

**Date of Decision :** 05-10-2010

**Acts Referred:**

Payment of Gratuity Act, 1972 — Section 4(6), 7

**Citation :** (2011) 128 FLR 180 : (2011) 2 LLJ 242 : (2011) LLR 265

**Hon'ble Judges :** Mukesh R. Shah, J

**Bench :** Single Bench

**Advocate :** Saurabh Mehta, for Nanavati and Nanavati, for the Appellant; Neeraj Soni, A.G.P., P.M. Vyas, Hiren P. Vyas and Sejal H. Vyas, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

M.R. Shah, J.—As common question of law and facts arise in these group of petitions, they are being disposed of by this common judgment and order.

2. In all these petitions, respective Petitioners-Management has prayed for an appropriate writ, direction or order quashing and setting aside the impugned recovery notice dated 11.11.2003 issued by Respondent No. 2 Mamlatdar and Alien Recovery, Ahmedabad (Annexure A to the petition) which have been issued in favour of concerned workmen-Respondent herein to recover the amount due and payable under the orders passed by the Controlling Authority under the Payment of Gratuity Act, 1972.

3. The only submission made by Shri Mehta, learned advocate for Nanavati & Nanavati appearing for the respective Petitioners is that in view of the fact that the concerned workmen-Respondent herein are in unauthorized occupation and retention of quarters allotted by the Petitioner-company even after attaining the age of superannuation, Petitioner has right to withhold the gratuity. Shri Mehta, learned advocate appearing on behalf of the respective Petitioners has relied upon the decision of the learned Single Judge of this Court rendered in Special

Civil Application No. 7273 of 2002 by submitting that the learned Single Judge in a similar set of circumstances and with respect to the very Petitioner-company has permitted the Petitioner to retain the amount of gratuity till the pendency of the proceedings before the competent authority under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. It is further submitted that the learned Single Judge in the aforesaid order has passed an order that Petitioners shall pay an amount of gratuity to the Respondent-workmen after the deduction of the dues outstanding on the part of the Respondents. Therefore, it is submitted that when the concerned Respondent-workmen are in unauthorized occupation of the quarters allotted by the company and the proceedings are pending before the competent authority under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and in case the Petitioner succeeds, concerned workmen are liable to pay the rent/mesne profit /damages for unauthorized retention of the quarters. Therefore, it is submitted that till the said proceedings are concluded and till the concerned workmen are in unauthorized occupation of the quarters, Petitioners can withhold the amount of gratuity and therefore, it is requested to quash and set aside the impugned recovery notices issued by Respondent No. 2 to recover an amount of gratuity as per the order passed by the appropriate authority under the Payment of Gratuity Act.

4. All these petitions are opposed by Shri Vyas, learned advocate for the concerned respective Respondent-workmen. It is submitted that as such Petitioner has never challenged the order passed by the Controlling Authority under the Payment of Gratuity Act, 1972 and the impugned notice are only for recovery for the amount due and payable under the respective orders passed by the Controlling Authority under the Payment of Gratuity Act. It is submitted that even otherwise on the aforesaid ground unless any order of forfeiture is passed by the Petitioners as provided Sub-section (6) of Section 4 of the Payment of Gratuity Act, Petitioner cannot withhold the amount of gratuity. Shri Vyas, learned advocate for the Respondent-workmen has heavily relied upon the decision of the learned Single Judge in the case of Gujarat State Road Transport Corporation v. Devendrabhai Mulvantrai Vaidya 2004 (100) FLR 165 as well as recent unreported decision of this Court rendered in Special Civil Application No. 7665 of 2010 and Special Civil Application No. 4252 of 2004.

5. It is further submitted that even the quarters in question/property is already sold by the Petitioners in the year 2007 and, therefore it is not open for the Petitioners now to contend that as the concerned Respondent-workmen are in unauthorized occupation of the quarters they can withhold the amount of gratuity. Therefore, it is submitted that the decision of the learned Single Judge rendered in Special Civil Application No. 7273 of 2002 shall not be applicable as at the relevant time the property/quarters were of the ownership of the Petitioners and even in the said petition the order passed by the Appellate Authority u/s 7 of Payment of Gratuity Act was under challenge. By making above submissions and relying upon the above decisions, it is requested to dismiss the present Special Civil Application.

Heard the learned advocates for the respective parties at length. At the outset, it is required to be noted that as such Petitioners has never challenged the orders passed by the Controlling Authority under the Payment of Gratuity Act and what is challenged in the present petition is the recovery notice issued by Respondent No. 2 to recover the amount due and payable under the orders passed by the Controlling Authority under the Payment of Gratuity Act.

Therefore, in absence of any challenge to the original order passed by the Controlling Authority under the Payment of Gratuity Act, it is not open for the Petitioner to contend that they can withhold the amount of gratuity. Once the order is passed by the Controlling Authority under the Payment of Gratuity Act, it is bounden duty of Respondent No. 2 to recover the said amount for which the recovery notices are issued. Under the circumstances, as such impugned recovery notices cannot be said to be illegal

6. Even otherwise on merits also the Petitioner has no case. It is to be noted that the amount of gratuity can be forfeited only as provided under Sub-section (6) of Section 4 of Payment of Gratuity Act. Admittedly, neither any order of forfeiture of amount has been passed nor any damage is quantified, which can be recovered from amount of gratuity. In the case of Devendrabhai Mulvantrai Vaidya (Supra) the learned Single Judge has categorically held that amount of gratuity cannot be withheld by the employer except in the eventualities envisaged in the provision of Sub-section (6) of Section 4. Similar view has been expressed by this Court in unreported decision of this Court rendered in Special Civil Application No. 7665 of 2010 and Special Civil Application No. 4252 of 2004. The amount of gratuity can be forfeited only as provided u/s 4(6) of the Payment of Gratuity Act. As per Section 4(6) of the Act, before forfeiting the amount of gratuity, an employee is required to be given an opportunity and a specific order is required to be passed with respect to forfeiture of amount of gratuity. No such order forfeiting the amount of gratuity has been passed. Even otherwise, as stated above Petitioners has never challenged the original order passed by the Controlling Authority under the Payment of Gratuity Act.

7. In view of the above and for the reasons stated above, all these petitions fail and they deserve to be dismissed and are accordingly, dismissed. Rule discharged. Ad-interim relief stands vacated forthwith. No costs.