

(2011) 03 GUJ CK 0136
In the Gujarat High Court

Case No : Letters Patent Appeal No. 512 of 2011 in Special Civil Application No. 9279 of 2010

Kasamkha Fatehkha Pathan

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 22-03-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C
Payment of Gratuity Act, 1972 — Section 8

Citation : (2011) 03 GUJ CK 0136

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : P.J. Kanabar, for the Appellant; N.J. Shah, Asstt. Government Pleader for Respondent No. 1 and Y.N. Ravani, for the Respondent

Final Decision : Allowed

Judgement

V.M. Sahai, J.—We have heard learned Counsel Mr. P.J. Kanabar for the Appellant, learned Assistant Government Pleader Mr. N.J. Shah for Respondent No. 1 and learned Counsel Mr. Y.N. Ravani for Respondent No. 2.

2. Learned Counsel for the Appellant has urged that learned Single Judge has dismissed the claim of the Appellant for payment of gratuity along with interest on the ground that the Appellant has alternative remedy u/s 33(C)(2) of the Industrial Disputes Act, 1947.

3. Learned Counsel for the Appellant has placed before this Court judgment dated 8.3.2011, passed by a learned Single Judge in Special Civil Application No. 238 of 2011 to Special Civil Application No. 240 of 2011, which is extracted below:

1. Heard learned Advocate Mr. PJ Kanabar for Petitioner and learned AGP Mr. AL Sharma for Respondent No. 1 as well as learned Advocate Mr. YN Ravani for Respondent No. 2.

2. These three petitions have been filed by employees of Savarkundla Municipality with a prayer to direct Respondent No. 2 Municipality to pay immediately an amount of unpaid gratuity as per order Annexure B dated 27.9.2001 passed by Controlling Authority under the Payment of Gratuity Act, 1972. Pending admission, hearing and final disposal of petitions, Petitioners are praying for directing Respondents to pay immediately amount of unpaid gratuity as per order Annexure B dated 27.9.2001 with a further prayer to direct Respondent No. 1 to take all steps of recovery of unpaid gratuity amounts as per order annexure B in case if Respondent No. 2 fails to pay amounts as per order at Annexure B to Petitioner in interest of justice.

3. Petitioners have retired from service after reaching age of superannuation. Thereafter, they approached Controlling Authority with an application claiming amount of gratuity which has been allowed by controlling authority in favour of Petitioners and thereafter, order was communicated by controlling authority to Chief Officer, Savarkundla Municipality. According to Chief Officer of Savarkundla Municipality, some amount has been paid towards gratuity but because of financial constraints faced by said Municipality, they are not able to pay amount of gratuity to all retired employees from 2005. Recovery Certificate has also been issued by Controlling Authority while exercising power u/s 8 of Payment of Gratuity Act to pay such amounts to Petitioners which is addressed to Collector, Amreli. It is necessary to note that in all three cases, more than ten years have passed. Till this date, amount of gratuity as per order passed by Controlling Authority has not been paid to Petitioners with interest as directed by Controlling Authority.

4. Learned Advocate Mr. Kanabar appearing for Petitioners in these petitions submitted that before approaching this Court by way of these petitions, Petitioners had approached Chief Officer, Savarkundla Municipality with a request to pay amount of unpaid gratuity as early as possible because they are not able to maintain family in absence of amount of gratuity.

5. Learned Advocate Mr. Ravani appearing for Respondent No. 2 Municipality raised contention before this Court that because of financial constraints faced by Respondent No. 2 Municipality, they have prepared one list of eligible persons, those who are entitled for amount of gratuity but they are paying as per serial number and as and when turn of Petitioner will come, they are prepared to pay due amount of gratuity which has remained unpaid to Petitioners as per turn.

6. Learned Advocate Mr. PJ Kanabar for Petitioners submitted that the order passed by Controlling Authority as well as appellate authority has not been challenged by Savarkundla Municipality before Higher Forum and orders passed in favour of Petitioners have not been stayed by any Higher Forum and, therefore, they must have to be implemented by Chief Officer, Savarkundla Municipality and if it is not possible, then, some suitable directions may be issued to Respondent No. 1 so, Respondent No. 1 may take effective steps to recover amount from Savarkundla Municipality in respect to each Petitioner.

7. I have considered submissions made by learned advocates for respective parties. Amount of gratuity which has been due in favour of Petitioner as per order passed by controlling authority and confirmed by appellate authority has not been paid to present Petitioners with interest till this date. Looking to facts which are emerging from record, at least in two cases, more than ten years have passed but they have remained without amount of gratuity. In such a case, it is bounden duty of Chief Officer of Savarkundla Municipality to give priority to such employees those who have retired long back and yet remained without amount of gratuity.

8. In light of this back ground, it is directed to Chief Officer, Savarkundla Municipality to pay amount of gratuity with interest in terms of order passed by Controlling Authority and confirmed by appellate authority as early as possible, within six weeks from date of receipt of copy of this order. It is further directed to Respondent No. 1 District Collector Amreli to initiate effective steps to recover amount of gratuity from Chief Officer, Savarkundla Municipality under provisions of Land Revenue Code 1890 within one month in case if Chief Officer, Savarkundla fails to pay amount of gratuity within period of six weeks as directed by this Court. Therefore, in short, amount of gratuity must have to be paid by Chief Officer, Savarkundla to each Petitioner within period of two and half months in all, failing which this Court will take serious view in the matter. Accordingly, these petitions are disposed of by this Court. Direct Service is Permitted to Petitioners.

4. In view of the decision of this Court, we are of the opinion that the claim of the Appellant for payment of gratuity could not be dismissed on the ground of alternative remedy as payment of gratuity amount is not disputed. Half of the amount of gratuity has already been paid by the Respondent to the Appellant. Therefore, order of the learned Single Judge dated 10.8.2010 in Special Civil Application No. 9279 of 2010 cannot be maintained and direction is liable to be issued to the Respondents to pay the amount of gratuity along with interest in terms of the order passed by the Controlling Authority and confirmed by the Appellate Authority.

5. In the result, this Appeal succeeds and is allowed. The Respondents are directed to release the balance payment of gratuity to the Appellant along with interest in terms of the order passed by the Controlling Authority and confirmed by the Appellate Authority, within a period of TWO MONTHS from today.

Direct service is permitted.