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(2008) 02 GUJ CK 0080

In the Gujarat High Court

Case No : Special Civil Application No. 17750 of 2006

Limbdi Municipality APPELLANT

Vs

Inayakhusen Nathumiya Saiyad and Another RESPONDENT

Date of Decision : 01-02-2008

Acts Referred:
Constitution of India, 1950 — Article 227

Citation : (2008) 118 FLR 1005 : (2008) 1 GLH 520 : (2008) 2 LLJ 942

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Manish R. Raval, for the Appellant; Asifkhan I. Pathan, for Respondent 1 and Government Pleader for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned Advocate Mr. Manish R. Raval for the petitioner and Mr. AI Pathan, learned Advocate for respondent No. 1 as well as Ms. Rita Chandarana learned AGP for the respondent No. 2.

2. Through this petition under Article 227 of the Constitution of India, the petitioner Municipality has challenged the order passed by the Controlling Authority and Appellate Authority (Annexure D and G respectively). Respondent No. 1 Inayathusen Nathumiya Saiyad had filed application before the controlling authority at Surendranagar claiming remaining amount of gratuity being Gratuity Application No. 48 of 2004. Grievance of the respondent No. 1 was that he is entitled for the notional fixation of pay as per the recommendations made by the 5th Pay Commission which came into effect from 1st January, 1996 and on that basis, he is entitled for the amount of gratuity. According to the respondent No. 1, similar benefits were given in favour of certain other employees those who have retired after 1996. The contention raised by the petitioner was to the effect that there was no actual payment as a consequence of revision of pay as per the recommendations made by the 5th Pay Commission to the respondent No. 1 and, therefore, notional fixation cannot be taken into account. According to the

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respondent No. 1, recommendations made by the 5th Pay Commission were made applicable to the concerned employees, those who were working with the Nagarpalika w.e.f. 1.1.96 and after considering the period from 1st January, 1996 to 30th October, 1999, notional fixation was carried out and actual payment was made with effect from 1st November, 1999. Aforesaid period of more than three years has been considered as notional and no benefit was paid by the Municipality to the concerned employees. Before the Controlling authority, there was no dispute between the parties as regards date of joining, date of retirement and earlier payment made in respect of the gratuity amount and length of service. Petitioner Nagarpalika had fixed salary as per the recommendations made by the 5th Pay Commission with efect from 1st January, 1996 on the basis of the stay received from the revision court and accordingly, for the period from 1st January, 1996 to 31st October, 1999, period was considered as notional and actual payment was required to be made with effect from 1st November, 1999. Respondent workman retired from service on 30th November, 1997 and accordingly, whatever salary fixed on the basis of 5th Pay Commission report, that has been disputed by the petitioner municipality. The Controlling Authority has examined the issue in light of the payment made to (1) Jivuben Ladhabhai and (2) Paluben Tejabhai who had retired subsequent to 1.1.1996 and prior to 1st November, 1999. Petitioner Municipality had paid amount of gratuity on the basis of basic salary of Rs. 1840.00 without revision thereof as per report of the 5th Pay Commission. However, according to the respondent No. 1, he is entitled for amount of gratuity from the municipality on the basis of notional fixation of his pay. After notional fixation of pay as per the report of the 5th Pay Commission w.e.f. 1.1.96, salary of the respondent No. 1 was coming to Rs. 6554.00. Date of joining of respondent No. 1 was 8th March, 1958 and date of retirement was 30.11.1997. Total period of service comes to 39 years, 8 months and 22 days and, therefore, respondent was entitled for the amount of gratuity of 40 years which comes to 600 days and after considering last drawn salary of the respondent employee as on 30.11.1997 on the basis of notional fixation of his salary as per the report of the 5th Pay Commission, which comes to Rs. 6554/-, considering the one day salary of Rs. 252.07, total amount comes to Rs. 1,51,242/- and deducting the amount of Rs. 1,30,800.00 paid to the respondent workman, it was held by the controlling authority that the respondent No. 1 is entitled for remaining amount of Gratuity of Rs. 20442.00 from the petitioner. Thereafter, the Controlling authority considered that the respondent No. 1 was paid the amount of gratuity available as per 5th Pay Commission with interest and the respondent No. 1 has raised demand for difference of the amount of gratuity after long period and petitioner is a local self government and considered the financial position of the petitioner municipality and considering all such aspects, the controlling authority ordered that the amount of difference of gratuity be paid by the petitioner to respondent No. 1 with simple interest at the rate of 10% per annum from the date of application filed by the respondent No. 1 i.e. From 1.12.2004. Said order was passed by the controlling authority on 26.9.2005 and thereafter, appeal preferred by the petitioner before the appellate

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authority was also dismissed by the appellate authority while confirming order passed by the controlling authority on 20.1.2006.

3. Whole issue was, whether the respondent No. 1 is entitled for the benefit of 5th Pay Commission Report or not when it was implemented by the Municipality with effect from 1st January, 1996. Admittedly, respondent No. 1 had retired from service on 30.11.1997. Since benefits of 5th Pay Commission were given on notional basis for the period from 1.1.96 to 30th October, 1999, no actual payment was made to any of the employees but notionally, salary was fixed in respect of each and every employee and actual payment of difference of salary was made available to the employees only with effect from 1st November, 1999. In view of the notional fixation of salary as per 5th Pay Commission Report for the period from 1.1.96 to 30.10.99, respondent cannot claim arrears of salary as a consequence thereof but respondent can certainly claim benefit of gratuity on the basis of such notional fixation of his salary and respondent was not claiming arrears of salary but was claiming gratuity on the basis of notional fixation of his salary as per 5th Pay Commission Report and that aspect was rightly examined by the controlling authority in light of the facts that similarly situated other employees were granted such benefit by the municipality on the same line and the controlling authority has also decided the matter while keeping in mind similar cases where the payment is made by the Municipality. Apart from that, date of retirement is 30th November, 1997. 5th Pay Commission was implemented by the municipality with effect from 1st January, 1996 and, therefore, it was the duty of the municipality to revise the salary of each employees those who have retired subsequent to 1.1.96 and prior to 30.10.1999. It makes no difference whether actual difference of salary for the period fro 1.1.96 to 30.10.99 was paid or not to the concerned employee but salary as per recommendation of 5th Pay Commission must have to be revised and that aspect was rightly examined by the controlling authority and difference of the amount of gratuity based thereupon was rightly granted by the controlling authority in favour of the respondent No. 1 and that was rightly confirmed by the appellate authority and in doing so, both the authorities have not committed any error in law and facts and, therefore, no interference is required in exercise of the powers under Article 227 of the Constitution of India. Reasons assigned and the conclusions drawn by the controlling authority as confirmed by the appellate authority are cogent and convincing requiring no interference of this Court under Article 227 of the Constitution of India. Learned Advocate Mr. Raval for the petitioner has not been able to point out any infirmity and/or jurisdictional error in the orders in question. He has also not been able to point out any irregularity committed by both the authorities. Therefore, there is no substance in this petition and same is required to be dismissed.

4. Accordingly, this petition is dismissed. Interim relief if any shall stand vacated. Rule is discharged. There shall be no order as to costs.

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