

(2015) 03 GUJ CK 0105
In the Gujarat High Court

Case No : Special Civil Application Nos. 17122 to 17125 of 2014

Manager, Ashoka Cotsyn

APPELLANT

Vs

Bharatbhai Arvindlal Shah and Others

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Payment of Gratuity Act, 1972 — Section 7

Citation : (2015) 146 FLR 541

Hon'ble Judges : S.G. Shah, J

Bench : Single Bench

Advocate : Mauna M. Bhatt, for the Appellant; Gaurav K. Mehta and Paritosh Calla, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

S.G. Shah, J—Rule. Learned advocate Mr. Gaurav K. Mehta waives service of notice of rule on behalf of respondent No. 1. Learned advocate Mr. Paritosh Calla waives service of notice of rule on behalf of respondent No. 2.

Heard learned advocate Mr. Manish Bhatt for learned advocate Mrs. Mauna M. Bhatt for the petitioner and learned advocate Mr. Gaurav K. Mehta for respondents in all matters.

Petitioner has challenged that judgment and order dated 25.3.2014 by the President of Industrial Court, Ahmedabad in Appeal (IC) No. 33 of 2010 as well as judgment and order dated 25.7.2014 in Review Application (IC) No. 4 of 2014, whereby judgment and order dated 14.3.2010 in application No. 60 of 1997 by the Labour Court is not only confirmed but the Industrial Court has modified the rate of interest from 6% to 8% and increased the liability of the petitioner to make such payment not only upon amount of retrenchment compensation but also upon the amount of gratuity.

2. Industrial Court has while answering the issue in para 6 of the impugned judgment held both the issues in the favour of the petitioners-respondents

herein, which has been determined to that extent in para 7 of the judgment. However, in paras 8 and 9 of the judgment, the Industrial Court has observed that it would be appropriate, if interest is awarded on unpaid amount and, thereby, though it is recorded that in Misc. Civil Application Nos. 897 of 2009, 898 of 2009, 536 of 2010 and 537 of 2010, the High Court has awarded 6% interest, considering the present interest rate by bank, the Industrial Court has enhanced the rate of interest at 8% but, there is no discussion or clarity in the entire judgment for enhancing such rate of interest on the amount of gratuity also. Only in a final operative order, the Industrial Court has directed the petitioner to make the payment of retrenchment compensation and payment of gratuity with 8% interest.

3. Therefore, learned advocate Mr. Bhatt has rightly pointed out that pursuant to provisions of sub-section 3(A) of section 7 of Payment of Gratuity Act, petitioner is not liable to pay interest on the amount of gratuity.

It would be appropriate to recollect such provisions which reads as under:

"(3-A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as the Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground."

4. However, though there is mandatory provision to pay the interest, such provision makes it clear that interest is not payable if the delay in payment is due to the fault of employee. In the present case, it is not disputed fact that in fact petitioner has not only willing but also offered the amount of granting, but the same was refused by respondent No. 1 and similarly situated employees. It was not disputed fact that retrenchment was because of closer of unit by its original management and it was merged with other company when it was otherwise gone into liquidation under the BIFR.

It is also not disputed that taking over of the previous company by a new company has already been approved by this High Court and payment of gratuity and retrenchment compensation is also approved under such scheme before this Court and therefore the only dispute is regarding rate of interest. It is not disputed fact that in writ petitions preferred being Misc. Civil Application Nos. 897 of 2009, 898 of 2009, 536 of 2010, 537 of 2010 by an order dated 15.10.2010 awarded 6% interest on amount of retrenchment compensation. It is also not disputed fact that all such employees did not accepted the amount of retrenchment compensation and gratuity, at the relevant point of time and the same is still laying with new company i.e. Arvind Mills Ltd. and only because of

delay in accepting the amount, the Court has graciously directed the company to pay such amount with 8% interest. As aforesaid in the impugned judgment the Industrial Court acceded its jurisdiction by granting the interest on amount of gratuity which cannot be awarded even by the competent authority under that Act, when employee had refused to accept it when offered and thereby delay in payment of gratuity is due to the fault by the employees, for which other side - employer could not be either blamed or made liable to pay interest.

However, considering that fact that difference in percentage of interest upon retrenchment compensation is only 2%, ends of justice would meet, if we allow this petition partly by modifying the impugned judgment, so as to restrict the liability of the petitioner to pay interest at the rate of 8% on the amount of retrenchment compensation only. Therefore, order to pay interest at the rate of 8% on the amount of gratuity as per impugned order is hereby quashed and set aside. The petition is therefore partly allowed in aforesaid terms. Rule is made absolute to that extent.