

(2011) 12 GUJ CK 0016
In the Gujarat High Court

Case No : Spl. Civil Application No. 17690 of 2011

Manager, Neptune Spin Fab. Pvt. Ltd.

APPELLANT

Vs

Appellate Authority, Office of Dy. Commissioner of Labour and
Others

RESPONDENT

Date of Decision : 15-12-2011

Acts Referred:

Citation : (2012) 132 FLR 998

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Prabhakar Upadhyay for the Petitioner No. 1, for the Appellant;

Final Decision : Dismissed

Judgement

K.M. Thaker, J.—The petitioner has approached this Court against two concurrent orders passed by the authorities constituted under the Payment of Gratuity Act on the basis of the material which was placed before the authority by the contesting parties.

The petitioner, a Limited Company, has preferred present petition against the order dated 18.3.2011 passed by the Controlling Authority appointed under the Payment of Gratuity Act, 1972 in Gratuity Application No. 209 of 2010.

The petitioner company has also challenged an order dated 30.8.2011 passed by the Appellate Authority in Gratuity Appeal No. 57 of 2011 which was preferred by present petitioner against the aforesaid order dated 18.3.2011 in Gratuity Application No. 209 of 2010.

Against such two concurrent orders based on findings of facts and appreciation of evidence, the petitioner has approached this Court.

Mr. Upadhyay, learned Counsel, has appeared for the petitioner and reiterated the same factual aspects, which have been mentioned hereinabove. He reiterated that there was no relationship between the petitioner and the respondent and

that the respondent had never worked with the petitioner company and therefore, there is no obligation on the petitioner company to pay any amount towards gratuity to the respondent workman.

2. I have heard the learned Counsel for the petitioner and perused the record.

3. It appears that the respondent herein approached the Controlling Authority constituted under the Act by way of an application filed in 2010 which was registered as Gratuity Application No. 209 of 2010 claiming that he was appointed by the petitioner company w.e.f. 9.2.1995 as a labourer for doing miscellaneous technical jobs in spinning department of the petitioner company. He also claimed before the authority that his service was brought to an end w.e.f. 31.12.2008 on account of closure of the petitioner company. He also asserted in his application that his last drawn wages was Rs. 114/- (daily wage). On such premise, the respondent workman claimed Rs. 23,040/- towards unpaid gratuity with interest at statutory rate i.e. 10%.

The petitioner herein contested the application by filing its written statement and flatly disputed status of the respondent workman and claimed that the respondent workman was never employed by it in any capacity whatsoever and there was no relationship of employer and employee between the company and the said respondent workman. On such ground, the claim of the respondent workman was resisted.

During the proceedings before the Controlling Authority, the respondent workman had produced certain documents on record before the authority under a list of documents dated 9.8.2010 which appear to be a note-book/register containing the record of respondent's presence in February, 1995, December, 2002 and June, 2008.

During the proceedings before the Controlling Authority, the statement on oath of the respondent herein was recorded before the authority and he was subjected to cross-examination by the learned advocate for the petitioner. From the record, it transpires and during hearing of present petition, learned advocate for the petitioner has admitted and confirmed, that the petitioner company had not examined any witness on its behalf before the Controlling Authority.

Not only this, but as it transpires from the record of present petition and has also been admitted and confirmed by the learned advocate for the petitioner that any documents were also not produced on record before the Controlling Authority by the present petitioner company.

In view of absence of any oral or documentary evidence of whatsoever nature from the side of the petitioner company, the Controlling Authority decided the application on the basis of the material available before it which comprise the documents produced by the present respondent as per the list of documents dated 9.8.2010 and his own statement on oath (including his cross-examination).

On the basis of appreciation of the said evidence, the Controlling Authority came

to the conclusion that the respondent workman had established its claim whereas the petitioner company had failed to rebut the evidence placed by the respondent and had also failed to lead any evidence on its own behalf and consequently, had failed to establish its own case pleaded in the written statement.

The Controlling Authority, therefore, passed the order dated 18.3.2011 and allowed the application in favour of the respondent workman.

4. Before the Appellate Authority also, the petitioner pleaded at the same tune, i.e., that the respondent workman was never employed by it and there was no relationship of employer and employee between the respondent workman and the petitioner company and that the respondent workman had not worked for 240 days. The appellate authority examined the record - evidence of the workman and also noticed that employer had not produced any evidence. On appreciation and evaluation of evidence, the appellate authority concurred with the decision of controlling authority and dismissed the appeal.

It is pertinent to note that in his evidence, the respondent workman had mentioned the name of the person, i.e., the Manager, under whose instructions he was working with the petitioner company.

However, the petitioner company conveniently did not examine the said person/ Manager and did not rebut the evidence given by the respondent workman.

5. Under the circumstances, the respondent's assertion that he was working under the instructions and authority of one Mr. Shekh Mahemad Abu Nasar has remained uncontroverted and has not been disputed.

6. It is also noticed from the record that the respondent herein had placed on record a note-book/register which contains, according to respondent's assertion, record of his presence with the petitioner company. The petitioner company has not produced any photocopy of the document placed on record by the respondent, but has produced only typed copy of the said document. Even from the said typed copy, it is noticed that the said document contains, on all the pages of the note-book/register, certain signatures which purport to be the signature of the concerned superior officer of the petitioner company.

It is pertinent that during the hearing of present petition, learned Counsel for the petitioner, on inquiry by the Court as to whose signature the said document contains, submitted that the respondent had claimed before the authority that the signature in the said document was that of the petitioner company's manager.

Despite such specific assertion by the respondent workman in his evidence before the Controlling Authority, the petitioner company preferred and chose not to examine its Manager as its witness either in its defence or for rebutting the allegation made by the respondent workman.

Under the circumstances, the respondent's evidence that the document contains the signature of Manager of the petitioner company remains absolutely uncontroverted.

Hence, when the Controlling Authority took into account and relied on such uncontroverted evidence, then, the said decision of the Controlling Authority cannot be said to be erroneous or perverse and cannot be faulted.

It is noticed from the copy of the oral statement/deposition given by the workman before the Controlling Authority, after which he was subjected to cross-examination, that even in his oral statement before the authority, the respondent workman had mentioned name of Mr. Shekh Mahemad Abu Nasar and asserted that he had worked under the supervision and as per the instructions of the said person/Manager.

During the hearing of present petition, this Court inquired from the learned Counsel for the petitioner as to whether the said person - Mr. Shekh Mahemad Abu Nasar was working with the petitioner company as its Manager or not, and in reply the learned Counsel for the petitioner fairly admitted and submitted that the said person was actually working with the petitioner company as Manager of the petitioner company.

7. In this view of the matter, it becomes relevant to note that if the respondent workman had never worked with the petitioner company, as it has been claiming, then, he would not know the name of petitioner company's Manager and would not be in position to state in his evidence that he was working under the authority and supervision of a person named by him.

When the said oral and documentary evidence given by the respondent workman is conjointly taken into account and it is also taken into account that the petitioner company did not lead any evidence, whatsoever, i.e. any oral or documentary evidence and more particularly did not examine the said Manager to rebut the claim of the workman then, the decision of the Controlling Authority to proceed on the basis of uncontroverted evidence of the respondent workman cannot be faulted.

Similarly, the decision of the Appellate Authority to accept the decision of the Controlling Authority based on such evidence also cannot be faulted.

8. The learned Counsel for the petitioner wants this Court to accept his contention that the respondent workman did not produce any evidence on record to establish that he was employed by the petitioner company and that he had worked for 240 days continuously for 5 years and was entitled for gratuity.

From the said submission of the learned Counsel for the petitioner, it appears that the petitioner wants to enjoy the luxury of not placing any oral or documentary evidence from its side on record before the Controlling Authority and it also wants to enjoy the luxury of not placing any evidence in rebuttal to contradict the evidence placed by the respondent workman on record and also

wants luxury that this Court should believe this version and discard the uncontrovered evidence placed on record by the respondent workman.

To say the least, this Court, after having considered two concurrent orders based on facts on record and appreciation of evidence, cannot allow the petitioner company to have such luxury and accept his such submission.

Having regard to the aforesaid aspects, it is clear that there is no material on record which would lead this Court to the conclusion that the Controlling Authority and/or the Appellate Authority have committed error of law or even error on fact in accepting the uncontroverted evidence placed on record by the respondent workman. There is nothing on record to conclude that the decision of the Controlling Authority is without any evidence whatsoever on record and/or is perverse or arbitrary.

I am not, in such facts and circumstances of the case, inclined to exercise discretion of entertaining the petition against two concurrent orders taking a view contrary to the petitioner's case.

The petitioner has failed to make out any case in his favour, hence, the petition deserves to be rejected and is accordingly rejected.