(2002) 02 GUJ CK 0034

In the Gujarat High Court

Case No : S.C.A. No''s. 7784 to 7817 of 2001

Navnitrai Manishanker Raval and Others — APPELLANT

Vs

Divisional Controller, Gujarat State Road Transport Corporation — RESPONDENT

Date of Decision : 21-02-2002

Acts Referred:
Payment of Gratuity Act, 1972 — Section 2(2)

Citation : (2003) 23 GLH 191 : (2003) 4 GLR 87 : (2003) 2 LLJ 1044

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : R.E. Variava, H.S. Munshaw, Roopal, R. Patel, Ashish M. Gagli and H.C. Raval and R.V. Desai, AGP for appearing Parties, for the Appellant;

Final Decision : Dismissed

Judgement

Ravi R. Tripathi, J.—This group of petitions are filed for the relief that the order dated January 15, 1999 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 be quashed and set aside and the respondents be directed to pay the amount of arrears of gratuity with 18% interest.

2. The facts of the case are that earlier the upper limit of gratuity amount was Rs. 1 lac. In the year 1995, the State Government and also the Central Government by notifications raised it to Rs. 2.5 lacs. The copy of the Office Memorandum issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions (Department of Pension & Pensioners'' Welfare), New Delhi dated July 14, 1995 was made available for perusal of this Court. The subject mentioned in the said Office Memorandum reads as under:

"Treatment of Dearness Allowance as Dearness pay for the purpose of Death Gratuity and Retirement Gratuity and raising the maximum limit of gratuity from Rs. 1.00 lakh to 2.50 lakhs." The relevant extract of the Office Memorandum are, "accordingly, the President is pleased to decide the dearness allowance linked to

AICPI 1201.66 as indicated below shall be treated as dearness pay for reckoning emoluments for the purpose of retirement gratuity/death gratuity under the Central Civil Services Pension Rules, 1972, in the case of Central Government Employees who retire or die on or after April 1, 1995.

3. The affidavit-in-reply is filed in Special Civil Application 7788 of 2001 and along with the. affidavit-in-reply, the Government Resolution No. NVT-1195/ GaJ/9-P dated January 10, 1996 is produced. The title of G.R. is, "Treatment of portion of Dearness Allowances as Dearness Pay for the purpose of Death-cum-Retirement gratuity and raising maximum limit of Gratuity from Rs. 1.00 lac to Rs.2.50 1acs."

4. In Sub-para-2 of para.2 of the G.R., it is mentioned that after careful consideration, Government is pleased to decide that dearness allowance linked to AICPI 120.66 as indicated below shall be treated as dearness pay reckoning emoluments for the purpose of death-cum-retirement gratuity for the State Government employees who retire or die on or after April 1, 1995. Mr. Variava learned advocate appearing for the petitioners in all these petitions submits that when all Central Government employees and the State Government employees are given the benefit of higher limit of gratuity amount of Rs.2.5 lacs, the same benefit should be extended to the petitioners also who are the employees of the respondent-Corporation (Gujarat State Road Transport Corporation) and as they also have retired on or after April 1, 1995.

5. Learned advocates appearing for the respondent-Corporation submit that the Corporation is having its own rules for pension and under a settlement, a copy of which is produced along with petition (Annexure-D in Special Civil Application No. 7788 of 2001), wherein about gratuity it is mentioned that the gratuity will be governed under the present rules of the Corporation or by the Act of 1972 from the date of its coming into force. It is also mentioned in the said clause that provisions which will be beneficial to the employees, will be followed for granting benefit of gratuity. The learned advocate for the respondents, contended that neither the Office Memorandum of the Central Government nor the Government of Gujarat Resolution dated January 10, 1996 has any application to the employees of the respondent- Corporation. It is also submitted that in para 6 of the said Resolution it is stated that, "this order will apply to all employees of the State Government, Panchayat employees, Teaching and non-Teaching Staff of non-Government grant-in-aid Schools/ Colleges and Universities and other employees to whom said pension scheme has been made applicable and pension scheme is in force". Learned advocates also submitted that "the date of giving benefit of the enhanced limit of gratuity'''' i. e. April 1, 1995 is not applicable to the employees of the respondent-Corporation.

6. Learned advocates also submit that Payment of Gratuity Act was amended by an ordinance, a copy of which is produced along with affidavit-in-reply. The title reads as under:

"An Ordinance further to amend the Payment of Gratuity Act, 1972. Sub-section (2) of Section 1 of the said Ordinance states that, it shall come into force at once."

Meaning thereby, that Ordinance came into force from the date of its publication in the Gazette of India and that is September 24, 1997. The learned advocate submits that at a later point of time, the said ordinance culminated into an Act being "the Payment of Gratuity (Amendment) Act, 1998". The Sub-section (2) of the Act says that it shall be deemed to have come into force on September 24, 1997. It is submitted by the learned advocate that if at all the Legislature wanted to give a retrospec-tive effect to the Ordinance, the same could have been provided as is provided under the Act. Though the Act was published on June 23, 1998 it is made effective since September 24, 1997. But the ordinance says that it shall come into force at once. Thus, Legislature never wanted to give retrospective effect to the said Ordinance.

7. In view of the aforesaid discussion, the contention raised by the learned advocate for the petitioners does not find favour and the same is not accepted. It may not be out of place at this juncture to note that whenever an event of prescribing a cut off date takes place; there is always a group of persons who have heart burning because by providing a ''cut off date'', certain persons who are beyond that date, stand to lose and persons who are within that date get the benefits. In the present case also, it has happened like that. The Central Government and State Government employees are getting the benefit of enhanced limit of gratuity from April 1, 1995, while the employees of the respondent-Corporation are not getting that benefit. They will be getting the same only from the date "The Gratuity Act" stands amended, i.e. September 24, 1997. Under this clear position of law the present petitioners do not get any benefit. These petitions are accordingly rejected. Rule discharged with no order as to costs.