

(2013) 04 GUJ CK 0045

In the Gujarat High Court

Case No : Special Civil Application No's. 4079, 5287 and 5288 of 2006 with Spl. C.A. No. 4088 of 2013

Parshottam Bhai Keshav Bhai Goyani and Others

APPELLANT

Vs

Bhavnagar District Co-Operative Bank Ltd.

RESPONDENT

Date of Decision : 22-04-2013

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4, 4(2), 4(3)

Citation : (2013) 138 FLR 712 : (2013) 3 GLR 1926 : (2013) LabIC 3126 : (2013) 4 LLN 631 : (2013) LLR 954

Hon'ble Judges : Paresh Upadhyay, J

Bench : Single Bench

Advocate : Kiran Yajnik, for the Appellant; K.M. Patel and Varun K. Patel, for the Respondent

Final Decision : Dismissed

Judgement

Paresh Upadhyay, J.—Heard Mr. Kiran Yajnik, learned advocate for the petitioners and Mr. K.M. Patel learned Senior Advocate with Mr. Varun K. Patel for the respondent-Bank.

Challenge in this group of petitions is made to the order passed by the Appellate Authority, Rajkot under the Payment of Gratuity Act, 1972, dated 24.11.2005. By the said order, the order of the Controlling Authority under the Payment of Gratuity Act dated 31.12.2004 is set aside.

Facts necessary for adjudicating the issues raised in this group of petitions, as emerging from record, are as under:

The petitioners were in service of the respondent-Bank.

The petitioners were paid gratuity at the time of their retirement, as per their entitlement.

After the retirement of the petitioners, the respondent-Bank had entered into

settlement with the employees working with it.

It was the case of the petitioners that, they were entitled to the gratuity at the enhanced rate, as if they were also the beneficiaries of the said settlement.

With this claim, the petitioners had approached the Competent Authority under the Payment of Gratuity Act. The said application, being Gratuity Application No. 14/2003, was allowed on 31.12.2004, and the claim of the petitioners was accepted.

The respondent-Bank was aggrieved by the said order and it had challenged the same before the Appellate Authority, however, the Appellate Authority had rejected the appeal vide order dated 31.3.2005.

The said order of the Appellate Authority was challenged before this Court in group of petitions being Special Civil Application No. 8251 of 2005 and cognate matters, wherein, this Court vide order dated 22.7.2005 set aside the order of the Appellate Authority dated 31.3.2005 and the matter was remanded back to the Appellate Authority to decide afresh, on all counts, reference to which was made in the order of this Court dated 22.7.2005.

Thereafter, the appellate authority, after hearing all the parties, passed an order on 24.11.2005 and allowed the appeals of the respondent-Bank and set aside the order of the Controlling Authority dated 31.12.2004. It is this order which is under challenge in these petitions.

2. Learned advocate for the petitioners submitted that the reasons recorded by the Controlling Authority in its order dated 31.12.2004 were just and proper and there was no occasion for the Appellate Authority to interfere in the same. He has vehemently contended that by the settlement of the Bank with its employees, the petitioners were entitled to gratuity of 23 months' salary, while they have received only of 20 months' salary. It is further contended that the petitioners were entitled to get the gratuity considering 26 days of the month and not 30 days. It is contended that the petitioners should get the difference on these two counts.

3. On the other hand, learned senior advocate Mr. K.M. Patel by referring to the affidavit-in-reply dated 30.6.2006, contended that the claim of the petitioners was misconceived, coupled with the fact that the Controlling Authority or the Appellate Authority did not have the jurisdiction to entertain the claim of the petitioners since what they were claiming was not under the provisions of the Payment of Gratuity Act, but under the settlement, which was in force between the respondent-Bank and its employees, to which petitioners were not party.

Learned senior advocate Mr. K.M. Patel for the respondent-Bank has drawn the attention of the Court to sections 4(2) and 4(3) of the Payment of Gratuity Act, which reads as under:

Section 4: Payment of gratuity.-

(1) Gratuity shall be...

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any over-time work shall not be taken into account:

Provided further that in the case of [an employee who is employed in a seasonal establishment and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days' wages for each season.

[Explanation.--In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.]

(3) The amount of gratuity payable to an employee shall not exceed [ten lakh rupees].

(4) For the purpose of...

(5) Nothing in this section...

(6) Notwithstanding anything...

It is contended by the learned advocate for the respondent-Bank that the ceiling provided u/s 4(3) at the relevant time was Rs. 1 lac, when the petitioners retired. It is submitted that it is undisputed that the petitioners were paid more than Rs. 1 lac at the time of their retirement towards gratuity. It is also indicated that under the Statute, the petitioners are entitled to 15 days wages for each completed year of service, while the payment which was made to them by the Bank was one month's salary for each completed year of service. It is also contended that the payment on the basis of one month's salary for each completed year of service itself was on much higher side than what is provided in the Statute, which is 15 days salary for each completed year of service. Under these circumstances, it is contended that the petitioners can not be permitted to take support from some provisions in isolation that the calculation ought to have been made on the basis of 26 days and not 30 days. It is further submitted by learned advocate for the respondent-Bank that since the claim of the petitioners was, not under the Payment of Gratuity Act, the Controlling Authority, and in sum, the Appellate Authority, would not assume the jurisdiction under the Act, and therefore, no order could have been passed. It is contended that though the respondent-Bank has not challenged the order of the Appellate Authority, to the extent it holds that the Controlling Authority as well as the Appellate Authority did have jurisdiction, while supporting the order, it can be supported on all grounds, including that, in law the petitioners were not entitled to any relief.

It is next contended on behalf of the respondent-Bank that the settlement under which the benefit is claimed by the petitioners, is on record. It is pointed out that the very opening part of the said settlement records that it covers such employees, who were working on the date of settlement, which is 14.3.1996, and further that whose names are mentioned in the schedule appended thereto. It is undisputed that none of the petitioners was in service as on 14.3.1996. It is also not in dispute that the name of none of the petitioners is reflected in the schedule to the said settlement. It is contended that under these circumstances, the petitioners would not be governed by that settlement and therefore, the Appellate Authority has committed no error in holding that the petitioners were not covered by the said settlement, and therefore were not entitled to the benefit which was claimed by them.

It is also pointed out that the petitioners were also quite aware of the fact that the grievance voiced by them could not be adjudicated by the authority under the Payment of Gratuity Act, and even if they had any grievance, it could be tried by the Civil Court only. It is further pointed out that the petitioners had already filed civil suit in the Court of Civil Judge (S.D.), Bhavnagar being Regular Civil Suit No. 606/1997, which was dismissed vide judgment and order dated 20.12.2005. It is pointed out that it was specifically contended before the authorities under the Payment of Gratuity Act that the petitioners are riding on two horses simultaneously, which is impermissible under law and on that count also, they must fail. It is pointed out that the petitioners have, on merits lost in the civil suit, wherein it is held that the petitioners are not entitled to claim the difference of gratuity under the settlement dated 14.3.1996, since they were not in service at the relevant time. It is also pointed out that the said order of the Civil Court was challenged by preferring an appeal being Regular Civil Appeal No. 5/2006 which was also dismissed by the learned Principal District Judge, Bhavnagar by judgment and order dated 11.1.2012.

In this factual back-ground, it is contended by learned advocate for the respondent-Bank that the petitions be dismissed.

Learned senior advocate for the respondent-Bank has also relied on the decision of the Calcutta High Court in Writ Petitions No. 19311 to 19318 of 1997 dated 6.2.1998 to contend that the petitioners could not claim the benefits under the settlement, which was not in force at the time of their retirement. He has also relied on the decision of this Court in the case of Gujarat State Export Corporation Ltd. v. Madhusudan L. Khandwala and another, 2004(1) GLH 158 to contend that the authorities did not have jurisdiction to entertain the claim.

4. Having heard learned Counsel for both the parties and having gone through the record and keeping in view undisputed facts which are recorded above, I find that the petitioners were not covered by the settlement dated 14.3.1996, under which, the benefit is claimed. I also find that the Appellate Authority under the Payment of Gratuity Act, has not committed any error by holding that the petitioners are not entitled to claim difference in gratuity. Since, on merits, the

order of the Appellate Authority is not interfered with, the question, as to whether the authorities under the Payment of Gratuity Act had jurisdiction to entertain the claim of the petitioners in this regard, or not, is not required to be gone into.

I further find that the petitioners have already lost on merits even before the Civil Court.

In view of undisputed facts which are recorded hereinabove, the petitioners cannot be granted any relief.

For the reasons recorded above, these petitions are dismissed. Rule is discharged. No order as to costs.