

(2008) 02 GUJ CK 0062

In the Gujarat High Court

Case No : Letters Patent Appeal No. 224 of 2008 in Special Civil Application No. 5395 of 2007 and Civil Application No. 1869 of 2008 in Letters Patent Appeal No. 224 of 2008

Regional Manager

APPELLANT

Vs

Nilaben Suresh Sanghvi

RESPONDENT

Date of Decision : 20-02-2008

Acts Referred:

Citation : (2008) 02 GUJ CK 0062

Hon'ble Judges : R.M. Doshit, J;K.M. Thaker, J

Bench : Division Bench

Advocate : Kirit J. Macwan, for the Appellant; None for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, J.—This Appeal, preferred under Clause 15 of the Letters Patent, by the employer Central Bank of India (hereinafter referred to as the Bank), arises from the judgment and order dated 22nd January, 2008 passed by the learned Single Judge in Special Civil Application No. 5395 of 2007. The respondent No. 1 is the legal representative of the delinquent employee.

2. The present proceeding arises from the order dated 27th April, 2005 made by the controlling authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the Act of 1972) directing the Bank to pay to the delinquent employee the amount of gratuity in the sum of Rs. 20,977/- with interest at the rate of 10% with effect from 18th July, 1984.

3. The predecessor of the respondent, the delinquent employee of the Bank, was by order dated 18th July, 1984 dismissed from service on disciplinary ground. On his dismissal from service, he was not paid the amount of gratuity. In the year 2004, the respondent approached the controlling authority by filing application No. 109 of 2004. The said application was contested by the appellant. According

to the Bank, the delinquent employee had committed acts of misconduct causing loss to the Bank to the extent of Rs. 27,736/-. The delinquent employee was, therefore, not entitled to receive the amount of gratuity under the Act of 1972. The controlling authority, by its order dated 27th April, 2005, has noted that the Bank had imposed the punishment of dismissal from Bank's service without notice with immediate effect. On the said order the Bank had not recorded its intention to forfeit the amount of gratuity payable to the delinquent employee. In absence of specific order of forfeiture, the controlling authority directed the Bank to pay the amount of gratuity and the statutory interest to the delinquent employee. The said order has been confirmed by the appellate authority as well as by the learned Single Judge. Therefore, the present Appeal.

4. Mr. Mecwan has submitted that as the delinquent employee had committed acts of misconduct because of which the Bank had suffered financial loss, the Bank had right to forfeit the gratuity payable to the delinquent employee. He has submitted that since the order was made as far back as on 17th July, 1984, it was not known whether there was express order for forfeiture of the gratuity or not. He has submitted that in such cases, the Courts have taken a view that the employer shall be allowed opportunity to hear the delinquent and to make order of forfeiture of gratuity. Reliance is placed on the judgment of this Court in the matter of Union of India v. K.R. Ajwalia 2005 (3) GLH 1 and the order in the matter of V.R. Shah v. Chairman Cum Managing Director, Central Bank of India, Mumbai and Anr. [Special Civil Application No. 10939 of 1995 decided on 17th March, 2005 (Coram: Mr. Justice G.S. Singhvi, as he then was)] and the judgment of the Hon'ble Supreme Court in the matter of Y.P. Sarabhai Vs. Union Bank of India and Another, . In both the above referred judgments of this Court, the employer concerned had made express order for forfeiture of gratuity against the delinquent employee, however, the delinquent employee had not been given opportunity of hearing. In the circumstances, though the order of forfeiture was set aside, the Court permitted the employer to consider the matter afresh after hearing the delinquent employee. In the matter of Y.P. Sarabhai (supra) the legal representative of the delinquent was allowed certain payments in lieu of gratuity. However, the question whether the gratuity was payable or not was not the matter directly at issue.

5. In the present case, the appellant did not raise plea of limitation or delay and laches before the authorities below or even before the learned Single Judge. The plea that the record was not available on account of delay and laches raised before us for the first time is not tenable. In absence of a specific order forfeiting the gratuity, we are of the opinion that the learned Single Judge and the authorities below were right in holding that the delinquent was entitled to the amount of gratuity and the statutory interest.

6. No case for interference is made out. The Appeal is dismissed in limine. Civil Application No. 1869 of 2008 stands disposed of.