

(2016) 06 GUJ CK 0031
In the Gujarat High Court

Case No : Special Civil Application No. 228 of 2016

Saurashtra University

APPELLANT

Vs

Saurabh Chanrakant Bhatt

RESPONDENT

Date of Decision : 17-06-2016

Acts Referred:

Payment of Gratuity Act, 1972 — Section 14, 4

Citation : (2016) 150 FLR 732 : (2016) 4 LLN 136

Hon'ble Judges : Paresh Upadhyay, J.

Bench : Single Bench

Advocate : Mr. S.N. Shelat, Senior Advocate with Mr. A.R. Thacker, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Paresh Upadhyay, J. (Oral) - Amendment is granted.

2. Heard Mr. S.N. Shelat, learned senior advocate with Mr. A.R.Thacher, learned advocate for the petitioner - University.

3. Challenge in this petition is made by the employer to the order passed by the Controlling Authority under the Payment of Gratuity Act, 1972 at Rajkot dated 09.10.2015 in Gratuity Case No.95 of 2014, whereby the University is directed to make payment of Rs. 2,02,280/- to the respondent towards gratuity, with statutory interest.

4. Mr. Shelat, learned senior advocate for the petitioner University has submitted that, the respondent was not regularly appointed. He had already approached the Gujarat Universities Services Tribunal, Ahmedabad for the reliefs, including for the relief of gratuity. It was Application No. 38 of 2010, which the Tribunal had rejected. It is submitted that the said order was challenged by him before this Court in Special Civil Application No. 2254 of 2011. The said petition was also dismissed vide order dated 06.07.2012 and that is how the respondent was not entitled to claim gratuity. Reference is also made to the Government

Resolution dated 26.09.1989. It is submitted that the impugned order be interfered with.

5. Having heard learned senior advocate for the petitioner and having gone through the material on record, this Court finds as under.

5.1 The respondent No.1 had joined the service of the petitioner University as a Laboratory Technician on 19.11.1990. He retired on attaining the age of superannuation on 03.11.2010. It is for this period, the payment of gratuity is ordered by the Controlling Authority, which is challenged before this Court.

5.2 The entitlement of the respondent No. 1 to claim gratuity flows from the Payment of Gratuity Act, 1972, more particularly Section 4 thereof.

5.3 The contention that the respondent had already unsuccessfully tried before the Gujarat Universities Services Tribunal in Application No. 38 of 2010 and the said rejection was confirmed by this Court in Special Civil Application No. 2254 of 2011 will not be of any help to the petitioner for the following reasons.

5.3.1 The observations of the Tribunal in the said order are as under.

"7. Apart from that, facts remain that vide reply dated 13.11.2010 University has turned down the request of the petitioner, to have the retirement benefits, sought vide representation dated 21.09.2010, on the ground that he was appointed on the post which was not approved.

10. It appears that after issuing G.R. Dated 26.09.1989, Government of Gujarat, through its Education Department, issued two resolutions dated 16.06.2003 being numbered as NGC-1582- 9505(84)-KH.

Nothing contrary than what is stated in these resolutions is shown to this Tribunal.

11. Not only that nothing is shown to this Tribunal that, if State Government is not responsible for extending the retirement benefits to the petitioner, it is for University to do the same."

5.3.2 Even the observations of this Court while rejecting the Special Civil Application No.2254 of 2011 are as under.

"3. Pursuant to issuance and service of notice on the second respondent, counter affidavit has been filed by respondent No.2 wherein it is stated that the petition is barred by delay and laches and the petitioner has approached the Tribunal only in 2010 after he reached the age of superannuation. It is next contended that the earlier round of litigations initiated by other ad-hoc employees including the present petitioner have been rejected and the said fact has been suppressed by the petitioner from this Court. It has next been contended that the petitioner was never made a regular employee and his post of Laboratory Technician was not extended by the State Government and the petitioner is not justified in claiming any declaration and even otherwise he is not entitled to any benefits like

pension, higher scale as per the recommendation of 6th Pay commission."

5.4 In view of above, it is clear that the issue before the Tribunal was with regard to regularisation of the service of the respondent No. 1, and revision of pay pursuant to recommendations of the 6th Pay Commission, etc. Since he had already retired by that time, he had also claimed pension, etc., as consequential relief. It can not be said that a person, who is not entitled to pension and gratuity under the Gujarat Civil Services (Pension) Rules, 2002, as applicable to the Universities? employees, is also not entitled to gratuity under the Payment of Gratuity Act, 1972. Legally, it is converse. The conjoint reading of Section 4 and Section 14 of the Act and the Government Resolution dated 26.09.1989 clearly indicates that, the respondent No. 1 was entitled to gratuity under the Act and the Controlling Authority has not committed any error while accepting the claim of respondent No. 1.

5.5 It is noted that the order of the Controlling Authority could and ought to have been challenged by the petitioner University before the Appellate Authority under the Payment of Gratuity Act, which it has not. It also needs to be noted that, filing of such appeal would require the appellant to deposit the entire amount as condition precedent, which the University has not done. Under the circumstances, while passing final order, appropriate direction will also be required to be given to University.

5.6 Reference needs to be made to the judgments of this Court in the case of State of Gujarat v. Vallabhbai Mavjibhai Khokhar (Special Civil Application No.1572 of 2016 of 2016 dated 06.06.2016) and in the case of Rajibhai Melabhai Chauhan v. State of Gujarat (Special Civil Application No. 213 of 2016 dated 06.06.2016). Reference also needs to be made to the decisions of this Court in the case of (i) Vadodara Mahanagar Seva Sadan v. Vimlaben Natubhai Sharma recorded on Special Civil Application No.6683 of 2013 dated 26.04.2013 and (ii) Vadodara Mahanagar Seva Sadan v. Subhashbhai Khodabhai Solanki recorded on 8744 of 2013 dated 03.07.2013 and 25.07.2013), which would also apply in the facts of this case.

5.7 In view of above, no interference is required in this petition. This petition therefore needs to be dismissed.

6. For the reasons recorded above, the following order is passed.

6.1 This petition is dismissed.

6.2 The impugned order passed by the Controlling Authority under the Payment of Gratuity Act, 1972 at Rajkot dated 09.10.2015 in Gratuity Case No.95 of 2014 is confirmed.

6.3 The amount as ordered by the Controlling Authority shall be paid by the petitioner University to the respondent within a period of two months from today.