

(2016) 07 GUJ CK 0058

In the Gujarat High Court

Case No : Special Civil Application No. 13892 of 2011

Shitalgiri Hansgiri Gusai

APPELLANT

Vs

Gujarat Urja Vikar Nigam Ltd.

RESPONDENT

Date of Decision : 15-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 4(3)

Citation : (2017) 1 CLR 1045 : (2016) 150 FLR 1040

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

Bench : Single Bench

Advocate : Mr. Ch Vora, Advocate, for the Appellant; Mr. Md. Pandya, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. K.M. Thaker, J.(Oral)—Heard Mr. Vora, learned advocate for the petitioners. Mr. Pandya, learned advocate for the respondent has filed leave note. No one is present from the respondent Board Nigam.

2. In present petition, the petitioners have prayed, inter alia, that:

"15(A) To issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the impugned Circular No. Guvnl/HR/Gratuity/1254 issued by the Respondent Authority dated 5.6.2010 vide Annexure:" G" and further be pleased to direct the Respondent Authority to grant benefit of payment of gratuity on the line of employees of Government of Gujarat up to Rs. 10 lacs instead of Rs. 3.50 lacs in line of Resolution vide Annexure-E and further be pleased to direct the Respondent Authority to pay the amount of differences according to their number of years in service and last drawn salary with reasonable amount of interest."

3. So as to justify and support the said request, Mr. Vora, learned advocate for the petitioners referred to Annexure-B of the petition where the petitioners have

placed respondent Board's Nigam's General Standing Order No.312 dated 24.8.1988. The learned advocate for the petitioners relied on paragraph No.29 of the said GSO, which reads thus:

"29. Gratuity:

The maximum financial ceiling on the amount of gratuity payable will be revised on state Government lines, which is at present Rs. one Lakh. This will have effect only from 1/10/87 Case of retirement etc. before this date will not qualify for this enhanced amount."

4. Besides the said document, learned advocate for the petitioners also referred to the circular dated 5.6.2010 issued by the respondent Nigam.

The said circular reads thus:

"Circular

Read - 1.

GSO 228 dated 8.2.1973

2.

GSO 229 dated 8.2.1973

3.

GSO Estt. Circular No.509 dated 5.10.1988

4.

GSO Estt. Circular No.610 dated 19.12.1997

5.

GSO Estt. Circular No.509 dated 23.09.1998

Sub:Enhancement of maximum ceiling of Gratuity of Rs. 10,00,000/-

In pursuance of the approval of the competent authority, it has been decided to raise the ceiling of Gratuity from Rs. 3,50,000/(Rupees Three lacs fifty thousand only) Rs. 10,00,000/- (Rupees Ten lacs only) w.e.f. 24/5/2010 as per the amendment in the Payment of Gratuity Act 2010 by the Government of India Cases of resignation / retirement etc. before this date i.e. 24/5/2010 will not qualify for this enhanced ceiling."

5. With reference to the relief prayed for in the petition, it is also appropriate to take into account the provisions under Section 4(3) of the Payment of Gratuity Act, 1972, which reads thus:

"4(3) The amount of gratuity payable to an employee shall not exceed ten lakh rupees."

6. The said subsection (3) of Section 4 of the Act is amended with effect from May 2010 by virtue of the Act No.15 of 2010. By the said amendment, the upper limit for payment of gratuity was enhanced from Rs. 3.5 lakh to Rs. 10 lakh with effect from 24.5.2010.

7. In this view of the matter and more particularly in light of the provisions under the Act as well as in light of the circular dated 5.6.2010, any cause to prosecute the petition does not survive.

8. However, it is clarified that if for any reason the respondent Nigam is not taking into account the said amended upper ceiling in respect of payment of gratuity, i.e. Rs. 10 lakh and if the respondent Nigam still continues to apply Rs. 3.5 lakh as upper limit then it will be open to the petitioners to take out appropriate proceeding in accordance with the law by raising demand / dispute to press in service its demand for enhancing the upper limit of gratuity from Rs. 3.5 lakh to Rs. 10 lakh and/or to take out appropriate proceeding before the authority constituted under the Act for claim of gratuity at appropriate rate in accordance with the law. Since the said circular dated 5.6.2010 is issued by the respondent Nigam and since the provision under the Act itself is amended with effect from 5.6.2010, any other or further order is not required in present petition. Accordingly, the petition is disposed of. Rule is discharged.