

(2011) 12 GUJ CK 0056
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1107 of 2010 in Special Civil Application No. 16121 of 2005

State of Gujarat and 2

APPELLANT

Vs

Jamnaben R Tavar and 1

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Citation : (2011) 12 GUJ CK 0056

Hon'ble Judges : V.M. Sahai, J;A.J. Desai, J

Bench : Division Bench

Advocate : Reeta Chandarana, Assistant Government Pleader, for the Appellant;
KB Pujara for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice V.M. Sahai

1. This Letters Patent Appeal has been filed challenging the judgment and order dated 27.1.2009 passed by the learned Single Judge in Special Civil Application No. 16121 of 2005.

2. We have heard learned counsel for the parties. Though served, none appears on behalf of respondent No. 2. The respondents herein had filed the captioned writ petition before the learned Single Judge claiming the benefits of Gratuity and Leave Salary with interest for the services rendered by them under the appellants. The learned Single Judge disposed of the writ petition by making the following observations in Paras - 3 to 6:

3. The proposition of law expounded by this Court in similarly two cases of similarly situated employees of Respondent No. 4 would be fully attracted, which have now admittedly become final as no further challenge has been made in, so far as, the payment of gratuity with the amount of interest on delayed payment is concerned.

4. In both the aforesaid decisions meticulously evaluation has been made. It would not be, therefore, necessary to reiterate the same, once the law has become applicable to the facts of the present case. The contentions which are advanced in the affidavit-in-reply are untenable for the nonpayment of gratuity to the petitioner. Otherwise also in the aforesaid two decisions, this Court has gone to threadbare discussion, the legal profile and the objections raised on behalf of the respondents and directed the respondents to pay the amount of gratuity claimed by the petitioners in respective petitions with the interest @ of 18% p.a. from the date the payment of gratuity becomes due till the interest of payment with the cost of Rs.5,000/-. There is no reason to make a departure from the earlier proposition of law laid down in the similarly situated employees of the Respondent No. 4. It would be interesting to refer at this juncture that the objection raised against the liability of the payment of the gratuity in the affidavit-in-reply is diametrically opposite to the resolution of the Government dated 13th April, 1988 issued by the Department of Education of the State of Gujarat, wherein it has been made competently clear that the employees of Respondent No. 4 shall be entitled to claim gratuity as if they are the employees of the State of Gujarat.

5. There is no any reasonable ground as to why despite two decisions and despite the Government Resolution in this behalf, the petitioner is allowed to suffer from nonpayment of legitimate dues of gratuity. It is, therefore, undoubtedly a case for delay without any reason for nonpayment of legitimate dues of the employee, in so far as payment of gratuity is concerned. In the aforesaid decisions, the rate of interest for delayed payment is approved and granted at the rate of 18% p.a. with cost of Rs.5,000/- and this Court is in full agreement with the proposition laid down in two earlier decisions referred hereinabove, so far as, the quantum of interest is concerned and the quantum of cost is concerned.

6. In the result, this petition is allowed and in view of the aforesaid discussions, evident and unambiguous stand and the policy of the Government manifested in the Government Resolution dated 13th April, 1988 referred hereinabove and two decisions, the petition shall stand allowed with cost, which is quantified at Rs.5,000/-. The respondent No. 1 is also directed to pay the cost of Rs.5,000/- to the petitioner within a period of one month from the date of receipt of the writ from this Court. The amount of gratuity with interest @ 18% from the date the amount became due and payable is directed to be paid to the petitioner by the respondents with interest @ 18% thereon with the payment of cost of Rs.5,000/- directed to be paid on or before 31st March, 2005, failing which, it will be open for the petitioner to move this Court for further direction. In so far as, the payment of leave salary is concerned it will be open for the petitioner to make a separate representation to the respondents and on such representation being made the respondent-authority concerned shall decide in accordance with rules and law within a period of 30 days from the date of receipt thereof. Rule is made absolute accordingly. Direct Service is permitted.

3. The learned Single Judge passed the above order after considering the decisions rendered by this Court in two other similarly situated cases. Considering the facts of the case and the Government Resolutions on the subject matter, we are of the opinion that the learned Single Judge has rightly passed the order under challenge. We are in complete agreement with the order passed by the learned Single Judge.

4. In view of the above, the appeal is devoid of any merits and is, accordingly, rejected.