

(2010) 12 GUJ CK 0170
In the Gujarat High Court

Case No : Special Civil Application No. 16227 of 2010

Sudesh Chemicals Pvt. Ltd. and Another	APPELLANT
Vs	
State of Gujarat and Others	RESPONDENT

Date of Decision : 27-12-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 12 GUJ CK 0170

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Chetan Pandya, for S.V. Raju, Associates for Petitioners 1 - 2, for the Appellant; Monali Bhatt, AGP for Respondents 1 - 2 and Rakesh B. Sharma, for Respondents 3, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—The Petitioner has filed this petition under Article 227 of the Constitution of India praying for quashing and setting aside the orders passed by the Controlling Authority in Gratuity Application No. 2/2007 and Gratuity Review Application No. 2/2007.

2. Heard Mr. Chetan Pandya, the learned advocate appearing for SV Raju Associates for the Petitioners, Mr. Rakesh B. Sharma, the learned advocate appearing for Respondent No. 3 and Ms. Monali Bhatt, the learned AGP appearing for Respondent Nos. 1 and 2.

3. It is the case of the Petitioner that an ex-parte order was passed by the Controlling Authority determining the amount of gratuity payable by the Petitioner to the Respondent No. 3 at Rs. 25,096=00.

4. Being aggrieved by the said order, Review Application was preferred by the Petitioner. A specific contention was raised by the Petitioner in that Review Application that the Payment of Gratuity Act is not applicable to the Petitioner establishment as there are less than 10 workers in the Petitioner establishment.

However, the said Review Application was also rejected by the Controlling Authority. The Controlling Authority has dealt with the contention raised by the Petitioner in the Review Application and while rejecting the said contention, it was observed that no evidence was produced on the record as to whether there are less than 10 workers in the establishment.

5. Being aggrieved by the said order of the Controlling Authority, the Petitioner has filed Civil Suit, which also came to be dismissed on the ground that an alternative remedy is available to the Petitioner by way of an appeal. Instead of filing an appeal before the Appellate Authority, the Petitioner has filed the present petition.

6. Mr. Pandya, the learned advocate appearing for the Petitioner submitted that while the Act itself is not applicable, there is no question of directing the Petitioner to make any payment of gratuity to the Respondent. He has further submitted that though this very contention was raised in the Review Application and though it was not dealt with by the Respondent No. 3 workman in his reply, the said contention was rejected by the Controlling Authority. He has further submitted that the Petitioner could not file an appeal because while approaching the Controlling Authority again by way of Review Application and thereafter by filing Civil Suit, the time limit prescribed for filing an appeal has expired and hence, the Petitioner has to file the present petition before this Court. He has, therefore, submitted that the matter may be remanded back to the Controlling Authority to decide the whole matter. He has further submitted that the Petitioner is ready and willing to deposit the amount of gratuity with the Controlling Authority.

7. Mr. Sharma, the learned advocate appearing for the Respondent, on the other hand, has submitted that the Controlling Authority has rightly passed order directing the Petitioner to pay the amount of Rs. 25,096=00 and has rightly rejected the Review Application on the ground that no evidence was produced nor it was filed within time. He has further submitted that the Petitioner should have filed an appeal before the Appellate Authority if it had any grievance against that order. Now, at this stage, no indulgence is required by this Court directing the Petitioner to approach the Controlling Authority once again after setting aside of this order.

8. Ms. Bhatt, the learned AGP has uphold the order passed by the Controlling Authority and submitted that the petition is to be dismissed.

9. Having heard the learned Counsels appearing for the parties and after considering the rival submissions, the Court is of the view that the amount involved in the present proceedings is only Rs. 25,096=00. Moreover, the Petitioner has to file an appeal challenging the order passed by the Controlling Authority. Instead of that, it has preferred Review Application and, thereafter, filed Civil Suit and then the present petition is filed. Normally, this Court is not exercising writ jurisdiction when an alternative remedy is available to the

Petitioner. The Court also is not inclined to exercise writ jurisdiction when the amount involved is very meager. Considering these two aspects of the matter, the Court does not interfere in the order passed by the Controlling Authority. However, it is open for the Petitioner to approach before the Appellate Authority by way of an appeal after depositing the amount in question. If such an appeal is filed before the Appellate Authority, the same shall be considered in accordance with law. The question of delay should be considered in view of the fact that the Petitioner was litigating firstly before the Civil Court and thereafter before this Court.

10. With these observations and directions, this petition is accordingly dismissed with no order as to cost.