

(2014) 12 GUJ CK 0073

In the Gujarat High Court

Case No : Special Civil Application No. 1293 of 2006

Sushil Kumar Maloo

APPELLANT

Vs

Guajrat Raffia Industries Ltd.

RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Payment of Gratuity Act, 1972 — Section 2, 2(e), 4

Citation : (2015) 145 FLR 1071 : (2015) 1 GLR 816 : (2015) LabIC 1057 :
(2015) 2 LLJ 317 : (2015) 3 LLN 401

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : D.J. Bhatt, Advocates for the Appellant; R.V. Desai, Advocates for the Respondent

Judgement

M.R. Shah, J.—By way of this petition under Articles 226 and 227 of the Constitution of India the petitioner has prayed for an appropriate writ, order or direction to quash and set aside the impugned order passed by the Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the "appellate authority") dated 11/11/2004 in Appeal No. 44/2004 by which the learned appellate authority has allowed the said appeal preferred by the respondent herein and has quashed and set aside the order passed by the controlling authority under the Payment of Gratuity Act directing the respondent to pay Rs. 56,538/- with 10% interest thereon from 01/09/1997 by observing that the conditions as envisaged under Section 4 of the Act has not been fulfilled as it cannot be said that the petitioner has completed five years of continuous service. The facts leading to the present Special Civil Application in a nutshell are as under;

1.1 The petitioner herein was serving with the respondent since 1984. He tendered voluntary resignation and left the services of the respondent on and from 1997. As the amount of gratuity was denied to the petitioner he approached the controlling authority under the Payment of Gratuity Act, 1972 by submitting

Form "N" Vide order dated 12/07/2000 the controlling authority under the Payment of Gratuity Act allowed the said application and directed the respondent to pay a total sum of Rs. 56,538/- with 10% interest thereon from 01/09/1997. It appears that thereafter the respondent preferred review application, which came to be rejected by the controlling authority vide order dated 22/10/2001. It appears that feeling aggrieved and dissatisfied with the impugned orders passed by the controlling authority dated 12/07/2000 and 22/10/2001, the respondent preferred appeal before the learned appellate authority, which came to be dismissed on the ground of limitation vide order dated 16/12/2003. Feeling aggrieved and dissatisfied with the order passed by the learned appellate authority dated 16/12/2003 in Appeal No. 81/2003 dismissing the appeal on the ground of limitation, the respondent preferred Special Civil Application No. 3319/2004 before this Court and by impugned judgment and order dated 05/05/2004 the learned single Judge allowed the said Special Civil Application and remanded the matter to the learned appellate authority to decide the appeal in accordance with law and on its own merits on imposing the cost of Rs. 10,000/- upon the respondent. Thereafter, the appeal came to be heard by the learned appellate authority, being Appeal No. 44/2004. It was contented on behalf of the respondent that as the ceiling of wages for coverage of the Act came to be removed by Act 34 of 1994 with effect from 24/05/1994 and prior thereto there was ceiling of wages for coverage of the Act i.e. Rs. 3500/- and prior to 1994 the wages of the petitioner was above Rs. 3500/-, the period for which the petitioner worked prior to 24/05/1994 is not required to be counted for the purpose of continuous five years service and, therefore, the petitioner had not completed continuous five years of service as provided under Section 4 of the Act and is not entitled to the amount of gratuity. Accepting the aforesaid submissions/contentions on behalf of the respondent by the impugned judgment and order the learned appellate authority has allowed the appeal preferred by the respondent and has held that the amendment in Section 2(e) of the Act by Act 34 of 1994 removing the ceiling of wages for coverage of the Act has come into effect from 24/05/1994 and prior thereto the petitioner was getting the wages beyond the ceiling of wages and, therefore, the petitioner has not completed continuous five years service and has not fulfilled the conditions as provided under Section 4 of the Act and, therefore, is not entitled to the amount of gratuity and consequently has allowed the said appeal by quashing and setting aside the order passed by the controlling authority granting the amount of gratuity to the petitioner.

1.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned appellate authority, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

2. Shri D.J. Bhatt, learned advocate appearing on behalf of the petitioner has vehemently submitted that the impugned judgment and order passed by the learned appellate authority is absolutely illegal and contrary to the provisions of

the Act.

2.1 It is further submitted by Shri Bhatt, learned advocate appearing on behalf of the petitioner that the learned appellate authority has denied the amount of gratuity to the petitioner solely on the ground that the conditions provided under Section 4 of the Act has not been fulfilled/satisfied.

2.2 It is further submitted by Shri Bhatt, learned advocate appearing on behalf of the petitioner that the learned appellate authority has materially erred in holding that one of the condition of completing five years of continuous service has not been fulfilled and the same is erroneous and cannot be sustained.

2.3 It is submitted that the moment the ceiling of wages for coverage of the Act came to be removed by Act 34 of 1994 with effect from 24/05/1994, when the petitioner resigned from service and applied for gratuity, what was required to be considered was whether on that day the petitioner had completed continuous five years of service or not. It is submitted that therefore what is required to be considered was the day on which the petitioner was entitled to the amount of gratuity considering the position as on that day. It is submitted that therefore when in the year 1997 when there was no ceiling of wages for coverage of the Act and as the petitioner has worked since 1984 i.e. had put on more than 17 years of service with the respondent, the petitioner had completed five years of continuous service and, therefore, the petitioner was entitled to the amount of gratuity as held by the controlling authority.

2.4 It is submitted that any contrary interpretation, more particularly, as done by the learned appellate authority, would be contrary to the statement of object and reasons for amendment to the Payment of Gratuity Act and shall frustrate the purpose of the Act. It is submitted that as observed in the statement of object and reasons while amending the Act in 1994 by Act 34 of 1994, there was a demand for removal of the ceiling of the wages for coverage of the Act. Thus, making all the employees eligible for gratuity irrespective of their wages with effect from 24/05/1994 and to see that the coverage of the Payment of Gratuity Act is widened and/or made applicable to all the employees irrespective of their wages, the interpretation made by the learned appellate authority would be denying the benefit to the persons like the petitioner and the same would be contrary to the statement of object and reasons.

Making the above submissions, it is requested to allow the present Special Civil Application and quash and set aside the impugned judgment and order passed by the learned appellate authority and restore the order passed by the controlling authority.

3. The present petition is opposed by Shri R.V. Desai, learned advocate appearing on behalf of the respondent. It is submitted by Shri Desai, learned advocate appearing on behalf of the respondent that in the facts and circumstances of the case, the learned appellate authority has not committed any error and/or illegality in allowing the appeal and quashing and setting aside

the order passed by the controlling authority. It is submitted that in the facts and circumstances of the case, no error has been committed by the learned appellate authority in holding that as the petitioner had not fulfilled the conditions mentioned in Section 4 of the Act, more particularly, completing five years of continuous service and, therefore, is not entitled to the gratuity and, therefore, the impugned order passed by the learned appellate authority is not required to be interfered with by this Court.

3.1 It is submitted by Shri Desai, learned advocate appearing on behalf of the respondent that admittedly prior to 24/05/1994 the wages of the petitioner was much more than the ceiling of wages i.e. more than Rs. 3500/- per month. It is submitted that the ceiling of wages for coverage of the Act came to be removed by Act 34 of 1994 only with effect from 24/05/1994 and, therefore, prior to 24/05/1994 the petitioner cannot be said to be an employee within the meaning of Section 2(e) of the Payment of Gratuity Act. It is submitted that therefore the period prior to 24/05/1994 considering the relevant provisions of the Act as it stood, the services rendered by the petitioner is not required to be calculated while considering the continuous five years of service as mentioned and provided under Section 4 of the Act. It is submitted that therefore the services rendered by the petitioner after 24/05/1994 only was required to be considered for the purpose of counting considering the continuous five years of service eligible for getting the amount of gratuity as provided under Section 4 of the Act. It is submitted that therefore no error has been committed by the learned appellate authority in holding that the petitioner has not completed five years of service and, therefore, is not eligible for the amount of gratuity and, therefore, has rightly allowed the appeal preferred by the respondent and has rightly quashed and set aside the order passed by the controlling authority.

3.2 Shri Desai, learned advocate appearing on behalf of the respondent has heavily relied upon the decision of the Patna High Court in the case of Mineral Area Development Authority Vs. State of Bihar and Others, . In support of his above submissions it is requested to dismiss the present Special Civil Application.

4. Heard the learned advocates appearing on behalf of the respective parties at length. At the outset, it is required to be noted that the Payment of Gratuity Act, 1972 is a benevolent Act in favour of the employees/workers. The Act came into force in the year 1972 and it provided gratuity for the employees getting wages at Rs. 270/- per month for the establishments like factory, plantation, shops and mines etc. in the event of superannuation; retirement or resignation and on death or disablement due to accident or disease. When the Payment of Gratuity Act, 1972 came to be amended by Act 22 of 1987 and the limit for coverage came to be enhanced to Rs. 2500/- per month, which came to be further enhanced to Rs. 3500/- per month, it appears from the statement of object and reasons that while amending the Act further by Act 34 of 1994, there was demand for removal of ceiling of wages for coverage of the Act making all the employees eligible for gratuity irrespective of their wages. It appears from the

statement of objects and reasons while amendment of the Act 34 of 1994 even the Labour Monsters Conference held in 1983 has recommended for removal of the wage limit for payment of gratuity. Consequently, the Payment of Gratuity Act came to be amended by Act 34 of 1994 by removing the ceiling of wages for coverage of the Act by amendment in Section 2(e) of the Act prior to amendment in Section 2(e) by Act 34 of 1994 and after amendment in the Act by Act 34 of 1994. Section 2(e) of the Act read as under;

Section 2(e) of the Payment of Gratuity Act prior to Act 34 of 1994

"employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

Section 2(e) of the Payment of Gratuity Act after the Act 34 of 1994

"employee" means any person (other than an apprentice) employed on wages, "not exceeding two thousand and five hundred rupees per mensem, or such higher amount as the Central Government may, having regard to the general level of wages, by notification, specify" in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

4.1 Considering the aforesaid position, the issue involved in the present Special Civil Application is required to be considered.

4.2 In the present case, it is an admitted position that the petitioner was working with the respondent since 1984. He tendered the resignation in the year 1997 and, therefore, applied for the amount of gratuity under the Payment of Gratuity Act in the year 1997. By the impugned judgment and order the learned appellate authority has denied the amount of gratuity to the petitioner on the ground that as prior to 24/05/1994 the wages of the petitioner was above the ceiling limit i.e. above Rs. 3500/- and the ceiling of wages for coverage came to be removed from 24/05/1994, the services rendered by the petitioner prior to 24/05/1994, as his wage was exceeding the wage limit, is not required to be counted for the purpose of continuous five years and is required to be counted from 24/05/1994 and, therefore, as the petitioner has retired in the year 1997 he had not completed continuous five years of service in the year 1997 and, therefore, he is

not entitled to the amount of gratuity. Therefore, the short question, which is posed for the consideration of this Court is, whether the services rendered by the petitioner from 1984 till the year 1994 is required to be ignored and/or in other words the eligibility criteria for getting the amount of gratuity as mentioned in Section 4 of the Act is required to be considered on the day on which the petitioner made an application for amount of gratuity on the circumstances occurring as mentioned in Section 4 of the Act and the continuous five years of services so far as the petitioner is concerned is required to be counted from 24/05/1994 only?

4.3 As observed hereinabove, the payment of Gratuity Act is a benevolent Act for the benefit of the workers and the employees. Initially when the Payment of Gratuity Act, 1972 was enacted it provided for the workers getting wages upto Rs. 270/- per month and the wage limit for the coverage of the Act came to be enhanced from time to time and it reached up to Rs. 3500/- per month vide notification dated 26/11/1992 issued in exercise of powers under Clause (e) of Section 2 of the Act. It appears that there was a demand for removal of ceiling of the wages for coverage of the Act, thus making all the employees eligible for gratuity irrespective of their wages and considering the recommendations made in the Labour Minister in the Conference held in the year 1993 for removal of the wage limit for the payment of Gratuity Act, by Act 34 of 1994 the ceiling of the wages for coverage of the Act has been totally removed and all the employees irrespective of their wages are eligible for the amount of gratuity subject to fulfilling the conditions of Section 4 of the Act and, therefore, the object and purpose of amendment of the Act 34 of 1994 removing the ceiling of wages for coverage of the Act is to widen the scope and to give the benefit of gratuity to all the employees and to widen the coverage.

4.4 Section 4 of the Act provides that gratuity shall be payable to an employee on termination of his employment after he has rendered continuous service for not less than five years (a) on his superannuation; or (b) on his retirement or resignation; or (c) on his death or disablement due to accident or disease provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement and, therefore, considering Section 4 of the Act any employee, who has rendered continuous service for not less than five years; on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease is eligible for gratuity. Under the circumstances, on the date of superannuation or on his retirement or resignation or at the time of death or disablement due to accident or disease an employee has rendered continuous service for not less than five years is eligible for the amount of gratuity. Any other interpretation would frustrate the object and purpose of the Payment of Gratuity Act, more particularly, the object and purpose of amending the Act, more particularly by the Act 34 of 1994 removing the ceiling of wages for coverage of the Act. The interpretation made by the learned appellate authority by the impugned judgment and order would be just

taking away the right of the eligible employee to get the amount of gratuity and would frustrate the object and purpose of amending the Act and widening the coverage of the Act. If the impugned judgment and order passed by the learned appellate authority and the view taken by the learned appellate authority is not interfered with, in that case, it would frustrate the object and purpose of removing the ceiling of wages for coverage of the Act making all the employees eligible for gratuity irrespective of their wages. As observed hereinabove and on fair reading of Section 4 of the Act what is required to be considered is that on the eventuality as mentioned in Section 4, whether an employee has rendered continuous service for not less than five years or not and nothing further than that. Under the circumstances, the impugned judgment and order passed by the learned appellate authority cannot be sustained and the same deserves to be quashed and set aside.

4.5 Now so far as the reliance placed upon the decision of the Patna High Court in the case of Mineral Area Development (supra) relied upon Shri Desai, learned advocate appearing on behalf of the respondent is concerned, on careful consideration of the said decision and the view observed, as such, apart from the fact that this Court is not in agreement with the view taken by the Patna High Court, on facts also the said decision would not be applicable to the facts of the case on hand and as such no such controversy was raised before the Patna High Court, which has been raised in the present petition.

In view of the above and for the reasons stated hereinabove, the present petition succeeds. The impugned judgment and order passed by the learned appellate authority under the Payment of Gratuity Act, 1972 dated 11/11/2004 in Appeal No. 44/2004 is hereby quashed and set aside and the order passed by the controlling authority dated 12/07/2000 in Application No. 25/1999 is hereby restored, which shall be implemented by the respondent within a period of three months from today. It is reported that at the time the petitioner preferred the appeal before the learned appellate authority the respondent had deposited Rs. 31,000/-, which has been continued to be invested in the Fixed Deposit. It will be open for the petitioner now to withdraw the same with interest accrued on the same and the balance amount of interest thereon shall be paid by the respondent to the petitioner within a period of three months from today. Rule is made absolute to the aforesaid extent. No order as to costs.