

(2014) 04 GUJ CK 0066
In the Gujarat High Court

Case No : Letters Patent Appeal No. 267 of 2014 In Special Civil Application No. 12576 of 2013

Thakor Chelajit Tasaji

APPELLANT

Vs

Dy. Director of Animal Husbandry

RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:

Citation : (2014) 142 FLR 738

Hon'ble Judges : V.M. Sahai, J;Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : Reena Kamani and P.H. Pathak, Advocate for the Appellant; N.J. Shah, Advocate for the Respondent

Judgement

V.M. Sahai, J.—The present appeal has been preferred by the appellant claiming interest at the rate of 10% on the amount of gratuity, whose petition has been dismissed by the learned Single Judge on the ground that he has made incorrect statement.

While perusing the record, what the appellant/petitioner in the prayer clause has mentioned was compliance of the order dated 17.9.2010, whereby, the concerned authority had directed the employer to pay remaining amount of Rs. 20,364/- with 10% interest which was not paid till the date, despite the order of the competent authority. The said order was not even challenged before any authority or before any Court. On 21.2.2014, the following order came to be passed by this Court:

1. The present appeal is filed by the appellant-original petitioner being aggrieved by the judgment and order of learned Single Judge dated 23.10.2013, whereby, the learned Single Judge is pleased to discharge the notice issued in the petition.
2. Learned advocate for the appellant invited attention of the Court to Paragraph-3 of the judgment and order, which reads as under:--

"3. Today, learned A.G.P. Mr. Vishal Patel has placed on record a copy of Pension Payment Order/Gratuity Payment Order dated 14.10.2008, issued by the office of the Director of Pension and Provident Fund, Gujarat State, a copy of which is given to the learned advocate for the petitioner. From the said order, it is pointed out that an amount of Rs. 42,336/- towards gratuity was ordered to be paid and as a matter of fact was paid to the petitioner on 16.10.2008. In the petition, no mention is found in that regard. In the view of this Court, this is suppression of a material fact, and the petition needs to be rejected on this ground alone. Not only that, the averments of Para-2 of the petition reads thus:--"That the petitioner was serving with respondent No. 1 and was superannuated from services in year 31.3.2008. That after retirement, the petitioner was not paid the amount of gratuity and hence was constrained to approach the Controlling Authority under the Payment of Gratuity Act, 1972 by way of case No. PGA/4/2009." On the face of the above referred order dated 14.10.2008, there is a false statement in the petition. This is an additional factor against the petitioner."

2.1 Learned Advocate for the appellant then invited attention of the Court to Annexure-"A" and Annexure-"B" of the petition and submitted that the petition was filed in the year 2013 and it was filed only for "non-payment of the difference amount in the gratuity", meaning thereby, after the amount referred to in Paragraph-3 of the judgment and order, Rs. 42,336/- was paid. Further, the amount of Rs. 20,364/- was payable to the petitioner as per the order passed by the Controlling Authority under the Payment of Gratuity Act, 1972. Not only that, but the learned Advocate for the petitioner submitted the certificate issued to that effect, which is at Annexure-"B" which is dated 17.9.2010. Learned Advocate submitted that therefore assuming for the sake of argument that the fact which is set out in the paragraph-3 is not mentioned the same was relevant for the purpose that the relief sought for in the petition "Non-payment of the deference amount along with interest".

The matter requires consideration.

ADMIT.

3. Looking to the peculiar facts of the case, the Court deems it proper to issue Notice for interim relief.

Notice as to interim-relief returnable on 10.3.2014. In the event, the amount of the certificate dated 17.9.2010 has not been paid by that date, a responsible officer shall remain personally present before this Court.

Learned Advocate for the appellant to serve a copy of the Letters Patent Appeal with all papers to learned Assistant Government Pleader.

A copy of this order be made available to learned AGP for its onwards communication for compliance. Direct service is permitted."

However, the said order was not complied with even as on 10.4.2014, and

therefore, this Court has passed the following order:

"Mr. N.J. Shah learned AGP, on instructions from Deputy Director Dr. V.N. Makwana, who is personally present before this Court, states that the proposal is forwarded to the Secretary, Agricultural Co-operation Department on 21.3.2014. Para-3 of the order dated 21.2.2014 is very clear. It is nothing else but over-reaching the order of this Court. Therefore, the concerned Secretary, Agricultural & Cooperation Department, Gandhinagar, shall personally remain present before this Court on the next date of hearing to show cause as to why the order dated 21.2.2014 is not being complied with and the proposal made to him on 21.3.2014 has not been considered by him. Further, it is made clear that if he complies with the order of this Court and the proposal forwarded to him is finalised and payment is made to the petitioner, in that case, he is not required to remain present before this Court. List on 22.4.2014."

2. Today, learned AGP Mr. N.J. Shah, on instructions, states that the said order has been complied with in letter and spirit and has placed on record the order dated 19.4.2014, whereby, the amount of Rs. 20,364/- alongwith 10% simple interest from 2009 till 17.9.2010 has been paid to the appellant. The question still remains is that the 10% simple interest on the amount of Rs. 20,364/- was to be paid by the respondents till they make the full and final payment of the amount of gratuity. Since the amount was paid on 21.4.2014 to the appellant, the appellant would be entitled for interest on the aforesaid amount at the rate of 10% simple interest till 21.4.2014.

3. In this view of the matter, we direct the respondents to calculate 10% simple interest on the amount of Rs. 20,364/- with effect from 18.9.2010 to 21.4.2014 and make the payment to the appellant on or before 22.6.2014 by way of bank draft in the name of appellant. In the result, this appeal is allowed. The impugned judgment and order dated 23.10.2013 passed in Special Civil Application No. 12576 of 2013 is quashed and set aside. No order as to costs.