

(2014) 01 GUJ CK 0106

In the Gujarat High Court

Case No : Special Civil Application No. 565 of 2006

Umiyashankar H. Joshi

APPELLANT

Vs

State of Gujrat and Others

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14 16 19 21 226

Citation : (2014) LabIC 3777

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : K.B. Pujara, for the Appellant; H.S. Soni, AGP for the Respondent(s) No. 1 and Mr. Pramthesh D. Dave, Advocate for the Respondent(s) No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Jayant M. Patel, J.—The petitioner by this petition is seeking direction against the respondent to pay amount of gratuity together with the interest at the rate of 18% p.a. from the date of his retirement i.e. 1.7.1986 till the actual payment. The petitioner has also prayed to quash and set aside the order of appellate authority passed under the Payment of Gratuity Act (hereinafter referred to as "the Act") and to restore the order dated 30.11.1993 at Annexure-D for direction to pay the amount of gratuity. The short facts of the case are that the petitioner who was working with respondent No. 4 and he retired as Assistant State Organising Commissioner of Scouts on 30.6.1986. The case of the petitioner is that he rendered service for about 24 years, 07 months and 15 days and he was entitled to amount of gratuity. Initially the petitioner invoked the jurisdiction of the controlling authority under the Act vide order dated 27.3.1985 at Annexure-A allowed the application and directed for disbursement of amount of gratuity of Rs. 23,073.75 ps. The respondent No. 4 preferred review application against the aforesaid decision being Review Application No. 45 of 1989 and in the said review application vide order dated 31.1.1990 the said order was set aside. The matter

was carried in appeal by the petitioner before the appellate authority under the Act being Appeal No. 447 of 1990 and the appellate authority vide order dated 24.9.1991 found that certain aspects were required to be examined by the controlling authority which were not examined and therefore, the matter was remanded to the controlling authority. The matter once again came to be considered by the controlling authority being Remand Case No. 15 of 1991 and the controlling authority after hearing both the sides found that the petitioner was entitled to the amount of gratuity of Rs. 20,357.70 ps. and therefore, direction was issued vide order dated 30.11.2003 to pay the amount with the interest at the rate of 10% p.a. from 1.10.2007. It appears that the matter was once again carried in appeal by the respondent No. 4 being Appeal No. 6 of 1994 and in the said appeal the appellate authority vide order dated 31.7.1995 allowed the appeal and set aside the order passed by the controlling authority for payment of gratuity. It appears that the petitioner herein did prefer application for review which also came to be dismissed as was not maintainable vide order dated 1.12.1995. Thereafter, it appears that no action was taken by the petitioner herein from 1995 to 2006 for a period of about 11 years and the present petition came to be filed in the year 2006 with the above referred relief. Hence, present petition before this Court.

2. I have heard Mr. K.B. Pujara, learned counsel appearing for the petitioner and Mr. H.S. Soni, learned AGP for the respondent Nos. 1, 2 and 3 State authority and Mr. P.D. Dave, learned counsel for the respondent No. 4.

3. The principal contention raised by the learned counsel for the petitioner was that as per three decisions of this Court (1) in the case of Samuel Joseph Vamesha v. State of Gujarat & Anr., reported in 1996 (1) GLH 518 (2) in the case of Ranchhodbhai Z. Patel v. State of Gujarat decided on 18.12.2011 in Special Civil Application No. 12327 of 2000 and (3) in the case of E.Y. Christian v. State of Gujarat decided on 03.02.2005 in Special Civil Application No. 14636 of 2003 read with judgment of Division Bench of this Court in Letters Patent Appeal No. 1155 of 2005 decided on 19.10.2011 (whereby the decision of the learned Single Judge of this Court in Special Civil Application No. 14636 of 2003 has been confirmed) the employees of respondent No. 4 are found to have been entitled for payment of gratuity on the principle that the respondent No. 4 is provided grant by the State Government hence they would be entitled to amount of gratuity at par with other government servants. It was also submitted that after the above referred three decisions this Court in the case of Special Civil Application No. 16121 of 2005 vide decision dated 30.1.2009 has taken the same view for entitlement, save and except that the amount of interest as was ordered earlier at the rate of 18% p.a. is reduced to 12% p.a. The learned counsel for the petitioner further submitted that on the principle of parity the petitioner would be entitled to the similar direction.

4. Whereas the learned AGP submitted that after the order of the appellate authority under the Act, the petition has been filed for the first time after 11

years and therefore, the petitioner would not be entitled to the relief as prayed in the petition.

5. It is admitted position that the petitioner had invoked the jurisdiction of the controlling authority under the Act on the premise that his service is governed by the Act and therefore, he is entitled to get the gratuity under the Act and since the payment was not made of the amount of gratuity the appropriate application was filed. Such jurisdiction was invoked as back as in the year 1985. Thereafter as referred to hereinabove the petitioner litigated and asserted the right for entitlement of the amount of gratuity under the Act, until 1.12.1995 whereby the relevant application was dismissed by the appellate authority. The ultimate position as per the decision of the appellate authority under the Act is that the petitioner is found to be not entitled to amount of gratuity and the order passed for payment of the amount of gratuity is set aside. Thereafter, for a period of about 11 years no action whatsoever is taken either for challenging the order of the competent authority under the Act nor for asserting the right to receive the amount of gratuity by any other proceedings. For the first time in the year 2006 a petition has been preferred. In my view the matter can be examined broadly on two facets; one is the sanctity to be maintained of an order passed by a statutory authority and the second is the delay in approaching before this Court.

6. On the first aspect it is hardly required to be stated that if a decision is of a competent authority, taken after hearing both the sides, it would attain finality between the parties. If either party is aggrieved by the decision of a competent authority in capacity-quasi judicial authority, it is for the aggrieved party to challenge the said order. It is an admitted position that after 1.12.1995 until the petition was filed after 11 years the petitioner did not challenge the said decision, therefore it can be said that the decision of the appellate authority under the Act had attained finality and the petitioner by implied conduct had accepted the decision of the appellate authority under the Act whereby it was found that the amount of gratuity was not payable. It is also by now well settled that if there is binding decision between the parties on a particular point or a particular aspect, merely because subsequently a different view is taken is not valid ground to reopen a binding concluded decision and if such is permitted it would result into tinkering or upsetting with the sanctity of the decision of the competent authority. It is neither case of the petitioner nor pleaded in the petition that the competent authority under the Act had no jurisdiction or authority to direct respondent No. 4 for payment of gratuity. On the contrary, the jurisdiction was invoked by the petitioner of the competent authority under the act and all throughout the petitioner has litigated as if the jurisdiction exist of the competent authority under the Act for the payment of gratuity. Further the decision is of 31.7.1995 of the appellate authority after hearing both the sides and thereafter on 13.12.1995 this Court for the first time in the case of Samuel Joseph Vamesha (Supra) has taken the view that the employee of respondent No. 4 would be entitled to the treatment at par with the government employee for receipt of amount of the gratuity. Under these circumstances it appears to me

that if based on the subsequent decision the petitioner is permitted to agitate the question for entitlement of the gratuity it would result into adversely affecting the sanctity of order passed by the competent authority under the Act.

7. On the second aspect of delay in the petition there is no explanation whatsoever for the delay after 1995 until 2006 of about 11 years. However, in the affidavit-in-reply at para-4 on behalf of the respondent Nos. 1 to 3 it has been stated as under:--

I say and submit that the present petitioner is praying before this Hon"ble Court to direct the authority to pay the amount of gratuity with interest from the date of retirement i.e. on 1.07.1986 and be pleased to quash and set aside order passed by authority on 31.07.1995. I say and submit that the petitioner filed the petition after a considerable long time. The present petitioner had retired in 1986 and impugned order was passed by the authority in the year 1995, and therefore, after a decade the present petitioner has filed this writ petition. Hence, only on the ground of delay the present petition is required to be rejected. I say and submitted that even otherwise the order of controlling authority is legal just and proper, and the relief of payments of gratuity as claimed by the petitioner cannot be granted, and therefore also the petition is required to be rejected.

The petitioner in rejoinder at para-3 has stated thus,

That with regard to the contention raised by the Respondent No. 3 in para-4 of the affidavit in reply about the delay, I say and submit that the said contention deserves to be rejected in as much as though I have challenged the order passed by the appellate authority dated 31.7.1995, in effect and substance, I am praying for gratuity on the same lines as has been ordered to be paid by this Hon"ble Court to exactly similarly situated other employees of the respondent No. 4 organisation by the judgments and orders dated 13.12.1995, 18.12.2001 and 3.2.2005 as per Annexure-G colly of the petition. Moreover there is no period of limitation for preferring a writ petition under Article 226 particularly when breach of fundamental rights under Articles 14, 16, 19 and 21 is alleged. Moreover no prejudice is caused to any party by not approaching the Court earlier and no rights can be said to have been accrued in favour of any other person because of any other person because of the alleged delay. Relying upon the Hon"ble Court's decision in Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, I say and submit that the delay if any in my approaching the Hon"ble Court deserves to be ignored and my grievance is required to be redressed particularly when I am aged 77 years and I am not paid my legitimate dues of gratuity, though I have retired way back on 30.6.1986. It is also pertinent that the Controlling Authority under the Payment of Gratuity Act had decided in my favour by its order dated 27-29/3/1989 and even the appellate authority had passed order dated 25.9.1991 in my favour. After remand the Controlling Authority passed order dated 30.11.1993 in my favour but unfortunately the appellate authority decided against me by its order dated 31.7.1995. My application for review also came to be decided against me by

order dated 11.12.1995. However, after fighting the legal battle of 6 rounds for a period of about 10 years, I had no wherewithal to continue the legal fight and hence I had no option but to suffer injustice and only after I came to know about the other similarly situated employees of the respondent No. 4 organization having approached this Hon''ble Court and their writ petitions having been decided in their favour, I once again mustered strength to approach this Hon''ble Court. In this fact situation the alleged delay in preferring the present writ petition should not come in my way when I am otherwise entitled to gratuity being at par with other employees of the respondent No. 4 Organisation.

In my view if the factual premise is to be examined, there is no explanation for the period of delay of more than 10 years by the petitioner. The reliance placed upon the decision of the Apex Court in the case of Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, and more particularly the observations made at para-10 by the learned counsel during the course of the hearing is ill-founded inasmuch as in the very decision at para-10 the Apex Court has observed that it is a matter of discretion to be exercised while refusing to entertain the petition on the ground of delay but each case must depend on its own facts. The facts of the case before the Apex Court in the case of Ramchandra Shankar Deodhar (Supra) shows that on 23.3.1968 by the decision of a Division Bench of Bombay High Court a proviso of the rule was found to be void and reference to the same is available at para-4 of the said decision. Further at para-10 the Apex Court has recorded, inter alia, as under:--

Moreover what is challenged in the petition is validity of the procedure for making promotion to the post of Dy. Collector - whether it is violative of the equal opportunity clause - and since this procedure is not a thing of the past, but is till being followed by the State Government, it is but desirable that its constitutionality should be adjudged when the question has come before the Court at the instance of parties properly aggrieved by it.

It is in this light of the aforesaid factual background the Apex Court made the observation for exercise of discretion to entertain the petition and not to deny the relief solely on that ground. Whereas the facts of the present case shows that as referred hereinabove there was a concluded binding decision of the competent authority against the petitioner.

8. The contention was raised by the learned counsel for the petitioner while examining the aspect to condone the delay or to exercise the discretion, Court may examine as to whether right of parties are altered or not and it was submitted that no rights are altered in the present case and therefore, Court may leniently view the said aspect of delay. In my view, again the contention is misconceived inasmuch as once a concluded binding decision of the competent authority prevails the right in favour of either side would get concluded and the right for finality of the decision would accrue. The decision which has become final if allowed to be upset that too after a period of about 11 years it would certainly adversely affect the rights, if any, of the institution-respondent No. 4

because before the competent authority under the Act the contention of the respondent No. 4 was that the petitioner would not be entitled to amount of gratuity. Therefore, it is incorrect to state that the rights have not altered. If the rights have altered to receive finality of the decision, the delay cannot be leniently viewed. In view of the aforesaid I find that it is a fit case where the jurisdiction of this Court under Article 226 of the Constitution of India should not be permitted to be invoked to the petitioner. Hence, no relief can be granted to the petitioner. In the result the petition is dismissed. Rule is discharged. Considering facts and circumstances no order as to costs.