

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5761 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAYENDRARAI V DESAI

Versus

TULSIDAS RAMJI

Appearance:

MR MB BUCH for Petitioner
MRS VP THAKKAR for Respondent No. 1
MR ANANT S DAVE for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 29/01/99

ORAL JUDGEMENT

This petition has been filed for quashing the order dated 21.8.86 passed by the Appellate Authority under Payment of Gratuity Act, 1972 whereby the order dated 23.5.85 of the Controlling Authority under the Payment of Gratuity Act, Jamnagar in Application no. 58 of 1985 has been set aside.

2. The petitioner was serving with the respondent no. 1 M/s. Tulsidas Ramji, Okha Port, Okha since February 1, 1961 on monthly salary of

Rs.850/including of all allowances. The petitioner took voluntary retirement from service with effect from July 1, 1985 after rendering total service of 24 years and 4 months. After retirement, the petitioner requested the respondent no.1 for the payment of gratuity amount of Rs. 10,200/-. In spite of various reminders and personal approaches, the respondent no.1 did not pay the gratuity amount to the petitioner and therefore, the petitioner filed Application no. 58 of 1985 before the Controlling Authority for payment of gratuity in form no. N as required under Rule 10 sub-rule (1) of the Payment of Gratuity Rules. The Controlling Authority, Jamnagar after giving an opportunity to the parties concerned, by its order dated May 23, 1985 held the petitioner as workman and ordered the respondent no. 1 to pay an amount Rs. 10,200/- to the petitioner by way of gratuity.

3. Being aggrieved by the said order of the Controlling Authority, Jamnagar, the respondent no.1 filed Appeal no. 32 of 1986 before the appellate authority under Payment of Gratuity Act at Rajkot. After hearing, by its order dated 21.8.86, the appellate authority set aside the order of the Controlling Authority holding that the amending provisions of the Act were not applicable to the case of the petitioner and therefore, the petitioner was not entitled for the gratuity amount. Hence, the petitioner has filed the present petition praying to quash the order of the appellate authority.

4. The main controversy in this petition is in respect of the provisions introduced by the Amendment which came into force on 1st July, 1984. Sub-section 3-A which has been inserted after sub-section 3 in Section 1 of the Payment of Gratuity Act, 1972 reads as under:

"3A: A shop or establishment to which this Act has become applicable shall continue to be governed by this Act notwithstanding the number of persons employed therein at any time after it has become so applicable falls below ten."

The learned counsel for the petitioner contended that the provisions of amending Act would be applicable even if there is any reduction in the number of employees serving on such establishment, even subsequently. The construction of language of the provision clearly establishes that the Act would be applicable to the shops and establishments where this Act was applicable, meaning thereby 10 or more than 10 persons were working in that

establishment or shop, when the Payment of Gratuity Act, 1972 came into existence. If that Act was applicable at any time that would continue even if the number of employees have reduced lateron. It is not disputed in the present case that when the petitioner was working, the number of employees in the respondent no.1 establishment was more than 10 persons and even in the year 1982, more than 10 persons were working in the establishment though the amending provisions were introduced in the year 1984. After 1982, the number of employees was reduced to less than 10 persons. The petitioner continued in service till July, 1985 when the amending provisions have been already been given effect on July 1, 1984. Thus, in my view, the lower appellate authority, was in error in holding that the amending provisions were not applicable to the respondent no. 1 establishment.

4. In view of the above discussion, the petitioner is entitled for the payment of gratuity as calculated by the controlling authority, Jamnagar. The learned counsel for the petitioner also submitted that the petitioner is also entitled for interest on the gratuity amount and in support of his this contention, he relied upon certain case laws in this respect that the petitioner is entitled for the interest at the rate of 15% per annum. However, in my view, interest can be directed to be paid in peculiar facts and circumstances of each case. There is no settled law in this regard. In my opinion, the petitioner is entitled for the interest at the rate of 8% per annum from the date of the order of the Controlling Authority till actual payment of the amount is made. Thus, the petition deserves to be allowed.

5. Accordingly, this petition is allowed. The impugned order dated 21.8.86 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 at Rajkot is quashed and set aside and the order dated May 23, 1985 passed by the Controlling Authority under The Payment of Gratuity Act, at Jamnagar is confirmed. The respondent no.1 is directed to pay to the petitioner, a sum of Rs.10,200/- alongwith interest at the rate of 8% per annum from May 23, 1985 till actual payment thereof. The respondent no.1 is further directed to pay the said amount to the petitioner within six weeks from the date of production of a certified copy of this judgment. Rule is made absolutely accordingly with no order as to costs.

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