

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 544 OF 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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DY. EXECUTIVE ENGINEER - Petitioner(s)

Versus

CHHELABHAI VAGABHAI PAGI - Respondent(s)

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Appearance :

Shri H.S. Munshaw for Petitioner(s).

Shri Y.V. Shah for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 31/08/2007

ORAL JUDGMENT

The petitioner, being aggrieved by the orders passed by the Controlling Authority and Appellate Authority under the Payment of

Gratuity Act, 1972, is before this Court under Article 227 of the Constitution of India, with a submission that the subordinate Tribunals erred in holding that the respondent had worked for fourteen years and he was accordingly entitled to gratuity on the basis of such calculation.

2. Placing reliance upon the Circular dated 13th February, 1998 issued by the Government, it is submitted that before becoming entitled to the gratuity, one is required to prove that he has worked for five years and for calculation of such five years, the provisions of Section-25B of the Industrial Disputes Act, 1947 would be applicable. His submission is that in absence of the proof from the side of the workman that he had worked for 240 days in last five years, the authorities could not decide the matter in favour of the workman.

3. Shri Y.V. Shah, learned Counsel for the respondent-workman, on the other hand, submitted that the Government could not issue a circular directing that certain provisions of the Industrial Disputes Act, 1947 must be read in the provisions of the Payment of Gratuity Act, 1972.

4. The Payment of Gratuity Act, 1972 simply says that if a particular workman or employee has worked for a particular period, then, on the strength of particular calculations, he would be entitled to

the payment of gratuity. The Payment of Gratuity Act does not say that the provisions of Section-25B of the Industrial Disputes Act would apply and unless entitlement is proved under Section-25B of the Industrial Disputes Act, the provisions of the Payment of Gratuity Act would not apply. The circular issued by the Government cannot provide any solace to the Government. The authorities were justified in deciding the matter in favour of the workman.

5. I find no reason to interfere. The petition deserves to and is, accordingly, dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S.Garg, J.]

*kamlesh**