

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 5693 of 2008

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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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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MOHMED HUSSAIN DILAWARMIYA MIR - Petitioner

Versus

STATE OF GUJARAT & 4 - Respondents

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Appearance :

MR MURALI N DEVNANI for Petitioner :
 MR KRUNAL D OANDYA, LD. AGP for Respondent : 1,
 NOTICE SERVED BY DS for Respondents : 1 - 2,4 - 5.
 NOTICE UNSERVED for Respondent : 3,
 MR HARDIK C RAWAL for Respondent : 5,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 30/09/2008

ORAL JUDGMENT

RULE. Mr. KD Pandya, learned AGP for respondent no.1 and Ms. Jyoti Mehta for respondent no.4 & 5 waives service of notice of rule on behalf of their respective respondents. Hearing of the petition is fixed forthwith with the consent of the parties.

1. Ms. Jyoti Mehta for Respondent No.4 & 5 has submitted that in fact the order of the controlling authority is based on the basis of documents adduced before it, but the relevant document i.e. the settlement where under the petitioner was not entitled to gratuity amount awarded, and therefore appropriate steps were required to be taken for rectification of the same. She also submitted that the corrective application had been filed before the controlling authority but in view of the provisions of Payment of Gratuity Act the controlling authority declined to accept the same. She admitted that no further steps have been taken thereon nor have they filed any appeal challenging the award made by the controlling authority, which is sought to be placed in to service in this petition. She submitted that ex facie the workman is not entitled to the amount of gratuity as awarded and seeks time to take appropriate steps and she ensures this Court by making statement under the instruction of Accounts Officer Mr. Nilesh M. Bhatt of the respondent Corporatino, who is present i the Court that, if no appropriate order is obtained from the appellate authority within 90 days from today, then the award dated 16/11/2006 shall be complied with without any delay.
2. Shri Dharmesh Devnani for the petitioner submitted that the reliance placed upon the so called settlement is actually disputed and disposal of this matter on the statement of the counsel for the Corporation - Respondent No. 4 & 5 may not amount to giving up his right to take up all the contentions before the appellate authority or any other forum wherein this so called settlement is placed into service.
3. In view of the statement made by Ms. Jyoti Mehta for respondent no. 4 & 5, this petition is disposed of, as she had

ensured on behalf of the Corporation – respondent no. 4 & 5 respectively to honour the award dated 16/11/2006 and comply therewith, if no other orders are obtained from the appellate authority. It goes without saying that, if any appeal is filed the workman will have all opportunities to resist the same on all permissible grounds, including the ground of delay. All the contentions are kept open to all the sides. The petition is accordingly disposed of. Rule discharged. However, there shall be no order as to costs.

[S.R. BRAHMBHATT, J]

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