

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 16575 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.THAKER

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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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JUNAGADH AGRICULTURAL UNIVERSITY - Petitioner(s)
Versus

RUDIBEN SAIPABHAI BAMBHANIYA - Respondent(s)

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Appearance :

MR DG CHAUHAN for Petitioner(s) : 1,
 MR ASHOK YAGNIK for Respondent(s) : 1.

Mr. Nisha Parikh AGP for respondent No.2 State.

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CORAM : HONOURABLE MR.JUSTICE K.M.THAKER

Date : 31/07/2008
ORAL JUDGMENT

Leave to amend the cause title. Rule. Mr. Ashok Yagnik, advocate appearing for respondent No.1 and Ms. Nisha Parikh, AGP appearing for respondent No.2 waive service of Rule. With the consent of the

learned advocates appearing for the respective parties, the matter is taken up for final hearing today.

2. By this petition, the petitioner Junagadh Agricultural University has challenged order passed by Controlling Authority, Bhavnagar, under the Payment of Gratuity Act, 1972 [hereinafter referred to as 'the Act']. The petitioner has also challenged an order dated 12.9.2006 passed by the appellate authority, Rajkot under the said Act in Appeals No. 36 to 38 of 2006, 40 of 2006, and 43 of 2006 to 49 of 2006. By its order, the controlling authority came to the conclusion that the applicant workman was entitled for payment of Rs. 71,557/- towards gratuity, whereas the University had made payment of Rs. 62,016/- towards gratuity and that therefore there was shortfall of Rs. 9,541/- (hereinafter referred to as 'said shortfall') hence the said shortfall was required to be paid to the respondent. Upon arriving at such a conclusion, the controlling authority by aforesaid order dated 5.4.2006 directed the petitioner university to make payment of said

shortfall to the respondent along with interest at the rate of 10% to be calculated from the date specified in the order.

3. Aggrieved by the said order, the petitioner University preferred appeal before the appellate authority and appellate authority by its order dated 12.9.2006 confirmed the order of appellate authority. Against the aforesaid orders, the University is before this Court by way of captioned petition.

4. Mr. DG Chauhan appears for the petitioner University and Mr. Anand Yagnik appears for the respondent. I have heard the learned advocates for respective parties.

5. Mr. Chauhan submitted that the petitioner University had already made payment of the amount payable to the respondent towards gratuity and nothing was due and payable inasmuch as the amount was calculated by the University in accordance with the provisions under the Act i.e., after taking into account total length of service and the last drawn salary, however, the respondent approached the controlling authority, and controlling authority

arrived at a different conclusion and ordered the petitioner University to make good the shortfall on the ground that the petitioner University had made short payment. Mr. Chauhan submitted that there is error apparent on the face of the order by the controlling authority and controlling authority has erroneously calculated the amount. He has also submitted that being aggrieved by the said order of the controlling authority the petitioner University approached the appellate authority, however the appellate authority also committed the similar mistake instead of setting aside the order of the controlling authority and approving the payment made by the petitioner University, confirmed the order of controlling authority.

6. Mr. Yagnik on the other hand submitted that the petitioner University had made short payment and had not calculated the amount payable towards gratuity in accordance with provisions of the Act and settled legal position, whereas the controlling authority has rightly calculated the amount and there is no error in the order of the controlling authority or the appellate authority.

7. So far as the issue regarding applicability of the Act to the University and the issue of entitlement of respondent for gratuity under the Act are concerned, there is no dispute between the parties. Under the circumstances, it is an admitted position in this petition that the respondent is entitled for gratuity under the provisions of the said Act. When the factual aspects are examined, then it is noticed that there is no dispute between the parties so far as the relevant factual details are concerned inasmuch as the date of joining of the respondent, the date of superannuation of respondent, his last drawn salary, and length of service are not in dispute. Thus, the only dispute which arises in the petition is about the justifiability of the quantum determined by the controlling authority on the basis of the said undisputed factual aspects as against the amount paid by the University by taking same facts into consideration.

8. Since, there was no dispute between the parties regarding the date of joining and date of

retirement, total length of service and the last drawn salary all that was required to be done by the controlling authority was to calculate the payable amount as per the provisions under the Act and in accordance with settled legal position.

9. As per Section 4(2) in case of monthly rated employee, employer is required to pay an employee [who has become eligible for gratuity as per S. 4(1) r/w. 2-A and 4(6)] 15 days' last drawn salary for every completed year of service and in view of the explanation to sub-section (2) of Section 4 (which has been inserted w.e.f. 1.10.1987 by Act 22 of 1987) the last drawn monthly salary has to be divided by 26 and the quotient has to be multiplied by 15 so as to arrive at 15 days' salary.

10. Thus, in present case, so as to determine the amount payable towards gratuity the petitioner's last drawn monthly salary (since the petitioner was monthly rated-employee) is required to be divided by 26 so as to arrive at per day (average) salary and then the amount so arrived at is required to be

multiplied by 15 so as to arrive at the 15 days' salary. Then the total amount payable towards gratuity is to be arrived at by multiplying such rate i.e. 15 days' salary by the total number of years of service put in by the employee. To put it differently, the payable amount is to be arrived at by calculating in following manner;

(i) Monthly salary = per day (average) salary.

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(ii) Per day (average) salary X 15 X Total length of service.

11. When the order in question is examined in light of such settled legal position, it is noticed that the controlling authority has applied the said formula inasmuch as it has taken into account the last drawn salary of the respondent as Rs. 3,876/- and has divided the same by 26, which would come to about Rs. 149/- and the amount so arrived at has been multiplied by 15, and then the resultant amount i.e. about Rs. 2235/- has been multiplied by total length of eligible service of concerned employee i.e. 32 years. Thus, so far as the question of method and mode of calculation and arriving at payable

amount is concerned, Controlling Authority has not committed any error. In present case, there is no dispute that the total length of eligible service of the petitioner is of 32 years. Accordingly, the controlling authority had concluded that the petitioner was entitled for Rs. 9,541/- For the purpose of satisfaction about the correctness of the calculation, the counsel for the petitioner was asked to recalculate the amount in accordance with the aforesaid formula. After calculating the same, the counsel for the petitioner also found that there is no error in the calculation made by the controlling authority.

12. In this view of the matter, it is clear that the controlling authority has calculated the payable amount by applying correct formula and has not committed any error in arriving at the final figure. Therefore, the order of the controlling authority does not suffer from any error of law or jurisdiction or even on factual aspects. Hence, the appellate authority was also justified in confirming the said order of the controlling authority.

13. On the overall consideration, the order of the Controlling Authority does not suffer from any error and jurisdiction and the authority has determined the payable amount in accordance with settled legal position and the Appellate Authority has also not committed any error in law or jurisdiction or even of facts in confirming the order of the Controlling Authority. Hence, there is no reason to interfere with two concurrent orders which do not suffer from any error of law and no case for interference is made out and that therefore the petition does not deserve to be entertained. Hence the same is rejected. Rule is discharged.

[K.M. Thaker, J.]

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