

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****LETTERS PATENT APPEAL NO. 1351 of 2008  
In SPECIAL CIVIL APPLICATION NO. 22187 of 2006****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI****and****HONOURABLE MR.JUSTICE A.G.URAIZEE**

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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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AHMEDABAD JUPITER TEXTILE MILLS....Appellant(s)

Versus

MAMLATDAR & 2....Respondent(s)

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**Appearance:**

MR RS SANJANWALA, ADVOCATE for the Appellant(s) No. 1

MS AMITA SHAH, ASST GOVERNMENT PLEADER for the Respondent(s) No.

1

MR CHIRAG M PAWAR, ADVOCATE for the Respondent(s) No. 2

MR MIHIR H PATHAK, ADVOCATE for the Respondent(s) No. 2

MR PS CHARI, ADVOCATE for the Respondent(s) No. 2

RULE UNSERVED for the Respondent(s) No. 3

CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**  
and  
**HONOURABLE MR.JUSTICE A.G.URAIZEE**

**Date : 31/01/2014**

**ORAL JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE KS JHAVERI)**

1. We have heard learned advocates for the parties.
2. This intra-court Letters Patent Appeal has been filed challenging the order dated 29.01.2008 passed by the learned Single Judge in Special Civil Application No. 22187 of 2006 whereby the learned Single Judge has dismissed the writ petition.
3. Mr. Sanjanwala, learned advocate appearing for the appellant submitted that the learned Single Judge erred in holding that the Recovery Certificate being an order consequential to the order of the Controlling Authority and the Appellate Authority and the said orders having not been challenged it would not be open to the appellant to question the Recovery Certificate. He submitted that the learned Single Judge has failed to appreciate that in view of the pending criminal proceedings the appellant is entitled to withhold the amount of Gratuity.
4. The learned Single Judge by way of the impugned order dated 29.01.2008 in Special Civil Application No. 22187 of 2006 has observed as under:

“18. In view of the law decided by the Apex Court as referred above as well as in light of the fact that not challenge is made to the order of the

controlling authority and appellate authority and only the petitioner has challenged the recovery certificate / notice which is based on order passed by controlling authority and appellate authority and therefore, according to my opinion, the amount of gratuity which has been withheld or forfeited by the petitioner is contrary to the order passed by the controlling authority and appellate authority. Therefore, there is no substance in the present petition. Accordingly, present petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated.

19. The respondent No.1 is directed to immediately recover the amount of interest which comes to Rs.74,795/- from the petitioner on the basis of notice (Annexure-A) dated 29.5.2006 and pay the said amount of interest to the respondent No.2 as early as possible."

5. We have also perused the affidavit-in-reply filed by respondent no. 2. From the records, it is borne out that the Controlling Authority under the Payment of Gratuity Act passed an order on 14.08.2003 directing the appellant to pay the gratuity amount and the interest thereon which was challenged by the appellant only after the period of limitation i.e. after about ten months. The Appellate Authority also dismissed the appeal of the appellant which also remained unchallenged and therefore the order passed by the Controlling Authority had attained finality. We are in complete agreement with the impugned order passed by the learned Single Judge. The order of the learned Single Judge does not reveal any infirmity and therefore we are not inclined to accept any contention raised in the present appeal.

6. Accordingly, the appeal being devoid of any merits is hereby dismissed. In view of the aforesaid order in appeal,

Civil Applications, if any, shall also stand disposed of.

**(K.S.JHAVERI, J.) (A.G.URAIZEE,J)**

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