

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 4452 of 2019**

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ASHVINKUMAR RAMNIKLAL JANI

Versus

STATE OF GUJARAT

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Appearance:

MR JAYRAJ CHAUHAN(2966) for the Petitioner(s) No. 1

MR MUKESH N VAIDYA(5197) for the Petitioner(s) No. 1

MR MUKUND M DESAI(286) for the Petitioner(s) No. 1

MS.SURBHI BHATI, AGP for the Respondent(s) No. 1,2,3

NOTICE SERVED BY DS for the Respondent(s) No. 4

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CORAM:HONOURABLE MR. JUSTICE BIREN VAISHNAV**Date : 19/04/2022****ORAL ORDER**

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for a declaration that the action of the respondents in not paying the entire amount of Rs.10 lakhs towards gratuity to the petitioner is arbitrary. Further direction is prayed that the respondents be directed to pay the remaining amount of gratuity to the petitioner along with 18% interest from the date of his retirement.

2. Facts in brief would indicate that the petitioner had joined service as an Assistant Lecturer on 28.08.1973 in the Government Polytechnic. His

appointment was under the pension scheme. Thereafter, he joined services as a lecturer in the Sardar Patel University with effect from 04.10.1979. He was appointed as a 'Reader' through open selection by direct recruitment with effect from 28.06.1984. He was confirmed in service with effect from 28.09.1986. It is his case that since the appointment was made after 01.04.1982 on the post of reader, his services has been counted under the GPF scheme. He retired from service on 14.06.2013.

3. Mr. Jayraj Chauhan learned counsel for the petitioner would submit that it is no longer in doubt that the petitioner was entitled to the benefit of pension as per the Government Resolution dated 15.10.1984 and the subsequent notifications. He would rely on a decision in case of ***State of Gujarat and Ors. v. Ashwinkumar Ramniklal Jani*** rendered in ***LPA No.219 of 2017*** by which, in the case of the petitioners, the Division Bench dismissed the appeal of the State holding that the petitioner was entitled

to the benefits of pension, confirming the decision of the coordinate bench of this Court rendered in Special Civil Application No.15316 of 2015 dated 03.02.2016.

4. He would submit that after the date of retirement, he was entitled to a gratuity of Rs.10 lakhs. This was pursuant to a notification dated 24.05.2010, by which, the gratuity amount was enhanced to Rs.10 lakhs from Rs.3,50,000/-. Consequential amendments made in sub-section (3) of Section 4 of the Payment of Gratuity Act. A resolution dated 19.07.2014 was passed by the State extending the benefit of availability of gratuity of Rs.10 lakhs given to CPF beneficiaries effective from the date of amendment i.e. 24.05.2010.

5. Ms.Surbhi Bhati learned AGP for the State would submit that reading the appointment order of the petitioner with the Sardar Patel university would indicate that the petitioner was governed by the CPF scheme and therefore not entitled to the gratuity.

6. Considering the submissions made by the learned advocates for the respective parties, the following facts would indicate that the petitioner is entitled to an amount of Rs.10,00,000/- as gratuity pursuant to the amended notification with effect from 24.05.2010 which became part of the Act, by which, the ceiling of gratuity was raised to Rs.10 lakhs. Admittedly, from the pay slip of the Sardar Patel University of June 2013, preceding the petitioner's retirement indicates that GPF was deducted from the salary of the petitioner. Admittedly therefore the petitioner was governed by the GPF scheme. That all was not in doubt in view of the Division Bench affirming the decision of the learned Single Judge in the petition filed by the petitioner as referred to herein above.

7. Even otherwise, as held by the Division Bench of this Court in Civil Application No.3918 of 2019 in F/LPA No.28476 of 2019, the Division Bench dismissed the appeal of the State upholding the order of the coordinate bench in Special Civil Application

Nos.7746 of 2014 with 7747 of 2014 dated 23.12.2016, where the Court considered the aspect of payment of gratuity of Rs.10 lakhs and held as under:

"1. Both the petitions raise identical questions of facts and law, and therefore, they are being decided by a common order.

2. The facts for the purpose of adjudication are drawn from Special Civil Application No. 7746 of 2014 which is as under :-

2.1. The petitioner was serving in Shri H.K.Commerce College, affiliated to Gujarat University and he retired from service on 14th June, 2011. He had not opted for pension and continued under the CPF Scheme. The petitioner had desired the benefit of Government Resolution dated 13.4.2009 which enhanced the amount of gratuity to Rs.10.00 Lacs. As the respondent had not paid the amount of Rs.10.00 Lacs (Rupees Ten Lacs only) towards gratuity, it is say of the petitioner that till date, the respondents have not sent any reply to the petitioner nor they have paid the remaining amount of gratuity at par with other GPF holders. Therefore, the petitioner has approached this Court with the following reliefs :-

(A) to admit this petition;

(B) to declare that the action of the respondents in not paying the entire amount of Rs.10 Lacs towards gratuity to the petitioner is arbitrary and bad in law and therefore be pleased to issue a writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the action of the

respondents in not paying full gratuity to the petitioner and further be pleased to direct the respondents to pay remaining amount of gratuity to the petitioner forthwith along with 12% interest per annum.

(c) Pending admission, hearing and final disposal of this petition, the respondents be directed to pay the remaining amount of gratuity along with interest at the rate of 12% per annum.

(d) to award the cost of this petition.

(e) to grant any other and further relief/s as may be deemed fit and proper in the facts and circumstances of the case.

3. Mr.Jairaj Chauhan, learned advocate appearing for the petitioners has submitted that to both the petitioners, the principal amount of gratuity has already paid on 10.10.2014 . He has urged that Rs. 3.50 Lacs (Rupees Three Lacs Fifty thousand only) paid on 14.9.2011 and the remaining amount of Rs.6.50 Lacs (Rupees Six Lacs Fifty Thousand only) has been paid on 10.10.2014. Therefore, the court needs to pass necessary directions for the interest part only.

*4. This Court has heard learned AGP Ms.Asmita Patel who has fairly submitted the Court may pass appropriate order considering the decision rendered in case of **H.Gangahanume Gowda Vs. Karnataka Agro Industries Corporation Ltd.** reported in **(2003) 3 SCC 40**. The Apex Court in the said authority has decided the interest on delayed payment of gratuity. It is also held that the same is mandatory and not discretionary. When it is not the case of the respondent that the delay in the payment of gratuity was due to the fault of the employee and that it had obtained permission in writing from the controlling authority for the delayed payment on that ground, the respondent had been directed to pay interest @ 10% on the amount of gratuity to*

which the appellant is entitled from the date it became payable till the date of payment of the gratuity amount.

5. Considering the submission of both the sides and bearing in mind the ratio sought to be relied upon by learned AGP , the amount of gratuity has already paid on 14.9.2011 to the tune of Rs.3.50 Lacs and the remaining amount Rs. 6.50 Lacs was paid on 10.10.2014 as petitioner had retired on 14.6.2011.

6. The Apex Court in the above referred decision has held that the grant of gratuity well within time mandatory and not discretionary wherein the Apex Court has held that :-

“9. It is clear from what is extracted above from the order of learned Single Judge that interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the courts during the pendency of enquiry. The learned Single Judge having held that the appellant was entitled for payment of gratuity was not right in denying the interest on the delayed payment of gratuity having due regard to Section 7(3A) of the Act. It was not the case of the respondent that the delay in the payment of gratuity was due to the fault of the employee and that it had obtained permission in writing from the controlling authority for the delayed payment on that ground. As noticed above, there is a clear mandate in the provisions of Section 7 to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. Since the employer did not satisfy the mandatory requirements of the proviso to Section 7(3A), no discretion was left to deny

the interest to the appellant on belated payment of gratuity. Unfortunately, the Division Bench of the High Court, having found that the appellant was entitled for interest, declined to interfere with the order of the learned Single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the learned Single Judge could not be said to be arbitrary. In the light of what is stated above, the learned Single Judge could not refuse the grant of interest exercising discretion as against the mandatory provisions contained in Section 7 of the Act. The Division Bench, in our opinion, committed an error in assuming that the learned Single Judge could exercise the discretion in the matter of awarding interest and that such a discretion exercised was not arbitrary.

10. In the light of the facts stated and for the reasons aforementioned, the impugned order cannot be sustained. Consequently, it is set aside. The respondent is directed to pay interest @ 10% on the amount of gratuity to which the appellant is entitled from the date it became payable till the date of payment of the gratuity amount. The appeal is allowed accordingly with cost quantified at Rs. 10,000/-."

6. Adverting to the facts herein, this Court notices that the Government Resolution has been passed by the State on 11-13/4/09 wherein the limit of gratuity was raised to Rs.10 Lacs. The facts remains that the entire sum had become due to the petitioner who retired on 14.06.2011. For no fault of the petitioners, the entire amount of gratuity had not been paid well within the time period and it had been paid in two parts i.e. Rs.3.50 Lakhs on 14.09.2011 and remaining amount of Rs.6.50 Lakhs on 10.10.2014. Hence, for the late payment of Rs.6.50 Lakhs, there is no

jurisdiction and the petitioners have made out their case to that extent. This Court is therefore of the opinion that respondent is required to be directed to pay simple interest @ 9% on the amount of gratuity paid late i.e. Rs.6.00 Lacs to which the petitioner was entitled from the date it become payable till the date of payment of the gratuity amount, i.e. from 14.09.2011 to 10.10.2014.

7. With the above observations and directions, these petitions stand disposed of."

8. Accordingly the case of the petitioner is covered by the decision reproduced herein above.

9. The petitioner retired in the year 2013 for no fault of his. Mr. Jayraj Chauhan would rely on the following decisions in support of his claim that the petitioner is entitled to interest on the delayed payment of gratuity.

(I) In case of ***D.D.Tiwari (D) Thr. Lrs vs Uttar Haryana Bijli Vitran Nigam*** reported in ***(2014) 8 SCC 894***

(II) In case of ***Union of India v. M.S.Abdulla*** reported in ***(2006) 6 SCC 455***

(III) In case of ***Vijay L. Mehrotra v. State of U.P. & Others*** reported in ***(2001) 9 SCC 687***

(IV) In case of ***Union of India and Another v. M.C. Desai and Others*** reported in ***(1996) 11 SCC 400***

(V) In case of ***H. Gangahanume Gowda v. Karnataka Agro Industries Corpn. Ltd.*** reported in ***(2003) 3 SCC 40***

(VI) In case of ***Y.K.Singla v. Punjab National Bank and Others*** reported in ***(2003) 3 SCC 472***

10. The respondents are directed to pay to the petitioner the amount of gratuity of Rs.10 lakhs within a period of 10 weeks from the date of receipt of copy of this order. Since the petitioner superannuated on 14.06.2013 and the amount of gratuity has been wrongfully withheld by the respondents, the petitioner shall be entitled to interest at the rate of 9% from the date of his superannuation till the date of actual payment.

11. The petition is allowed in the aforesaid terms.

ANKIT SHAH

(BIREN VAISHNAV, J)