IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7637 of 2024

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JUNAGADH MUNICIPAL CORPORATION
Versus
HIRABEN VINODBHAI PARMAR & ORS.

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Appearance:
MR HS MUNSHAW(495) for the Petitioner(s) No. 1
for the Respondent(s) No. 1,2,3

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CORAM:**HONOURABLE MRS. JUSTICE MAUNA M. BHATT**

Date : 08/05/2024

ORAL ORDER

1. Junagadh Municipal Corporation as petitioner has filed this petition challenging an order of Controlling Authority dated 14.08.2023 in Gratuity Case No.17 of 2023 and an order of Appellate Authority dated 01.03.2024 in Gratuity Appeal No.3 of 2024, wherein the petitioner-corporation is directed to pay to respondent difference of Gratuity of Rs.3,81,637/- with simple interest at the rate of 10% per annum from 23.08.2021 till actual date of payment.

2. Heard Mr.H.S.Munshaw, learned advocate for the petitioner. He submitted that order of Controlling Authority dated 14.08.2023 is erroneous because the respondent-workman was initially appointed by the petitioner-corporation as Daily wager on temporary and ad-hoc basis. The appointment of

respondent-workman was depending upon availability of work and funds available to the petitioner-corporation. The respondent-workman was thereafter with effect from 01.02.1984 taken as permanent Safai Kamdar by an order dated 16.05.2002 in the pay-scale of Rs.750-940 with effect from 01.10.2000 on condition that a period between 01.01.2000 to 01.04.2002 would be counted as Notional period. Thus, after employee was made permanent, he was granted regular pay scale w.e.f. 01.10.2000. Thereafter, respondent-workman expired on 23.07.2021 while he was in employment of the petitioner-corporation and on account of death of respondent-workman, respondent No.1-widow was granted various benefits including payment of Gratuity on 20.10.2021. The amount of Gratuity paid to widow has been accepted and subsequently Gratuity Application No.17 of 2023 was preferred seeking payment of Gratuity from initial date of appointment. Initial date of appointment of the respondent-workman shown as 01.02.1984. His date of permanency has been not in dispute as the respondent-workman was made permanent with effect from 01.04.2002 and his date of death is 23.07.2021.

It is case of the petitioner that initial period where the respondent-workman had worked as temporary casual labourer, he would not be entitled for the said benefits. Learned advocate for the petitioner submitted that since the respondent was made permanent Safai Kamdar vide an order dated

16.05.2002 in the pay-scale of Rs.750-940 with effect from 01.10.2000, he would be entitled for payment of Gratuity from 01.10.2000 and therefore, initial service counted from 01.02.1984 being erroneous, the orders deserves to be quashed and set aside. He submitted that therefore, order of Controlling Authority dated 14.08.2023 directing the petitioner to pay difference of Gratuity of Rs.3,81,637/- is erroneous. It is not in dispute that workman was already paid Gratuity of Rs.3,61,551/- and therefore, direction to pay balance of Rs.3,81,637/- by counting total amount payable towards Gratuity of Rs.7,43,188/-, is erroneous.

3. Considering the submissions and facts on record, it is noticed that undisputedly the respondent-workman was appointed initially on ad-hoc basis as Safai Kamdar with effect from 01.02.1984. Thereafter, he was made permanent by an order dated 16.05.2002 and was put in regular pay scale of Rs.750–940 with effect from 01.10.2000. The petitioner-corporation counted Gratuity by taking into consideration the service rendered by the respondent-workman after he has been put in regular pay-scale with effect from 01.10.2000. Thus, the initial period under which the respondent had worked as Casual Labourer was not counted.

Completion of 240 days in a year while the respondent was working as Casual Labourer, prior to date of his regularisation,

is not in dispute.

4. In the decision of Hon'ble Supreme Court in the case of **Lalappa Lingappa and others V/s. Laxmi Vishnu Textile Mills Ltd.,** reported in **(1981)2 SCC 238**, it is held as under:

> "14. In dealing with interpretation of sub-section (1) of Section 4, we must keep in view the scheme of the Act. Sub-section (1) of Section 4 of the Act incorporates the concept of gratuity being a reward for long, continuous and meritorious service. The emphasis therein is not on 'continuity of employment', but on rendering of 'continuous service'. The legislature inserted the two Explanations in the definition to extend the benefit to employees who are not in uninterrupted service for one year subject to the fulfillment of the conditions laid down therein. By the use of a legal fiction in these Explanations, an employee is deemed to be in 'continuous service' for purposes of sub-section (1) of Section 4 of the Act. The legislature never intended that the expression 'actually employed' in Explanation I and the expression 'actually worked' in Explanation II should have two different meanings because it wanted to extend the benefit to an employee who 'works' for a particular number of days in a year in either case. In a case falling under Explanation I, an employee is deemed to be in continuous service if he has been actually employed for not less than 190 days if employed below the ground in a mine, or 240 days in any other case, except when he is employed in a seasonal establishment.
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> In a case falling under Explanation II, an

> employee of a seasonal establishment, is deemed to be in continuous service if he has actually worked for not less than 75 per cent of the number of days on which the establishment was in operation during the year.
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> 15. In our judgment, the High Court rightly observed : "It is important to bear in mind that in Explanation I the legislature has used the words 'actually employed'. If it was contemplated by Explanation I that it was sufficient that there should be a subsisting contract of employment, then it was not necessary for the legislature to use the words 'actually employed'." It is not permissible to attribute redundancy to the legislature to defeat the purpose of enacting the Explanation. The expression 'actually employed' in Explanation I to Section 2(c) of the Act must, in the context in which it appears, mean 'actually worked'. It must accordingly be held that the High Court was right in holding that the permanent employees were not entitled to payment of gratuity under sub-section (1) of Section 4 of the Act for the years in which they remained absent without leave and had 'actually worked for less than 240 days in a year.”

5. In this case it is not in dispute that the respondent had completed 240 days in a year when initially he was working as Casual Labourer. The issue being settled, there is no error in the order of the Controlling Authority and the same deserves to be upheld.

6. In view of above, the order of Controlling Authority dated 14.08.2023, is hereby confirmed. The Appeal filed by the Municipal Corporation was rightly rejected.

7. At this stage, learned advocate for the petitioner-corporation pointed out that in view of filing of appeal, challenging order dated 14.08.2023 of controlling authority, the amount of gratuity has been deposited before the Controlling Authority. The amount lying with the Controlling Authority shall be disbursed in favour of respondent-workman, after due verification, within a period of four weeks from the date of receipt of this order. With this, the present petition is disposed of.

(MAUNA M. BHATT,J)

DIPTI PATEL...