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**HIGH COURT OF GUJARAT**

**MEHTA PRAFULLABEN DALPATRAI**

*Versus*

**NITIN A MEHTA**

**Date of Decision:** 15 April 2004

**Citation:** 2004 LawSuit(Guj) 263

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**Hon'ble Judges:** [Ravi R Tripathi](#)

**Eq. Citations:** 2004 4 GLR 3113, 2005 1 LLJ 490, 2004 LabIC 3682

**Case Type:** Special Civil Application

**Case No:** 5843 of 2002

**Editor's Note:**

**Payment of Gratuity Act, 1972 - Sec 2(e) - Controlling Authority had order to pay towards gratuity - Compromise being at - Review application was withdrawn - Without paying said amount management filed review in review - Out same was rejected - Appeal - Allowed - On ground that the pending issued before appellate Authority the full Bench of this Court at 2001 (2) GLR 1626 holding that the teacher will not fall within definition of the employee under payment of Gratuity Act - It is a well settled legal position that once the right are crystallized between parties the same cannot be disturbed on account of pronouncement of judgment unless the same is given retrospective effect - Held, order passed by appellate authority is quashed and set aside - Petition is allowed**

**Final Decision:** Petition allowed

**Advocates:** [P K Jani](#), [Deepak Shukla](#), [Nanavati Associates](#), [H D Dave](#)

**Cases Referred in (+): 1**

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**[1]** This petition is filed by the petitioner-teacher being aggrieved of the order dated 15th March, 2002 passed by the Appellate Authority under the Payment of Gratuity Act in Gratuity Appeal No.92 of 2001 whereby the Appellate Authority has quashed the order dated 2nd February, 2001 passed by the Controlling Authority under the Payment

of Gratuity Act in Application No.17 of 1999 whereby the Controlling Authority had ordered to pay a sum of Rs.69,265=00 to the petitioner towards gratuity.

**[2]** The facts of the case are that the petitioner had approached the Controlling Authority under the Payment of Gratuity Act by way of Application No.17 of 1999 wherein the respondent no.1-Management had raised a preliminary contention that the Controlling Authority has no jurisdiction to try the application. The Controlling Authority, after hearing the parties, was pleased to pass an order dated 23rd December, 1999, holding that the applicant, petitioner herein, had retired on 31st May, 1997 and by virtue of Notification No.F.No.S.42013/1/95-SS,II dated 3rd April, 1997 issued by the Government of India, educational establishments are covered under the Payment of Gratuity Act, 1972 and, therefore, the Controlling Authority is empowered to hear the application. Being aggrieved of that order, the Management had approached this Court by filing Special Civil Application No.377 of 2000, which came to be decided by this Court (Coram: H.K.Rathod, J.) by order dated 2nd May, 2000 wherein this Court was pleased to observe that:

"In the light of aforesaid citations, observations and discussion said decision, according to my opinion, the Controlling Authority has not committed any jurisdictional error in entertaining the application preferred by the respondent workman. Further, no jurisdiction error is committed by the Controlling Authority which requires interference at the hands of this Courts in exercise of powers under Art. 226 & 227 of the Constitution of India. Therefore, the present petition is dismissed at the notice stage. Ad-interim relief granted earlier stands vacated. There shall be no order as to costs.

After the aforesaid judgement and order of this Court, Application No.17 of 1999 was proceeded with. By order dated 2nd February, 2001, the Controlling Authority allowed the same in favour of the applicant-teacher, present petitioner, directing the Management to pay a sum of Rs.69,265=00 towards gratuity. Being aggrieved of that, the Management filed Review Application No.26 of 2001, which came to be withdrawn on 7th May, 2001 on a compromise being arrived at. Against the order of payment of Rs.69,265=00 with 10% simple interest, the matter was settled for Rs.80,000=00 and the Review Application was withdrawn. After the said Review Application was withdrawn, the Management passed a Resolution on 7th May, 2001 and paid two cheques of Rs.40,000=00 each, of which one cheque was dated 1st July, 2001, while the another was dated 1st January, 2002. When the first cheque dated 1st July, 2001 was presented by the petitioner-teacher before the Bank for payment, the teacher learnt that there was an instruction of stopping the payment to the Bank as the Management had approached the Controlling Authority again by filing an application. That application was rejected by an order dated 26th July,

2001 on the ground that there cannot be a review of review. Being aggrieved of that order, the Management approached the Appellate Authority under the Payment of Gratuity Act by filing Gratuity Appeal No.92 of 2001, which came to be decided on 15th March, 2002. The Appellate Authority was pleased to allow the appeal preferred by respondent no.1-Management and quash the order of the Controlling Authority on the ground that during the intervening period, a decision is rendered by a Full Bench of this Court in the matter of Shantiben L.Christian vs. Administrative Officer, Ahmedabad Municipal School Board, reported at 2001(2) G.L.R. 1626, holding that though the Payment of Gratuity Act is made applicable to the educational institutions by Notification dated 3rd April, 1997 of the Government of India, teachers are not included in the definition of the term, "employee", defined under Section-2(e) of the Payment of Gratuity Act. Hence, the present petition. It is to be mentioned here that the judgement of the Full Bench of this Court was the subject matter of appeal before the Apex Court in Civil Appeal No.6369 of 2001 wherein the Apex Court was pleased to confirm the view taken by the Full Bench of this Court, that the petitioner, being a teacher, will not fall within the definition of the term, "employee", under the Payment of Gratuity Act and, therefore, will not be entitled to the payment of gratuity.

**[3]** Mr.p.k.jani, learned Advocate appearing for the petitioner, contended that this is a matter wherein the dispute between the parties is concluded by a compromise in Review Application No.26 of 2001 on 7th May, 2001 whereby the Management had agreed to pay a sum of Rs.80,000=00 against the order of the Controlling Authority passed in Application No.17 of 1999 on 2nd February, 2001 whereby it was directed that the Management shall pay an amount of Rs.69,265=00 with 10% simple interest thereon. The learned Advocate submitted that in that view of the matter, later pronouncement of the Full Bench affirmed by the Apex Court will not affect the rights, which were crystallised between the parties by virtue of the Compromise dated 7th May, 2001. He submitted that even if the Management entered into a compromise, not knowing the law pronounced by the Full Bench of this Court on 4th May, 2001, it does not change the situation and the present petition is required to be allowed quashing and setting aside the order dated 15th March, 2002 passed by the Appellate Authority under the Payment of Gratuity Act in Appeal No.92 of 2001. He submitted that neither the Full Bench of this Court nor the Apex Court has made the judgements retrospectively applicable, so as to apply to the case of the petitioner, who had crystallised rights in her favour. He, therefore, submitted that this petition is required to be allowed and the order of the Appellate Authority is required to be quashed and set aside.

**[4]** Mr.d.g.shukla, learned Advocate appearing for the respondent no.1-Management, submitted that the judgement of the Full Bench is dated 4th May, 2001 whereas the compromise was entered into on 7th May, 2001 and, therefore, it is nothing but a compromise entered into being ignorant of the law pronounced by the Full Bench of this Court. He submitted that, therefore, the order of the Appellate Authority is required to be upheld and it is required to be held that the Management is under no obligation to pay Rs.80,000=00, which was agreed upon under the compromise in Review application No.26 of 2001 on 7th May, 2001.

**[5]** It is a well settled legal position that once the rights are crystalised between the parties, the same cannot be disturbed on account of pronouncement of judgement unless the same is given restrospective effect. If the Review Application was pending either before the Controlling Authority or before the Appellate Authority, things would have been different. But, as the Management, in its wisdom, compromised the matter, the proceedings stood concluded and the rights stood crystalised and, therefore, now, it cannot be said that by virtue of the pronouncement of the Full Bench of this Court, the rights accrued in favour of teacher will not evaporate.

**[6]** In view of the above, the present petition is allowed. The order dated 15th March, 2002 passed by the Appellate Authority under the Payment of Gratuity Act in Gratuity Appeal No.92 of 2001 is hereby quashed and set aside. The respondents are directed to honour the compromise, which they have entered into on 7th May, 2001 in Review Application No.26 of 2001, within eight weeks from the date of receipt of writ of this Court. It is clarified that this decision does not pronounce on legal proposition relating to entitlement of the teachers for gratuity under the Payment of Gratuity Act. Rule is made absolute. No order as to costs.