
HIGH COURT OF GUJARAT

MUNICIPAL SCHOOL BOARD

Versus

SURESHBHAI MISTRI

Date of Decision: 10 January 2014

Citation: 2014 LawSuit(Guj) 1974

Hon'ble Judges: [K J Thaker](#)

Case Type: Special Civil Application

Case No: 20832 of 2006

Subject: Constitution, Labour and Industrial

Acts Referred:

[Constitution Of India Art 227](#)

[Payment Of Gratuity Act, 1972 Sec 2\(e\)](#)

Advocates: [A D Oza](#), [Nirav Joshi](#), [Nanavati Associates](#)

K.J.Thaker, J.

[1] Heard, Mr. Hemang Raval, learned Advocate for Mr. Oza, learned Sr. Advocate for the petitioner and Mr. Joshi, learned Advocate for Nanavati Associates for respondent No.1.

[2] Mr. Joshi, learned Advocate for respondent No.1, submitted that the issue involved in this petition is squarely covered by the judgment of this Court in Special Civil Application No. 29350 of 2007, Dated : 12.12.2007, wherein at Para-12, the learned Single Judge observed as under;

"12. In this case, no material is produced by petitioner before the controlling authority and appellate authority which outset the responded from the definition of employee under Section 2(e) of the Payment of Gratuity Act, 1972. That is enough when respondent is covered by definition of employee and completed more than 5 years continue service, for that, there is no dispute raised by petitioner, then, controlling authority has rightly examined it and granted the benefit in favour of respondent and appellate authority has rightly decided the matter, for that, no

error is committed by controlling authority as well as appellate authority which requires any interference by this Court under Article 227 of the Constitution of India."

[3] As against this Mr. Raval, learned Advocate for the petitioner, submitted that the aforesaid order is challenged by the present petitioner, who was also a petitioner, therein, by way of Letters Patent Appeal No. 95 of 2008 and the same is pending. He, hence, submitted that the learned Single Judge ought not to have passed the impugned order, treating the order of this Court dated 12.12.2007 as final.

[4] I have gone through the material on record as well as the order of this Court dated 12.12.2007 and I am not persuaded that any other view than the one taken by the learned Single Judge can be taken in the matter. In the result, the petition fails and is DISMISSED. It is, however, clarified that the amount lying with the concerned authority will be kept in tact, till the Letters Patent Appeal No. 95 of 2008 is disposed of by the Division Bench of this Court. Rule is discharged. No order as to costs.

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