

**1993 (2) G. L. H. 299**  
**J. M. PANCHAL AND A. N. DIVECHA, JJ.**

Gani Juma ...Petitioner  
Versus  
P. C Mehta and Others ...Respondents

Special Civil Application No. 2458 of 1979 D/- 9-1-1992\*

\*Special Civil Application praying to quash and set aside the Order dated 21 -3-1979 passed in Appeal No. 74/78, etc.

**Payment of Gratuity Act, 1972 - S. 3 - Ambit - Absorption of an employee in the employment of another authority results into termination of the bond of employment with the former authority - All terminal benefits including service gratuity paid on termination - Gratuity cannot be claimed for that period which would amount to double benefits.**

The workman was paid all his terminal benefits including the service gratuity and the death-cum-retirement gratuity till 31st March 1957. It would mean that he was practically made to retire from service with effect from 31st March 1957. It cannot be gainsaid that the terminal benefits are paid to an employee on termination of the bond of employment. In that view of the matter, we find no hesitation in accepting the case pleaded on behalf of the respondents that the workman's bond of employment with the then State of Saurashtra came to an end with effect from 31st March 1957. His absorption in the Bombay Electricity Board started a fresh bond of employment. His services remained uninterrupted without any break for the purpose of increments and certain other benefits except for the purpose of pension and gratuity. For the purposes of gratuity, his services could not be said to have continued. Even at the cost of repetition it may be reiterated that a fresh bond of employment started on his absorption in the Bombay Electricity Board. It is true that his absorption was pursuant to some resolution passed by the Government of Bombay, sometime in 1959. It however transpires from the record that he was given an option to be absorbed in the employment of the Bombay Electricity Board and to be governed by the conditions of service applicable to its employees. It further transpires from the record that he exercised his option in favour of being a regular employee of the concerned Electricity Board. In that view of the matter, there should be no [ @page299 ] hesitation in affirming the conclusion reached by the lower appellate authority to the effect that a fresh bond of employment came into existence on the workman's absorption in the Bombay Electricity Board with effect from 1st April 1957.

Once this factual position is accepted, the workman's continuous service for the purpose of the Act would be from 1st April 1957 till the date of his retirement. His past services prior to 1st April 1957 cannot be taken into consideration for the purposes thereof. We are, therefore, of the view that the lower appellate authority was quite justified and right in coming to the conclusion that the workman was not entitled to any gratuity payment for the period prior to 1st April 1957. (Paras 5 and 6 )

**Cases Referred :**

1. Jashubhai Hiralal Gandhi v. Competent Authority & Deputy Collector, Ahmedabad and Others, 1990 (2) G.L.H. 609 (Para 4)
2. Chief Engineer, Beas Sutlej Link Project v. Controlling Authority. Payment of Gratuity Act & Others (1985) 66 Factories Journal Reports p. 194 (Paras 7, 8)

**Appearances :**

Shri N. D. Nanavati, Advocate for the petitioner  
Shri U. R. Bhatt, Asst. G. P. for respondents Nos. 1 & 2

Shri K. D. Gandhi, Advocate for Shri K. S. Nanavati for respondent No. 3

**PER A. N. DIVECHA, J. :**

1.

Can the past services of an employee be counted for the purpose of payment of gratuity under the Payment of Gratuity Act, 1972 (the 'Act' for brief) when the terminal benefits in respect of such past services have been paid to him? This is one of the question arising in this petition under Article 226 of the Constitution of India questioning the correctness of the judgment and Order passed by respondent No. 1 herein on 21st March 1979 in Appeal No. 74 of 1978. Thereby respondent No. 1 upset the order passed by respondent No. 2 in the application bearing No. 78 of 1976 made by the predecessor-in-title of the present petitioners (the 'workman' for convenience) for the purpose of claiming gratuity for his entire service from respondent No. 3. It is needless to say that respondent No. 2 had accepted the claim of the workman *in toto*.

2. It may be mentioned at this stage that soon after institution of the petition the workman left for his heavenly abode on 17th October 1979. His heirs have been brought on record in his place by virtue of the order passed by this Court on 8th January 1992 in Civil Application No. 39 of 1992.

3. The aforesaid question may be examined in the backdrop of certain undisputed facts. The workman was employed in the Power House Department of the then Junagadh State sometime on 28th October 1938. On the formation of the Saurashtra Electricity Board, he was placed on deputation thereto with effect from 1st July 1954. On formation of the State of Bombay, the Saurashtra Electricity Board came to be merged with the Bombay Electricity Board and he came to be transferred as an employee of the Bombay Electricity Board with effect from 1st April 1957 by virtue of one Government Resolution passed by the then Government of Bombay on 28th March 1959. It appears that under the State Government service, he was enjoying the status of a pensionable post. It appears that in the [*@page300*] Bombay Electricity Board there was no scheme of pension and instead it had the scheme of contributory provident fund in lieu thereof. It appears that thereupon he was required to exercise an option to accept and abide by the rules and regulations framed by the concerned Electricity Board and the conditions of service applicable to its employees. He appears to have exercised option to be an employee of the Board for all such purposes. It transpires from the record that thereupon his terminal benefits including the amount of gratuity payable to him were worked out and paid to him. It becomes clear from the record that the amount of service gratuity payable to him under the rules of the then Government of Saurashtra together with the death-cum-retirement gratuity amount was credited in his contributory provident fund account maintained in the concerned Electricity Board. There was thus constructive payment of the entire gratuity amount to him. He continued to be in the services of the Bombay Electricity Board from 1st April 1957. On formation of the State of Gujarat and consequently the Gujarat Electricity Board, he came to be absorbed as an employer of the Gujarat Electricity Board which is arraigned as respondent No. 3 in this petition. He appears to have retired from service on superannuation on and from 2nd December 1973. It appears that he was paid gratuity for the period from 1st April 1957 to the date of his retirement. He found this payment to be inadequate in view of the fact that his past services prior to 1st April 1957 were not taken into consideration for the purpose of payment of gratuity. He, therefore, demanded such payment by way of difference from respondent No. 3. It appears that he received no favourable response from it. He thereupon made an application on 31st August 1976 to the authority of respondent No. 2 under the Act. That authority accepted his claim *in toto* and ordered payment of Rs. 5,813/- to him within 30 days being difference of the gratuity amount payable to him. That decision was communicated to respondent No. 3 by one communication of 23rd March 1978. Its copy together with its accompaniment being the finding recorded by respondent No. 2 is at Annexure A to this petition. That aggrieved respondent No. 3. It carried the matter in appeal before respondent No. 1 under the relevant provisions contained in Section 7 of the Act. It was registered as Appeal No. 74 of 1978. By his judgment and order passed on 21st March 1979 in Appeal No. 74 of 1978 respondent No. 1 accepted the appeal and practically upset the order passed by respondent No. 2 at Annexure A to this petition. A copy of the order passed by respondent No. 1 in Appeal No. 74 of 1978 on 21st March 1979 is at Annexure B to this petition. That aggrieved the workman. He has, therefore, preferred this petition under

Article 226 of the Constitution of India questioning the correctness of the decision of the appellate authority at Annexure B to this petition.

4. It cannot be gainsaid that this petition questioning the decision of the appellate authority under Article 226 of the Constitution of India would not be maintainable in view of the Division Bench ruling of this Court in the case of *Jashubhai Hiralal Gandhi v. Competent Authority & Deputy Collector, Ahmedabad and Others* reported in 1990 (2) Gujarat Law Herald at page 609. At the instance of the learned Advocate for the petitioners, this petition is treated as the one under Article 227 of the Constitution of India and is heard and disposed of accordingly.

5. As pointed out hereinabove, the workman was paid all his terminal benefits including the service gratuity and the death-cum-retirement gratuity till 31st [page301] March 1957. It would mean that he was practically made to retire from service with effect from 31st March 1957. It cannot be gainsaid that the terminal benefits are paid to an employee on termination of the bond of employment. In that view of the matter, we find no hesitation in accepting the case pleaded on behalf of the respondents that the workman's bond of employment with the then State of Saurashtra came to an end with effect from 31st March 1957. His absorption in the Bombay Electricity Board and later on in the Gujarat Electricity Board started a fresh bond of employment. His services remained uninterrupted without any break for the purpose of increments and certain other benefits except for the purposes of pension and gratuity. For the purposes of gratuity, his services could not be said to have continued. Even at the cost of repetition it may be reiterated that a fresh bond of employment started on his absorption in the Bombay Electricity Board. It is true that his absorption was pursuant to some resolution passed by the Government of Bombay some time in 1959. It however transpires from the record that he was given an option to be absorbed in the employment of the Bombay Electricity Board and to be governed by the conditions of service applicable to its employees. It further transpires from the record that he exercised his option in favour of being a regular employee of the concerned Electricity Board. In that view of the matter, there should be no hesitation in affirming the conclusion reached by the lower appellate authority to the effect that a fresh bond of employment came into existence on the workman's absorption in the Bombay Electricity Board with effect from 1st April 1957.

6. Once this factual position is accepted, the workman's continuous service for the purpose of the Act would be from 1st April 1957 till the date of his retirement. His past services prior to 1st April 1957 cannot be taken into consideration for the purposes thereof. We are, therefore, of the view that the lower appellate authority was quite justified and right in coming to the conclusion that the workman was not entitled to any gratuity payment for the period prior to 1st April 1957.

7. We are supported in our view by the single Judge's ruling of the Punjab and Haryana High Court in the case of *Chief Engineer, Beas Sutlej Link Project v. Controlling Authority, Payment of Gratuity Act and Others* reported in (1985) 66 Factories Journal Reports at page 194. In that case the concerned employee was working with the Bhakra Nangal Project on work-charged basis. As the work on the project was nearing completion and a large number of employees were to be rendered surplus and discharged whose services could be usefully utilised on the Beas Project which was still in its initial stage, a scheme was formulated for providing re-employment to skilled and unskilled workmen who were to be discharged as surplus by the former project. Under the scheme, the work-charged employees had to tender their resignations to the Bhakra Nangal Project. The workman in that case tendered his resignation with the result that the relationship of employer and employee stood snapped. He was paid retrenchment compensation *ex gratia* under a special sanction of the Government. He was given a fresh appointment by the Beas Project authorities. On his retirement on attaining the age of superannuation, he claimed the gratuity amount for his entire service including the services rendered by him in the Bhakra Nangal Project. His claim was accepted by the authorities under the Act. The Punjab and Haryana High Court however upset the decisions of the [page302] authorities under the Act on the ground that the past services of the concerned employee came to an end on his having resigned from the post in the Bhakra Nangal Project. We are in agreement with the view taken by the Punjab and Haryana High Court in its aforesaid ruling in the case of *Chief Engineer, Beas Sutlej Link Project* (supra).

8. The aforesaid ruling of the Punjab and Haryana High Court cannot be distinguished simply on the ground that in that case the workman had resigned and in the present case the workman was absorbed in the Bombay

State Electricity Board by virtue of some resolution passed by the Government of Bombay some time in 1959. It may be noted that as transpiring from the record, the workman was given an option to become an employee of the Bombay Electricity Board and to be governed by its service conditions. As pointed out hereinabove, the record shows that he exercised such option to be governed by the conditions of service applicable to its employees. In that view of the matter, it was on his volition that his bond of employment with the State Government prior to 1st April 1957 came to an end. He accepted a fresh bond of employment with the Bombay Electricity Board with effect from 1st April 1957. In that view of the matter, the aforesaid ruling of the Punjab and Haryana High Court relied on by Shri Bhatt and Shri Nanavati for the respondents will apply in the present case.

**9.** It is difficult to accept the submission urged before us on behalf of the petitioners to the effect that the right to receive gratuity accrued in favour of the workman on coming into force of the Act, and his past services prior to 1st April 1957 could not be ignored for the purpose of giving benefits to him under the beneficial piece of legislation. The reason therefore is quite simple. The Act does not contemplate payment of double benefits to any workman. As pointed out hereinabove, he was paid his due gratuity by crediting that amount in his contributory provident fund account. Consequent upon such payment, his tie of employer-employee relationship with the former employer came to an end. Such services of his cannot be considered for the purposes of the Act.

**10 .** In view of our aforesaid discussion, we find no reason to interfere with the judgment and order at Annexure B passed by the lower appellate authority, that is, respondent No. 1.

**11 .** In the result, this petition fails, it is hereby rejected. Rule is discharged however with no order as to costs on the facts and in the circumstances of the case.

(ISS) Rule discharged.