

Gujarat High Court holds denial of earned leave encashment to be a violation of an employee's constitutional right

In the recent case of *Ahmedabad Municipal Corporation vs. Sadgunbhai Semulbhai Solanki*¹, a single judge bench of the Gujarat High Court (“**Gujarat HC**”) held that earned leave encashment cannot be denied by an employer and that depriving an employee of the same is a violation of his/her constitutional rights.

Brief facts

Sadgunbhai Semulbhai Solanki (“**Respondent**” or “**Employee**”) started his employment with the Ahmedabad Municipal Corporation (the “**Petitioner**”) in the year 1975. Throughout the Respondent’s career, he worked in various roles, including the role of helper, turner and junior clerk. Due to the Respondent’s inability to clear departmental examinations in the years 1986 and 1993, the Respondent was reverted multiple times to lower posts. The Respondent filed civil suit², before the Civil Court of Ahmedabad against the reversion order and *vide* interim relief, his employment continued at the post of junior clerk until 1993. The suit was finally disposed of by the Civil Court on September 28, 2012, with directions to the Petitioner to consider the Respondent’s case. The Petitioner thereafter decided to provide the Respondent one final chance to appear in the departmental exam in November 2012. However, the Respondent voluntarily declined the opportunity and was eventually reverted to the position of helper.

Subsequently, on March 6, 2013, the Respondent tendered his voluntary resignation without depositing the required 1 (one) month notice pay and proposed to be retired with effect from March 7, 2013, and stopped reporting to duty. However, the Respondent’s resignation remained unaccepted by the Petitioner and eventually on April 30, 2014, the Respondent attained the age of superannuation.

Upon retirement, the Respondent filed an application seeking leave encashment for a period of 10 (ten) months amounting to INR 2,83,703 (Indian Rupees two lakh eighty-three thousand seven hundred and three), which the Petitioner denied stating that the Respondent remained absent without authorisation for the period between March 6, 2013, to April 30, 2014. Aggrieved by the same, the Respondent filed Recovery Application³ under Section 33C(2)⁴ of the Industrial Disputes Act, 1947 (“**ID Act**”) before the Labour Court, Ahmedabad. The Labour Court ruled in the favour of the Respondent, acknowledging his entitlement to encash earned leave and directed the Petitioner to pay INR 1,63,620 (Indian Rupees one lakh sixty-three thousand six hundred and twenty) as leave encashment dues to the Respondent. Aggrieved and dissatisfied with the order of the Labour Court, the Petitioner filed a fresh petition before the Gujarat HC challenging the Labour Court’s decision.

¹ C/SCA/12834/2018 – High Court of Gujarat

² SCA No, 771 of 1993

³ RA No. 558 of 2013

⁴ Recovery of money due from an employer.

Issues

1. Whether the Respondent was entitled to leave encashment despite his alleged unauthorised absence?
2. Whether the Respondent's claim is maintainable under Section 33C(2) of the ID Act?
3. Whether the Petitioner's refusal to pay leave encashment violated the Respondent's constitutional rights?

Observations and analysis

Some of the critical observations of the Gujarat HC are as follows:

1. it was argued by the Petitioner that the Respondent's resignation was not accepted due to non-payment of the required notice pay, and the Respondent did not work or resume duty from March 6, 2013, to April 30, 2014. In response, the Respondent claimed that he was deemed retired after 90 (ninety) days of submitting the voluntary resignation application as per Gujarat Civil Service Rules, 2002 ("**GCSR**"), making notice pay irrelevant. The Respondent further stated that he had 299 (two hundred and ninety-nine) accrued leave credits as per records and had a pre-existing right to claim leave encashment. The counsel for the Respondent further argued that benefits such as gratuity were already paid to the Respondent and hence, he is eligible to receive the leave encashment benefits as well;
2. the Gujarat HC after reviewing the submissions from both parties and having perused the order of the Labour Court, noted that the Petitioner failed to communicate acceptance or rejection of the Respondent's resignation within the stipulated 90 (ninety) day period and only responded on October 19, 2013, i.e., 7 (seven) months later and again on November 8, 2013, asking the Respondent to deposit a 1 (one) month notice pay of INR 9,090 (Indian Rupees nine thousand and ninety) for his resignation to be accepted. The Gujarat HC further observed that, in accordance with Rules 49(1) and 49(2) of the GCSR, if no response is received within 3 (three) months of such a voluntary retirement application, the employee is deemed to have retired. Moreover, the Respondent had cited physical inability and social responsibilities as reasons for his resignation and stated his readiness to pay the required notice period;
3. regarding the Petitioner's claim of non-maintainability under Section 33C(2) of the ID Act, the Gujarat HC, relying on the employment certificate dated June 27, 2012, submitted by the Respondent, concluded that the Respondent has a pre-existing right. Given that the Petitioner has recognised the certificate and has not disputed the same, the Gujarat HC held that the application under Section 33(c)(2) is deemed maintainable;
4. further, regarding the Petitioner's claim that the Respondent was absent without authorisation from March 6, 2013, to April 30, 2014, the Gujarat HC noted that the Petitioner did not initiate any departmental proceedings to address the Respondent's alleged unauthorised absence. Additionally, the Gujarat HC observed that no intimation was sent to the Respondent to resume duty immediately since the Respondent failed to deposit 1 (one) month notice pay. Such inaction by the Petitioner undermines its stance against the Respondent's leave encashment claim;
5. the Gujarat HC relied on Rules 22 and 63 of the GCSR to clarify that leave encashment is a right of the employee unless explicitly forfeited by statutory provisions. It went on to further note that leave encashment is akin to salary which is property and depriving a person of his property without valid statutory provision is violation of the provisions of the Constitution of India; and
6. the present petition was dismissed for lack of merit, and the Labour Court's order dated January 23, 2018, in Recovery Application⁵ was confirmed.

⁵ Review Application No. 558 of 2013

Conclusion

The Gujarat HC's dismissal of the petition reinforces employees' right to leave encashment, an employer's obligation to adhere to procedural requirements, and recognises leave encashment as an integral part of an employee's compensation. The present judgment protects earned benefits (like gratuity and leave encashment) from being withheld due to procedural lapses or arbitrary decisions by employers. By emphasising that salary (and by extension, leave encashment) is 'property', the court underscores the fundamental protection granted under Article 300A of the Constitution of India, which prohibits deprivation of property without legal authority.

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