

(2016) 09 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No. 21323 of 2006

Ahmedabad Municipal Transport Service

APPELLANT

Vs

Jitendrabhai C. Acharya

RESPONDENT

Date of Decision : 06-09-2016

Acts Referred:

Citation : (2017) 1 GujLH 1

Hon'ble Judges : Mr. K.M. Thaker, J.

Bench : Single Bench

Advocate : HCLS Committee and Mr. Krunal D. Pandya, Advocates, for the Respondents No. 1.1; Mr. H.S. Munshaw, Advocate, for the Petitioners No. 1; Notice Served, for the Respondents No. 1.2

Final Decision : Disposed off

Judgement

Mr. K.M. Thaker, J.(Oral) - When the petition is called out and taken up for hearing learned advocate for the respondent is not present. It is informed that learned advocate Mr. Kunal Pandya, who appears for the respondent has filed leave note.

2. Having regard to the relief prayed for in this petition and considering the fact that the petition is pending since 2006 the Court deems it proper to decide the petition by examining the material on record, though learned advocates are not present.

3. In this petition the petitioner has prayed, inter alia, that:-

"8(B) Be pleased to allow this Special Civil Application by way of quashing and setting aside the interim order passed by the Learned Presiding Officer, Labour Court No. 2, Ahmedabad, passed on 20.3.2006 in Reference (LCA) No. 2171 of 1994 by allowing the application regarding challenge of legality and validity of the departmental inquiry in reference and declared that the departmental inquiry held against the respondent herein is illegal and unjust as it has been conducted contrary to the principals of natural justices and post-pond the further hearing of

the reference in the interest of justice."

4. On reading the relief prayed for by the petitioner it becomes clear that the petitioner has taken out present petition at interlocutory stage of reference case i.e. Reference (LCA) No. 2171 of 1994.

5. From the relief prayed for by the petitioner and the details mentioned in the petition it appears that upon feeling aggrieved by termination order dated 14.5.1993 passed by the petitioner Municipal Transport Service, the respondent raised industrial dispute which was referred for adjudication to the learned Labour Court at Ahmedabad. The dispute/reference was registered as Reference (LCA) No. 2171 of 1994.

6. While challenging dismissal order passed by the disciplinary authority of petitioner on diverse ground, the respondent also challenged legality and propriety of the domestic inquiry which was conducted by the petitioner pursuant to charge-sheet dated 28.5.1990.

7. Since claimant challenged legality and propriety of the departmental inquiry the learned Labour Court considered the said contention as preliminary objection and decided said issue as preliminary issue.

8. Having examined rival contentions with regard to legality and propriety of the departmental inquiry learned Labour Court reached to the conclusion that the domestic inquiry conducted by the petitioner was not conducted in legal and fair manner and the said domestic inquiry was defective and therefore illegal. Learned labour Court passed said interim order on 20.3.2006 and declared that the domestic inquiry is defective and illegal.

9. Feeling aggrieved by the said order dated 20.3.2006 declaring domestic inquiry illegal, the petitioner has taken out this petition.

10. Above discussed facts bring out that the petition is taken out at interim/interlocutory stage while the proceeding of said reference case remained pending before the learned Labour Court.

11. Actually vide impugned order dated 20.3.2006 the learned Labour Court also declared that further hearing in the reference case would be conducted on 28.4.2006.

12. In view of the fact that the petition is taken out at interim/interlocutory stage against interim order, the petition does not deserve to be entertained.

13. Further, the petitioner can challenge the decision of the learned Court with regard to domestic inquiry, at final stage if final award is rendered against petitioner ? employer.

14. Having regard to the observations by Hon"ble Apex Court and having regard to the fact that present petition is taken out against order declaring domestic inquiry illegal, present petition is disposed of with the clarification that after final

order is rendered it will be open to the petitioner to raise dispute with regard to said interim order and also with regard to the domestic inquiry. It is also clarified that in the event final award is rendered against the petitioner and if the petitioner challenges final award and if final award necessitates challenge against Labour Court's decision with regard to domestic inquiry, then present order and disposal of the petition at this stage will not stand in way of the petitioner to challenge the legality and propriety of the interim order dated 20.3.2006 and the Labour Court's decision that the departmental inquiry is defective.

With the aforesaid clarifications petition is disposed of. Rule is discharged.

Orders accordingly.