(2004) 02 GUJ CK 0034

In the Gujarat High Court

Case No : Special Civil Application No''s. 1990, 12965 and 12989 of 2003

Baroda Rayon Corporation Ltd. APPELLANT

Vs

Saroj S. Jacob RESPONDENT

Date of Decision : 23-02-2004

Acts Referred:
Payment of Gratuity Act, 1972 — Section 7(7)

Citation : (2004) 02 GUJ CK 0034

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Trivedi and Gupta in Special Civil application No. 12965 of 2003, for the Appellant; M.R.Mengdey, Ld. AGP for Respondent No.28 in Special Civil Application No.1990 of 2003, for the Respondent

Judgement

Jayant Patel, J.—With the consent of the parties all the matters are taken up for final hearing today.

2. In all these petitions, the challenge is, by the petitioner, against various 27 orders passed by the Controlling Authority under the Payment of Gratuity Act (hereinafter referred to as "the Act") and the petitioner has consequently prayed for quashing and setting aside the intimation issued by the Mamlatdar for recovery of the amount. The petitioner has also prayed for quashing of the order passed below Review Application.

3. The short facts of the case appear to be that the respondents concerned in all the petitions were workmen of the petitioner. The respondent concerned retired from services and it is the case of the petitioner that the amount of gratuity as admissible was paid. However, the respondent workmen concerned were not satisfied and they moved appropriate applications before the authority under the Act for recovery of the balance amount of gratuity. The matters were considered by the authority and ultimately orders have been passed in the month of July, 2000, whereby the different amount specified in the concerned order is ordered to be paid by the petitioner to the respondents with interest at the rate of 10%.

It further appears that the petitioner submitted the review application before the Controlling Authority under the Act in the month of January, 2003 and the said review application was pending and in the meantime, Mamlatdar, Surat initiated the proceedings for recovery of the amount. It further appears that in the month of January, 2003, as per the communication dated 19-2-2003, the Controlling authority passed the order of dismissing the review application preferred by the petitioner and at this stage, the petitioner has approached this Court by these petitions.

4. I have heard Mr.Thakkar, learned Counsel, appearing for the petitioner, Mr.Clerk, learned Counsel appearing for the concerned workmen who are respondents in the concerned petitions and Mr.Mengdey, learned AGP appearing for the Mamlatdar (City Surat) in the respective petition(s).

5. There is no dispute on the point that against the orders passed by the Controlling Authority dated 19-7-2000, there is remedy of statutory appeal u/s 7(7) of the Act before the appellate authority. However, the contention of the petitioner is that since the Unit was closed nobody could represent the case before the Controlling Authority and the matter proceeded ex-parte. There is also no dispute on the point that no appeal is preferred by the petitioner before the appellate authority. It may be noted that one of the conditions precedent for entertaining of the appeal before the appellate authority against the decision of the Controlling authority is to deposit the amount as ordered by the Controlling authority and if the amount is not deposited, the appeal cannot be maintained. However, Mr.Thakkar for the petitioner submitted that the period of limitation for providing appeal is 60 days with the further power to the appellate authority to condone the delay for a period of 60 days more and, therefore, he submitted that since the limitation period is over, the petitioner could not resort to the proceedings of the appeal. Mr.Thakkar also submitted that as such the review application was preferred and the said review application was pending and during the pendency of the review application, the Mamlatdar had initiated the proceedings for recovery of the amount and, therefore, the petitioner had no option but to approach this Court.

6. Mr.Thakkar wanted to raise various other contentions for assailing the orders passed by the Controlling authority on merits and Mr.Clerk on the other hand, appearing for respondent workmen wanted to support the order passed by the Controlling authority on merits, but I find that it may not be required for this Court at this stage to examine the merits or demerit of the orders passed by the Controlling authority since it is an admitted position that the petitioner has not resorted to the statutory remedy available under law of preferring the appeal. It is well settled that the things which cannot be done directly, cannot be permitted to be done indirectly by invoking the power of this Court under Article 226 of the Constitution. If law provides for resorting to the proceedings of appeal and or depositing the amount while invoking the power of the appellate authority, such provisions of law in normal circumstances cannot be allowed to be bypassed

while exercising power under Article 226 of the Constitution. No extraordinary circumstances are brought to the notice of this Court, except financial crisis by the petitioner which would not permit the petitioner to invoke the jurisdiction of this Court at this stage under Article 226 of the Constitution as an extraordinary case. The inability of the employer to pay the amount as ordered by the Controlling authority or to deposit the amount as ordered by the Controlling authority cannot be said to be an extraordinary circumstance to make departure from the normal principles of relegating the party to appeal by self-imposed restrictions. At the most, the petitioner may seek some time to deposit the amount, but such inability to make the payment cannot be said to be a valid ground of bypassing the regular statutory remedy of appeal before the appellate authority.

7. Mr.Thakkar submitted that even if the petitioner now prefers the appeal before the appellate authority the question of limitation may come against the petitioner and as a result thereof the petitioner may be deprived of the adjudication on merits by the appellate authority against the decisions of the Controlling authority. Further, Mr.Thakkar also submitted that this Court may have to examine the legality and validity of the order passed by the Controlling authority below review application and also the action taken by the Mamlatdar for recovery of the amount. As regards the question of review application is concerned, as such there is no power of review expressly provided under the Act. The Controlling authority while exercising power under the Act is functioning as the quasi judicial authority and it is well settled that when any authority exercises quasi judicial power, unless it is expressly provided under the statute, there is no power of review. Therefore, as such the review application was otherwise not maintainable. In any case, such review application was preferred in January, 2003, whereas the order of the Controlling authority is passed in July, 2000. I am not expressing any final view on the said aspect and it will be open for the appellate authority to consider the matter on merit and other aspects of the order of Controlling authority, since it is an admitted position that the appeal is not preferred and the petitioner has not resorted to the remedy of appeal and when the right to prefer appeal is coupled with the condition to deposit the amount as ordered, I find that the petitioner should be relegated to the remedy of appeal and while resorting to the proceedings of appeal, a condition should also be put to the petitioner for deposit of the amount as required under the statute.

8. In view of the aforesaid discussion I find that the following directions shall meet with the ends of justice:

8.1) It will be open to the petitioner to prefer appeal/s within a period of three weeks from today before the appellate authority.

8.2) The petitioner, while preferring the appeal/s or thereafter, but not later than a period of ten weeks from the date of presentation of the appeal/s, shall deposit the amount as ordered by the Controlling authority and such amount shall be deposited with the Controlling authority.

8.3) After the amount is deposited by the petitioner as indicated earlier, the appellate authority shall take up the hearing of the appeal and shall decide all contentions, including the contentions on the question of limitation as well as on merits of the orders of the Controlling Authority, after hearing both the sides and the decision shall be rendered as early as possible, preferably within a period of three months from the date on which the matter is taken up for hearing.

8.4) The ad-interim relief granted by this Court shall continue for a period of three weeks in the event appeal/s not preferred or for a period of ten weeks after the presentation of the appeal/s in the event the appeal/s preferred.

8.5) It is clarified that in the event the petitioner, either not preferring the appeal or not depositing the amount within a stipulated time limit as indicated earlier, the ad-interim relief shall automatically stand vacated upon the expiry of the said period. It is also clarified that all contentions are open.

8.6) It will be for the parties to raise all contentions available under the law before the appellate Authority.

9. The petitions are disposed of in terms of the aforesaid directions. Rule discharged subject to the aforesaid directions. No costs.