

(2015) 09 GUJ CK 0013

In the Gujarat High Court

Case No : Special Civil Application No. 6930 of 2015

Bharat Textile Works

APPELLANT

Vs

Bhikhabhai Gandabhai Patel and Others

RESPONDENT

Date of Decision : 11-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 38, 39(a), 43
Industrial Disputes Act, 1947 — Section 17-B, 33-C(2)

Citation : (2015) 147 FLR 618

Hon'ble Judges : V.M. Pancholi, J.

Bench : Single Bench

Advocate : Pratik P. Thakkar, for the Appellant; P.C. Chaudhari and Paritosh Calla, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Pancholi, J.—This petition is filed under Article 227 of the Constitution of India wherein the petitioner has prayed that the order dated 6.12.2014 passed by the Labour Court, Ahmedabad in Recovery Application No. 84 of 2012 be quashed and set aside. Heard learned Advocate Mr. Pratik Thakkar for the petitioner and learned advocate Mr. P.C. Chaudhari for the respondent No. 1.

2. Learned Advocate for the petitioner submitted that the petitioner is engaged in the business of textile. Respondent No. 1 was appointed as a Peon in the year 1976. In the year 2002, because of financial difficulties faced by the petitioner, the petitioner had decided to retrench the respondent No. 1. Notice was given to him to collect the legal dues, however, the respondent No. 1 did not turn up for collecting the said dues and, therefore, the petitioner issued retrenchment order dated 4.5.2002. The respondent-workman raised the industrial dispute which was culminated into Reference (LCA) No. 807 of 2002. The Labour Court passed an award on 30.3.2010 by which the petitioner was directed to reinstate the respondent-workman with continuity of service along with all consequential benefits and 40% back wages. Learned advocate further submitted that the

petitioner has, therefore, filed Special Civil Application No. 14039 of 2010 before this Court and this Court, after bipartite hearing, passed an order on 14.12.2010 and granted interim relief qua back wages. At that time, the statement was also made that the petitioner is ready and willing to reinstate the respondent-workman. This Court, thereafter, confirmed the said relief by an order dated 27.12.2010. Learned Advocate Mr. Thakkar referred to the said order which is produced at page 54 of the compilation.

3. Learned advocate Mr. Thakkar, thereafter submitted that the respondent-workman never turned up thereafter to resume his duties. However, on 23.6.2011, the respondent-workman filed an affidavit dated 17.1.2011 before this Court in which it has been stated that the respondent-workman is not gainfully employed. On the receipt of the said affidavit, the petitioner issued a letter dated 6.7.2011 to the respondent - workman stating that the petitioner is in receipt of an affidavit under section 17-B of the Act. The respondent-workman has not approached the petitioner for resuming the duty. The respondent-workman, after receipt of letter dated 6.7.2011, gave his reply on 11.7.2011 stating that the respondent-workman had filed affidavit under section 17-B long back and he has not received any wages under section 17-B . However, he has not made any reference with regard to reinstatement. Learned advocate Mr. Thakkar at this stage submitted that the petitioner, from the very beginning when the notice was issued by this Court in the aforesaid Special Civil Application, was willing to reinstate the respondent-workman. However, instead of joining his duty, the respondent filed an application being Civil Application No. 177 of 2012 for the payment of wages and compliance of section 17-B of the Industrial Disputes Act on 10.1.2012.

4. Learned advocate, at this stage, further submitted that during the pendency of the aforesaid Civil Application, the respondent was reinstated as Peon on 5.3.2012. This Court, thereafter, disposed off the aforesaid Special Civil Application, by an order dated 21.3.2012. This Court further observed that the prayers in the said application cannot be granted. However, this Court granted permission to the respondent - workman to approach before the appropriate forum for ancillary benefits. Learned advocate Mr. Thakkar has referred to the order passed by this Court in Civil Application No. 177 of 2012 which is produced at page 67 of the compilation.

5. Learned Advocate Mr. Thakkar thereafter submitted that the respondent-workman filed Recovery Application No. 84 of 2012 before the Labour Court, Ahmedabad with similar prayer as prayed for in Civil Application No. 177 of 2012 i.e. for recovery of amount as per section 17-B of the Act. It is submitted that the Labour Court, by way of impugned order, directed the petitioner to pay an amount of Rs. 86,323.60 ps. He, therefore, submitted that the petitioner has filed this petition challenging the said order.

6. Learned Advocate Mr. Thakkar would mainly submit that the reliefs prayed for in the Recovery Application No. 84 of 2012 were already prayed in Civil

Application No. 177 of 2012 before this Court. This Court had not granted the said relief and, therefore, it was not open for the Labour Court to grant recovery application filed by the respondent-workman and, therefore, the impugned order is illegal and perverse. Hence, this Court may quash and set aside the same. It is contended that the Labour Court does not have jurisdiction under section 33-C(2) of the Industrial Disputes Act to decide the question of wages under section 17-B of the Industrial Disputes Act in the facts and circumstances of the present case. He further contended that the petitioner was willing to reinstate the respondent-workman and the petitioner had also made statement before this Court which was recorded in the order dated 14.12.2010 in Special Civil Application No. 14039 of 2010. The conduct of the respondent-workman in not resuming the duty itself proves that the respondent-workman might be gainfully employed and, therefore, the impugned order be quashed and set aside. He, therefore, submitted that this petition be allowed. At this stage, learned Advocate Mr. Thakkar pointed out that as per the order passed on 27.4.2015 by this Court in this petition, the petitioner has already deposited the amount of Rs. 86,323.60 ps. before Registry of this Court.

7. On the other hand, learned Advocate Mr. Chaudhari appearing for the respondent-workman mainly submitted that the reliefs prayed for in Civil Application No. 177 of 2012 and recovery application filed under section 33-C (2) of the Industrial Disputes Act were different. He submitted that as per the award passed by the Labour Court, the petitioner was required to reinstate the respondent-workman at his original post of peon. In spite of the petitioner had shown willingness to reinstate the respondent on the post of helper. This Court has granted stay qua back wages only. Learned advocate further submitted that the petitioner is engaged in the Engineering Industry and the provisions of Minimum Wages Act are applicable to the said institution. Thus, respondent-workman has prayed for the minimum wages as per the schedule annexed with the said application which is produced at page 75 of the compilation. Learned advocate Mr. Chaudhari referred to the said document and submitted that the respondent-workman had claimed only minimum wages in the recovery application. He further contended that this Court permitted the respondent-workman to approach before the appropriate forum for ancillary reliefs. Thus, for ancillary reliefs i.e. for minimum wages, the respondent-workman had preferred the said application. The Labour Court, after considering the reply filed by the petitioner as well as from the documents produced before it, has passed the order whereby the direction is given to the petitioner to pay Rs. 86,323.60 ps. to the respondent-workman. Thus, the Labour Court has not committed any error nor the Labour Court exceeded its jurisdiction and, therefore, this Court may not exercise the powers under Article 227 of the Constitution of India. He, therefore, submitted that this petition be dismissed.

8. I have considered the arguments advanced on behalf of learned advocates for the parties. I have also gone through the documents produced on record including the orders passed by this Court.

9. It is true that this Court has passed an order in the Civil Application No. 177 of 2012 and observed that the relief prayed for in the said application cannot be granted. However, this Court has at the same time permitted the present respondent-workman for approaching the appropriate forum for other ancillary benefits as the respondent-workman has been reinstated on 5.3.2012. Thus, as per the permission granted by this Court, the respondent-workman filed an application for getting ancillary benefits i.e. for the payment under the Minimum Wages Act as per the calculation produced at page 75 of the compilation. The Labour Court considered the documents produced on record before it and after considering the material, passed the order by which direction is given to the petitioner to pay minimum wages of Rs. 86,323.60 ps. for the period in question as per the calculation produced at page 75. Thus, I am of the opinion that when this Court granted permission to file an application for ancillary reliefs to the respondent-workman and when the Labour Court has granted said ancillary reliefs, by giving direction to the petitioner to pay minimum wages to the respondent-workman for a particular period, no illegality has been committed by the Labour Court nor it can be said that the Labour Court has exceeded its jurisdiction and granted the relief which this Court has not granted to the respondent-workman in Civil Application No. 177 of 2012. Thus, in the opinion of this Court, the aforesaid submission of learned advocate for the petitioner is misconceived.

10. Further, the scope of judicial review is very limited while exercising powers under Article 227 of the Constitution of India. The Hon"ble Supreme Court in the case of Jasmer Singh Vs. State of Haryana , more particularly on paragraphs 18 and 19 as under:

"18. The said award is challenged by the respondent-employer in Civil Writ Petition No. 9532 of 2001 urging untenable contentions. In the said writ petition, the High Court exercised its jurisdiction contrary to the judgment of this Court in Syed Yakoob v. K.S. Radhakrishnan and also the judgment, which was referred to in Harjinder Singh v. Punjab State Warehousing Corpn. The learned Counsel for the appellant has aptly placed reliance upon another judgment of Anoop Sharma v. Public Health Division in support of her legal submissions that both the learned Single Judge and the Division Bench of the High Court have erred in exercising their supervisory power under Article 227 of the Constitution of India in setting aside the finding of fact recorded on the facts based on the pleadings and evidence on record.

19. Further in Harjinder Singh v. Punjab State Warehousing Corpn. wherein this Court opined on the exercise of power by the High Court under Article 227 of the Constitution of India as under : (SCC p. 205, para 21)

"21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare

legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38 , 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to sub-serve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

"10. ...The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State." (State of Mysore v. Workers of Cold Mines, AIR p. 928, para 10)"

Keeping in mind the aforesaid observation of the Hon''ble Supreme Court, I am of the opinion that no interference is required in the impugned order. Accordingly, this petition is required to be dismissed and is accordingly dismissed.

At this stage, learned advocate Mr. Thakkar appearing for the petitioner requested this Court that this order be stayed for a period of three weeks so as to enable the petitioner to approach the higher forum as the petitioner has deposited the entire amount before Registry of this Court and if the stay as prayed for is not granted, the respondent will withdraw the said amount. The request of learned Advocate Mr. Thakkar is reasonable and the same is accepted. This order is stayed for a period of three weeks.