

(2012) 09 GUJ CK 0090

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1009 of 2012 in Special Civil Application No. 5000 of 2004 with Letters Patent Appeal No. 1008 of 2012 in Special Civil Application No. 5070 of 2004 with Civil Application No. 9172 of 2012 in Letters Patent Appeal No. 1009 of 201

Borsad Municipality

APPELLANT

Vs

Naginbhai Kishabhai Vaghela and 1

RESPONDENT

Date of Decision : 24-09-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2012) 09 GUJ CK 0090

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : Siddharth H. Daves, for the Appellant; N.D. Songara for Respondent(s) : 1 and None for Respondent(s) : 2, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice G.B. Shah

1. The present appeals have been filed by the appellant - original petitioner challenging judgment and order dated 12/06/2012, passed by the learned Single Judge of this Court in Special Civil Application Nos. 5000 of 2004 and 5070 of 2004, by which, the learned Single Judge has dismissed the petitions filed by the present appellant praying following reliefs:

In Special Civil Application No. 5000 of 2004:

(A) Your Lordships be pleased to issue a writ of certiorari and/or any other appropriate writ, order or direction, quashing and setting aside the impugned Order dated 15.12.2003 passed by the learned Presiding Officer in Misc. Application No. 23 of 2002 and restore Misc. Application No. 4 of 2001.

(B) Pending admission, hearing and till final disposal of this petition, Your Lordships be pleased to grant stay of operation, execution and implementation of

the judgment and Award dated 13.11.2000 (At Annexure A) passed by the learned Presiding Officer in Ref. (LCA) No. 1011/92, in the interest of justice.

(C) Your Lordships be pleased to grant such other and reliefs as may be deemed just, fit and proper in the interest of justice.

In Special Civil Application No. 5070 of 2004:

(A) Your Lordships be pleased to issue a writ of certiorari and/or any other appropriate writ, order or direction, quashing and setting aside the impugned Order dated 15.12.2003 passed by the learned Presiding Officer in Misc. Application No. 22 of 2002 and restore Misc. Application No. 3 of 2001.

(B) Pending admission, hearing and till final disposal of this petition, Your Lordships be pleased to grant stay of operation, execution and implementation of the judgment and Award dated 8.12.2000 (At Annexure A) passed by the learned Presiding Officer in Ref (LCA) No. 162/95, in the interest of justice.

(C) Your Lordships be pleased to grant such other and reliefs as may be deemed just, fit and proper in the interest of justice.

Facts in nutshell of the case of the appellant - original petitioner as per Para 3 & 4 of the judgment and order in Special Civil Application No. 5000 of 2004 are as under:

3. ... The respondent workman was constrained to raise Industrial Dispute as his services as Gardener came to be terminated abruptly without following due procedure of law. The respondent workman claimed that he was engaged as Gardener since last 10 years at the daily wage of Rs. 22.50 ps but when he demanded the wages in accordance with provisions of Payment of Minimum wages Act, his services came to be terminated abruptly without following due procedure of law. After terminating the services, the petitioner engaged other workman to do the job of gardener. The said dispute was referred to the Competent Court by the concerned officer by framing terms of Reference as to whether the workman be reinstated on his original post with back wages. The said was registered as Reference No. 347 of 1991 (old), which came to be renumbered as Reference (LCA) 1011 of 1992. In this Reference, the parties led evidences and matter was slated for further discussion and hearing. However, on account of absence of concerned representative of the petitioner, the court decided the reference and allowed it partly in favour of the workman and ordered reinstatement with 50% of back wages with continuity of service and awarded cost of Rs. 1000/- vide order dated 13.11.2000.

4. The Award was ex-parte and hence, the restoration application being Restoration Application No. 4 of 2001 was preferred under the provisions of Rule 26A of the Industrial Disputes (Gujarat) Rules 1966. Unfortunately same was came to be dismissed as no one pursue the same, vide order dated 4.10.2002. One more application came to be filed being Misc. Application No. 23 of 2002 for restoration of the Restoration Application, which came to be dismissed on

15.12.2003 for the reasons recorded thereunder. Being aggrieved and dissatisfied with said order dated 15.12.2003, the petitioner has approached this Court under Article 227 of the Constitution of India for the prayers stated hereinabove.

1.1 Facts in nutshell of the case of the appellant - original petitioner as per Para 3 & 4 of the judgment and order in Special Civil Application No. 5070 of 2004 are as under:

3. ...The respondent workman was constrained to raise Industrial Dispute as his services as Octroi Clerk came to be terminated on 29.7.1987 abruptly without following due procedure of law. The respondent workman claimed that he was engaged as Octroi Clerk on 1.6.1982 on temporary basis for one month each and was paid salary of Rs. 260/- plus Dearness allowance. The said dispute was referred to the Competent Court by the concerned officer by framing terms of Reference as to whether the workman be reinstated on his original post with back wages. The said was registered as Reference (LCA) 162 of 1995. In this Reference, the parties led evidences and matter was slated for further discussion and hearing. However, on account of absence of concerned representative of the petitioner, the court decided the reference and allowed in favour of the workman and ordered reinstatement with full back wages and awarded cost of Rs. 1000/- vide order dated 8.12.2000.

4. The Award was ex-parte and hence, the restoration application being Restoration Application No. 3 of 2001 was preferred under the provisions of Rule 26A of the Industrial Disputes (Gujarat) Rules 1966. Unfortunately, same was came to be dismissed as no one pursue the same, vide order dated 4.10.2002. One more application came to be filed being Misc. Application No. 22 of 2002 for restoration of the Restoration Application, which came to be dismissed on 15.12.2003 for the reasons recorded thereunder. Being aggrieved and dissatisfied with said order dated 15.12.2003, the petitioner has approached this Court under Article 227 of the Constitution of India for the prayers stated hereinabove.

2. We have heard Mr. Dave, learned counsel for the appellant and Mr. Songara, learned counsel for the respondent in both these appeals. Learned counsel for the appellant vehemently urged that the learned Single Judge ought to have appreciated that since the concerned officer in-charge of the appellant municipality was transferred, the case was not represented on behalf of the appellant. He further urged that the appellant being a local self-government body, its administration is being handled by many persons and the case of the appellant was not represented because the concerned officer was transferred. The learned counsel for the appellant further urged that it ought to have been appreciated that ex-parte judgment and award, reinstating the respondent with 50% back wages, is against the settled position of law as well as against the evidence on record, since there was no evidence to show that the respondent had worked for 240 days in a calendar year. Last but not the least, the learned

counsel for the appellant requested to allow these appeals.

2.1 Per contra, Mr. Songara, learned counsel for the respondent submitted that the learned Single Judge has taken into consideration all the aspects of the matter and has rightly come to the conclusion and dismissed the petitions as aforesaid and has further urged that present appeal may also be dismissed.

3. We have heard learned counsel for the parties and perused the record, and have also gone through the judgment and order passed by the learned Single Judge. The learned Single Judge has taken all pains to consider all the aspects of the matter into consideration. Following paragraphs of the judgment and order in Special Civil Application No. 5000 of 2004 are relevant and, the same are reproduced as under:

9. This court has heard learned advocates for the parties and perused the documents. Before advertng to the rival contentions of learned advocates for the parties, it is most appropriate to set out here below few glaring facts for appreciating them in light of rival contentions, viz.:

(I) The prayers made in this petition, nowhere suggest even remotely any challenge to the award dated 13.11.2000, therefore, when the petition is preferred under Article 227 of the Constitution of India, the court need to be taken into consideration the legality and/or maintainability of the challenge to the order dated 15.12.2003 only

(II) The prayer as it is stated hereinabove, did not contain any challenge to ex-parte order dated 13.11.2000 and petition is preferred under Article 227 only therefore, the court's jurisdiction of superintendence was invoked and petitioner has not challenged the ex-parte award in any manner. The fact remains to be noted that order dated 13.11.2000 contained elaborate discussion with regard to deposition of the workman and workman's cross-examination at the end of the petitioner-employer. The Labour Court's finding in respect of those aspect have not been assailed in any manner in this petition as the petitioner has chosen to confine his petition qua challenge to order dated 15.3.2003 only.

(III) The respondent workman's submission and contention qua he being engaged as daily rated Gardener since last 10 years could not have been controverted in any manner and therefore same premise has to be accepted to be existing for deciding the controversy in question.

(IV) The entire ex-parte award does not indicate anywhere as to whether the employer had ever taken up plea of non-completion of 240 days, so as to make out a issue for the court for adjudication. The court hastened to add here that it is the question to be examined only when there is a challenge against the order dated 13.11.2000 but unfortunately in the instant case, no challenge against the order dated 13.11.2000 at all.

(emphasis supplied)

10. In the aforesaid backdrops of facts and legal premise, question arises as to whether can this court while exercising jurisdiction under Article 227 of the Constitution of India look into and decide the legality and/or propriety and/or justification for passing the order and award dated 13.11.2000, the answer would emphatic "NO" as in absence of any prayer in pleadings, the court while exercising powers under Article 227 of the Constitution of India shall not go into other aspect. Therefore, the Court has to be more conscious while examining the order impugned i.e. order dated 15.12.2003. The said order is eloquently clear qua the inertia and/or inaction on the part of employer in conducting the Reference and in pursuing the cause thereafter by way of restoration application. The dismissal of restoration application vide order dated 4.10.2002 and 15.12.2003 itself go to show that employer petitioner did not pursue the remedy with due care and caution. The court has in fact observed at one place that order of Reference was in the year 1991 and therefore, if one takes this factor into consideration, there shall be no justification for not accepting the plea in respect of legality and so called lacuna in the award dated 13.11.2000. The order dated 15.12.2003 in my view cannot be said to be capable of being interfered with in any manner as the remedy is discretionary and said discretion is rightly not exercised as there is no justification coming forward from the employer. The restoration of the matter is not to be treated as a casual action, especially in a back drop of the facts of present case, the same would not have been justified in any manner as it would have amounted to put workman to undue hardship and untold miseries for which there exists no justification and hence order dated 15.12.2003 cannot be said to be in any manner contrary to provisions of law or resulted into miscarriage of justice. The Article 227 of the Constitution would also restrict this court from holding otherwise as the order dated 15.12.2003 cannot be said to have resulted into miscarriage of justice in any manner. The order dated 13.11.2000 did contain elaborate discussion qua the deposition of the workman and cross-examination of the workman and contention with regard to non-completion of 240 days. The facts and circumstances of the case persuade this court to reject this petition being bereft of merits, as the order impugned cannot be said to be so perverse as to interfere with under Article 227 of the Constitution of India. The contention of Shri Shah with regard to molding of relief, in my view, is not justified or in accordance with law, especially when the court is examining the matter under Article 227 of the Constitution of India and petitioner has chosen expressly to maintain this petition only under Article 227 of the Constitution of India and has omitted to make any prayer qua order dated 13.11.2000 and has not even sought any amendment amending the petition, therefore, this contention is of no avail to the petitioner.

(emphasis supplied)

11. In the result, the petition deserves to be rejected and is rejected accordingly. Rule discharged. There shall be no order as to costs.

3.1 Similarly, paragraphs 9, 10 and 11 in judgment and order in Special Civil

Application No. 5070 of 2004 are relevant, however, for brevity and as the contents of the said paragraphs are covered in above paragraphs, the same are not reproduced.

In above view of the matter, we find ourselves in complete agreement with the findings recorded by the learned Single Judge and we do not find any error committed by the learned Single Judge, which requires interference. Accordingly these appeals fail and are dismissed, along with Civil Applications.