

(2012) 06 GUJ CK 0037

In the Gujarat High Court

Case No : Spl. Civil Application No. 5000 of 2004

Borsad Nagar Palika

APPELLANT

Vs

Naginbhai Kishanbhai Vaghela and Another

RESPONDENT

Date of Decision : 12-06-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2012) 134 FLR 579

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : Y.V. Shah, for the Appellant; N.D. Songara for the Respondent No. 1 and Megha Chitalia AGP for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.—Heard learned advocates for the parties.

The petitioner, Municipality constituted under the provisions of the Gujarat Municipality Act a statutory authority, has approached this Court by way of this petition under Article 227 of the Constitution of India with following prayers:

(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.

Facts in brief leading to filing this petition as could be called out from the memo of petition deserve to be set out as under:

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.

2. The Award was ex parte and hence, the restoration application being Restoration Application No. 4 of 2001 was preferred under the

provisions of Rule 26-A 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.

3. The learned advocate for the petitioner has contended that the Labour Court

has unfortunately not appreciated the real fact that the workman was not entitled to relief granted in his favour by ex-parte order, as the workman did not have any right whatsoever to be in the employment. The Labour Court without recording clear findings qua completion of 240 days service, partly allowed the Reference on the footing that workman has completed 240 days. Learned advocate for the petitioner has relied upon the decision of the Apex Court in case of Ranip Nagar Palika v. Babuji Gabhaji Thakore and others, 2008 AIR SCW 449 : 2008 (1) LLN 756 (SC). contended that Labour Court was under an obligation to record finding that workman did complete 240 days and then only could have pass order in favour of workman granting relief. In the instant case, even if one looks cursorily at the original order passed ex parte on 13.11.2000, one would easily come to the conclusion that there was no finding as such workman completed 240 days so as to invoke provisions of section 25-F for the relief prayed in the Reference. Shri Shah learned advocate for the petitioner contented that even if the reliefs are not prayed, the same could be molded by this Court by Article 227 of the Constitution of India.

4. Learned advocate appearing for respondent workman contended that in fact the order dated 13.11.2000 cannot be said to be an order ex-parte as the entire order contain clearly the finding and the evidences and observations thereon. Therefore, Award in the first instance cannot be said to be an ex-parte. Without prejudice to said submission, learned advocate for respondent workman further contended assuming for the sake of argument that the award is ex-parte is not called for any interference as Labour Court has in detail discussed the evidences and inaction on the part of respondent. The factum of workman being continued in service for more than 240 days is not required to be proved, as could be seen from the evidence available on record. Therefore, submission made by learned advocate for the petitioner in respect of non-recording of 240 days continuous service is of no avail to the employer concerned.

5. Learned advocate for respondent workman further contended that decision cited at bar would be of no avail to the petitioner looking to facts and circumstances of the present case as in the present case, facts and pleadings would govern the decision and said decision, which is said to be ex-parte did not require to be interfered in any manner.

6. Learned advocate for respondent workman thereafter contended that the orders passed on 4.10.2002 and 15.12.2003 also would not be

interfered with as the petitioner has not shown any equitable ground even to maintain this petition under Article 227 of the Constitution of India nor

did show any justification for maintaining this petition under Article 227 of the Constitution of India and therefore, petition is required to be

dismissed.

7. 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.

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