

(2006) 07 GUJ CK 0037

In the Gujarat High Court

Case No : Special Civil Application No. 117 of 2006

Commercial Co. Op. Bank Ltd.

APPELLANT

Vs

Pravin S. Mehta

RESPONDENT

Date of Decision : 17-07-2006

Acts Referred:

Constitution of India, 1950 — Article 141, 227
Industrial Disputes Act, 1947 — Section 33C2

Citation : (2006) 07 GUJ CK 0037

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Shirish Joshi, for the Appellant; Parul P Vasavada, for the Respondent

Judgement

H.K. Rathod, J.—Heard learned Advocate Mr. Shirish Joshi for petitioner and Ms. Parul Vasavda for respondent. In this petition under Article 227 of the Constitution of India, petitioner Bank has challenged the order passed by the Labour Court, Jamnagar in Recovery Application NO. 613 of 2001 dated 5.5.2005 wherein the labour court has partly allowed the recovery application and has directed the petitioner to pay to respondent an amount of Rs.22415.80 as dues towards full wages of suspension period within thirty days of publication of the said order.

2. Learned Advocate Mr.Joshi appearing for petitioner has submitted that the Model Standing Orders Act is not applicable to petitioner. He also submitted that after verification, Model Standing Orders are applicable to petitioner. He also raised a contention before this Court that the application u/s 33-C-2 of the ID Act, 1947 was filed by the respondent workman after a period of 7 to 8 years and, therefore, labour court ought not to have entertained such an application in view of the delay on the part of the workman in filing of such an application. Except these submissions, no other submission was made by learned Advocate Mr.Joshi before this Court. No decision was cited by him before this Court.

3. On the other hand, learned Advocate Ms. Vasavada appearing for the

respondent workman has submitted that this question was examined by this Court (Coram ; Hon''ble Ms. Justice R.M. Doshit) in Special Civil Application No. 443 of 1999 decided on 8.10.1999 wherein this Court has decided that when there is no service rules/statutory rules/Standing Orders to provide how much subsistence allowance is to be paid to the workman during the period of suspension, then, workman is entitled for full wages during the period of suspension. Based on the aforesaid submission, learned Advocate Ms. Parul Vasavada submitted that the labour court was right in passing the order in question after considering the provisions of the Standing Orders as well as the earlier order of this Court in identical matter.

4. I have considered the submissions made by the learned Advocates for the parties. I have also perused the order in question as well as the order of this Court in SCA No. 443 of 1999 decided on 8.10.1999. According to my opinion, labour court has rightly considered the matter at issue that when there is no service rule providing specific subsistence allowance during the period of suspension, then, petitioner shall have to pay full wages to the workman during the period of suspension. According to my opinion, the controversy sought to be raised by the petitioner is no more res integra in view of the aforesaid decision of this Court (Coram : R.M. Doshit, J.) dated 8.10.1999. In para 4 of the said decision, this Court observed as under:

4. It is not disputed that the relevant standing order does not provide for payment of wages at the reduced rate during the period of suspension pending inquiry. In absence of specific rule to that effect the respondent would be entitled to the full wages even during the period of suspension. However, the demand was for 25% of wages by way of additional amount of subsistence allowance. The Learned Judge ought not to have granted more than what was demanded. The petition is therefore, allowed. The impugned order of the Learned labour Judge is modified to the effect that the respondent will be entitled to 25% of the wages by way of additional amount of subsistence allowance for the period in question. Rule is made absolute to the above extent only. There shall be no order as to costs.4 to be quoted.

5. Therefore, in view of the observations made by this Court in aforesaid case, it is clear that the contention sought to be raised by petitioner in this case has been negated by this Court in aforesaid decision and, therefore, according to my opinion, labour court, Jamnagar was right in examining the matter at issue and was right in relying upon earlier decision of this Court referred to above and in doing so, no error has been committed by labour court calling for interference of this Court under Article 227 of the Constitution of India.

6. As regards contention of Mr. Joshi that the labour court ought not to have entertained recovery application in view of delay of about 7 to 8 years in filing of such an application u/s 33-C-2 of the ID Act, 1947, no period of limitation has been prescribed by the statutory provisions in Section 33-C-2 of the ID Act, 1947. Therefore, in view of that and also in view the decision of this Court

(Coram : Hon"ble Mr.Justice H.L.Gokhale) in case of GSRTC versus Keshavlal Maneklal Shah reported in 1998 (2) GLH 996 , contention about limitation raised by Mr. Joshi cannot be accepted. This Court after considering the decisions of the Apex Court in (1) Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others, and (2) The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., , observed as under in para 3 and 4 of the said decision:

3 Mr Munshaw, Learned Counsel for the petitioner, submitted that the claim of the workman was a belated one and ought to have been rejected on the ground of laches. He relied upon the judgment of single judge of this Court (Calla, J.) reported in 1996 (2) GLH 161 in the case of Esi Scheme v. Natwarlal Amrutlal Shah. In that case, the application for over time had been filed u/s 33(C)(2) of the Act belatedly and there was a delay of 17 years in filing that application and no explanation was given for filing it except that the workman was not much educated and had no knowledge of law. That application had been entertained by the learned judge of the Labour Court and that order came to be quashed in the aforesaid judgment of the learned single judge. The learned judge held, "The proceedings u/s 33-C(2) of the Industrial Disputes Act initiated in the year 1990 in respect of over time for the period from 1973 to 1986 therefore should not have been entertained by the Labour Court merely because the Limitation Act is not applicable unless it could come to the conclusion that the delay has been reasonably explained." In the present case also the overtime for the period 1977-89 is sought to be claimed by filing an application in the year 1990. When one peruses the judgment of the learned single judge, there is a reference to the judgment of the Honourable Supreme Court in the case of Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others, and it is stated, "... support was sought to be taken from earlier decision of the Supreme Court in Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others, holding that the claim which was barred by time under the Payment of Wages Act can be made u/s 33-C(2) of the I.D.Act. Thus this decision also does not lay down any such proposition of law that the case where no limitation is prescribed the party can approach or initiate proceedings u/s 33-C(2) of the I.D. Act at any time without explaining the delay." With due respect to my brother, he has not noted the observations made by the Hon"ble Supreme Court in para 13 of that judgment which reads as follows:

A claim u/s 33C(2) is a claim for wages within the meaning of the payment of Wages Act. It is, no doubt, somewhat anomalous that a claim, which would be rejected as barred by time if made under the Payment of Wages Act, should be entertained u/s 33C(2) of the Act; but this apparent anomaly does not justify the introduction of considerations of limitation in proceedings u/s 33C(2). It is necessary to bear in mind that though the legislature knew how the problem of recovery of wages had been tackled by the Payment of Wages Act and how limitation had been prescribed in that behalf, it has omitted to make any provision for limitation in enacting Section 33C(2). The failure of the legislature to make any provision for limitation cannot be deemed to be an accidental omission. In the circumstances, it would be legitimate to infer that legislature

deliberately did not provide for any limitation u/s 33C(2).

It is also material to note that in that very volume, the judgment of the Constitution Bench in the case of *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, is also reported and in that judgment on page 752 the Hon''ble Supreme Court has stated on facts of that case and on law as follows:

It is true that though the Sastry Award was passed in 1953 and the Labour Appellate Tribunal's decision was pronounced in 1954 and it became final on October 21, 1955, the respondents did not make their claims until 1962. We have had occasion in the past to emphasise the fact that industrial adjudication should not encourage unduly belated claims; but, on the other hand, no limitation is prescribed for an application u/s 33C(2) and it would, on the whole, not be right for us to refuse an opportunity to the respondents to prove their case only on the ground that they moved the Labour Court after considerable delay.

4. The nature of these proceedings also came to be considered by the Hon''ble Supreme Court later on in *Central Inland Water Transport Corporation Limited Vs. The Workmen and Another*, where the Hon''ble Supreme Court held that these proceedings are in the nature of execution proceedings and the observations made in para 12 of the said judgment are as follows:

A proceeding u/s 33C(2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money.

None of these judgments are considered by the learned single judge and the view taken by him is exactly contrary to the long standing judgment of the Hon''ble Supreme Court in the cases of *Bombay Gas Company & Central Bank of India (supra)*. The Labour Court exercising the jurisdiction u/s 33-C(2) has to examine the claim of the workman on merits even though the application is filed after a considerable delay and the consideration of limitation and requirement of explaining the delay cannot be introduced therein. Recently, in the case of *Bombay Telephone Canteen Employees' Association, Prabhadevi Telephone Exchange Vs. Union of India and another*, a Bench of the two Judges of the Hon''ble Supreme Court held that the Telecom Department was not an industry and on a Reference being made to a Bench of 3 Judges in the case of *General Manager, Telecom v. Srinivas Rao* reported in 1998 1 LLJ 255, the Hon''ble Supreme Court noted that the long standing judgment in the case of *Bangalore Water Supply and Sewerage Board* reported in 1978 1 LLJ 349 had not been considered by that Bench. The Hon''ble Supreme Court therefore held in *Srinivas Rao's* case that the judgment in the case of *Bombay Telephone Canteen Employees'* case cannot be treated as laying down correct law. In that case, the Hon''ble Supreme Court has observed as follows:

It is needless to add that it is not permissible for us, or for that matter any Bench of lesser strength, to take a view contrary to that in Bangalore Water Supply case (supra) or to bypass that decision so long as it holds the field. Moreover, that decision was rendered long back nearly two decades earlier and we find no reason to think otherwise. Judicial discipline requires us to follow the decision in Bangalore Water Supply case (supra).

5 I am aware of the fact that I am sitting singly and the judgment of my brother in the case of ESI Scheme (supra) was rendered when he was sitting as a single judge. However, when the law laid down by the Hon'ble Supreme Court time and again is quite clear and those long standing judgments holding field are not considered in the ESI Scheme (supra) judgment, it will be within my jurisdiction to say so inasmuch as the law laid down by the Hon'ble Supreme Court binds the High Court under Article 141 of the Constitution of India. In the circumstances, it will have to be stated that the proposition laid down in the case of ESI Scheme (supra) cannot be treated as laying down the correct proposition of law. The order of the Labour Court cannot therefore be faulted for considering the belated claim of the respondent-workman.

Therefore, in view of the aforesaid decision of this Court in GSRTC v. KM Shah (Supra) wherein this Court has held in para 5 of the judgment that the decision in case of ESI Scheme v. Natvarlal Amrutlal Shah 1996 (1) GLH 161 cannot be treated as laying down the correct proposition of law in view of the aforesaid decisions of the Hon'ble Apex Court, contention raised by the learned Advocate Mr. Shirish Joshi about limitation cannot be accepted and same is, therefore, rejected.

Learned Advocate Mr. Joshi has not been able to point out any infirmity and/or jurisdictional error in the order in question. He has also not been able to point out any error apparent on the face of the record and, therefore, this Court cannot interfere with the order in question. Findings recorded by the labour court are not perverse or contrary to record. This Court is having very limited jurisdiction while exercising powers under Article 227 of the Constitution of India. Unless the findings given by the labour court are shown to be perverse or contrary to record, same cannot be interfered by this Court even if another view is possible and that has not been established by Mr. Joshi before this Court. Therefore, there is no substance in this petition and the same is required to be dismissed. Accordingly, this petition is dismissed.