

(2010) 09 GUJ CK 0039

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1034 of 2008 in Special Civil Application No. 22267 of 2006 and Letters Patent Appeal No. 1192 of 2008 in Special Civil Application No. 22622 of 2006

C.S. Hotels Pvt. Ltd. and Another

APPELLANT

Vs

Mafabhai Pasabhai Solanki and Others

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25FFA

Citation : (2010) 09 GUJ CK 0039

Hon'ble Judges : S.J. Mukhopadhaya, C.J.; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : S.N. Soparkar and Sachin D. Vasavada, s 1-2, for the Appellant; T.R. Mishra, for Respondents 1-3, for the Respondent

Judgement

Akil Kureshi, J.—These appeals arise out of similar background. They have been heard together and are being disposed of by this common Judgment. In both the appeals, appellant management has challenged a common Judgment dated 24-26/09/2007 passed by the Learned Single Judge disposing of large number of petitions including Special Civil Applications No. 22267/2006 and 22622/2006.

2. In Special Civil Applications No. 22267/2006 and 22622/2006, management had challenged ex-parte awards passed in favour of the respective workman by the Labour Court directing reinstatement and back-wages. Both the petitions were dismissed by the Learned Single Judge by the said common Judgment dated 24-26/09/2007 in which may other petitions were also decided. Number of appeals came to be filed by the management against the said Judgment. All the appeals including the present Letters Patent Appeals came to be disposed of by Division Bench of this Court by common Judgment dated 15.10.2008 in following manner:

The appellant - C.S. Hotels Private Limited had, on 20th July, 1994, entered into a memorandum of settlement with its workmen. Under the said settlement, the

appellant had agreed, inter alia, that the said settlement would be operative for three years commencing from 1st March, 1994; the appellant agreed to give ad hoc rise at 7% over the basic wages and the special allowances that the workmen would be getting as on 28th February of the concerned year; the ad hoc rise in wages would be given on 1st March, 1994, 1st March, 1995 and 1st March, 1996; such ad hoc rise would be treated as wages for the purpose of other fringe benefits like provident fund, bonus, etc.

Learned advocate Mr. Thakore has produced a statement of 58 workmen showing the salary received by each workman as on 1st December, 1996. As Mr. Mishra had some doubt about the correctness of the figures shown in the statement, he was given opportunity to submit his own figures. However, such figures have not come forth. We, therefore, treat the figures given by the learned advocate Mr. Thakore as true.

As recorded hereinabove, according to the appellant the hotel has been closed since 1st December, 1996. However, learned advocate Mr. Mishra has dispute. He has submitted that as late as in the year 1998 the appellant had engaged some more workmen.

In view of the above referred undisputed facts and applicable law and in view of the dispute as to the date of the closure of the hotel, we hold that the hotel be deemed to have closed with effect from 1st January, 2000; Each of the 55 workmen (excluding the aforesaid 3 workmen with whom the dispute has been settled out of the Court) will be paid the outstanding dues as under:

Each workman [55 in number] will be paid the wages for the period from 1st December, 1996 to 31st December, 1999. For the purpose of calculation of the wages, the pay drawn as on 1st December, 1996 will be taken into consideration. Each workman will be entitled to 7% ad hoc rise as agreed under the settlement. Such rise shall be calculated as on 1st March, 1997, 1st March, 1998 and 1st March, 1999. The wages so calculated shall not be less than the minimum wages prevalent at the relevant time.

In addition to the wages, each workman will be paid one months' pay in lieu of notice as envisaged by Sections 25F and two months' pay for failure to give notice of intention to close the hotel u/s 25FFA of the Act. Each workman will be paid retrenchment compensation, minimum bonus, leave encashment and gratuity calculated on the basis of the wages as on 31st December, 1999 computed as above.

In addition to the aforesaid payments, each workman will be paid an ex gratia amount in lieu of reinstatement in service, interest and cost. Such ex gratia amount will be 75% of the outstanding amount of wages, notice pay, retrenchment compensation, minimum bonus, leave encashment and gratuity payable under this order.

If any of the workmen has already been paid any amount earlier, such amount

will be adjusted against the amount payable under this order.

The appellant will make computation of the outstanding dues of the workmen payable under this order within four weeks from today. Copy of the computation made by the appellant will be furnished to the learned advocate Mr. T.R. Mishra appearing for the workmen and to the Mamlardar, Alien Recovery, Ahmedabad. The amount payable to each workman will be disbursed by the Mamlatdar, Alien Recovery out of the sum of Rs. 86,20,000=00 deposited with him, after proper identification of the workmen. Any deficit in the amount payable to the workmen will be made good by the appellant - C.S. Hotels Private Limited as early as possible but not later than 12th December, 2008. In the event, the appellant fails to deposit the deficit amount with the Mamlatdar, Alien Recovery, as directed, the appellant will be required to deposit the deficit amount with interest @ 1% for delay of every one month or any part thereof till the date such deficit is deposited. Such amount of interest on the deficit, if any, will be passed over to the workmen [55 in number] in equal proportion.

In view of this order, the impugned judgments and orders passed by the learned Single Judge are set-aside. The Special Civil Applications stand partly allowed. The awards/orders made by the Labour Court in respect of the respondents workmen will stand modified in the above terms.

In view of the approaching Diwali festivals, the Mamlatdar, Alien Recovery, Ahmedabad is directed to make advance payment of a sum of Rs. 20,000/= to each workman, after proper identification. This amount will be adjusted against the amount payable to such workman under this Order. In case of the workmen whose claim is less than rupees twenty thousand, they will be paid 50% of their claim. We are informed that in compliance with the direction issued by the learned Single Judge, seven workmen have been paid 30% of their claim. The said seven workmen will not be entitled to receive advance payment under this Order. The Mamlatdar, Alien Recovery will make the advance payment as directed, as early as possible, but not later than 24th October, 2008.

The Appeals and the Civil Applications are disposed of. The parties will bear their own cost.

Registry will send the writ forthwith.

3. The workmen who were respondents in these appeals filed Misc. Civil Application (Review) No. 1188/2010 and 1186/2010 in respective Letters Patent Appeals contending inter-alia that the appellant management had withheld certain vital information from the Court of previously challenging the same ex-parte award which petition was dismissed by this Court. On this basis the workmen sought recall and review of the Judgment dated 15.10.2008 insofar as it pertained to their cases. On these review applications, Division Bench of this Court passed two separate but similar orders both dated 3.8.2010. Before the Bench, learned Counsel for the workmen contended that Letters Patent Appeals were disposed of by the Division Bench along with other appeals on 15.10.2008

without service of notice to the workmen. Counsel for the management however, contended that workmen's advocate was appearing in all the appeals and contention was thus purely technical. Division Bench therefore, observed that:

3. However, technically it appears that no notice was issued on the petitioner and, therefore, he could not reply to the notice and the case was disposed of.

4. Division Bench directed as under:

The petitioner, who is the respondent in the LPA, will also state as to why the appeal be not disposed of in terms of the common order dated 15.10.2008 passed in similar LPAs arising out of the common order passed in a bunch of writ petitions.

5. We have, upon recall of the order dated 15.10.2008 with respect to these two Letters Patent Appeals, heard the counsel for the parties at considerable length. Counsel for the management contended that Judgment passed on 15.10.2008 in the entire group by Division Bench covers all aspects of the matter and Division Bench passed composite order which cannot be modified for individual workmen. He further contended that previous petitions of the management were dismissed for non removal of office objections and would not bar filing of fresh petitions. He further contended that these very workmen had received substantial benefits under the Judgment dated 15.10.2008 of the Division Bench. They now cannot go back and challenge that very Judgment. He stated under instructions that out of two workmen one received sum of Rs. 2,88,000/- and other Rs. 2,68,000/- under the said Judgment of Division Bench.

6. On the other hand, learned Counsel Shri Mishra for the workmen vehemently contended that management had previously filed writ petitions challenging the same ex-parte awards against these workmen. Such petitions were dismissed. Without disclosing this fact fresh petitions were filed. He further submitted that large recoveries of unpaid wages of the workmen were outstanding. Cases of these workmen were thus different from the rest which came to be decided by the Judgment dated 15.10.2008.

7. Having thus heard learned advocates for the parties admittedly, previous petitions of the management were not dismissed on merits, but were dismissed for want of removal of office objections. Bar of res judicata therefore, would not apply. In any case, Learned Single Judge had entertained the petitions and disposed of the same on merits by common Judgment dated 24-26/09/2007. It was this Judgment under challenge in Letters Patent Appeal in which Division Bench, along with other group of petitions involving the same management and its workmen, passed a detailed order dated 15.10.2008, relevant portion of which we have already recorded and reproduced in this order.

8. Upon perusal of the Judgment dated 15.10.2008, it clearly emerges that Division Bench had taken overall view of the pending disputes between the management whose hotel was closed down and its workmen who on account of

such closure were laid off. Several benefits were granted to the workmen. A composite formula was provided for payment of unpaid wages. Petitioners were also part of the same Judgment previously. They however, raised grievance before this Court that appeals against them were disposed of without proper notice. It was only on this limited count that qua them Judgment dated 15.10.2008 was recalled. However, we see no reason to take different view particularly, when the workmen themselves have received substantial benefits under the said Judgment dated 15.10.2008. As already pointed out by learned Counsel for the management, workmen have received amounts of Rs. 2,88,000/- and other Rs. 2,68,000/- under the Judgment of Division Bench.

9. Letters Patent Appeals are therefore, disposed of in same terms as was previously done by Division Bench by common Judgment dated 15.10.2008. Directions issued in said order shall operate and apply in present cases between the parties also.