

(2014) 02 GUJ CK 0046

In the Gujarat High Court

Case No : Special Civil Application No. 24324 of 2006

Dahod District Panchayat

APPELLANT

Vs

Bharatbhai Somabhai Chauhan

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Citation : (2015) 144 FLR 35 : (2014) 3 GLR 2199

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : H.S. Munshaw, Advocate for the Appellant

Judgement

R.R. Tripathi, J.—The facts of the case are shocking or if it can be said they are interesting too. The petitioners, namely, Dahod District Panchayat, through District Health Officer and Medical Officer, Bandibar Primary Health Centre, Taluka Limkheda are before this Court being aggrieved by an order passed by the learned Judge of the Labour Court, Godhra in Misc. Application No. 34 of 2005 dated 25-3-2006, whereby the learned Judge of the Labour Court was pleased to reject that application. Misc. Application No. 34 of 2005 was filed for setting aside the order passed in Recovery Application No. 323 of 2001, which was allowed by the learned Judge of the Labour Court, directing the petitioners to pay an amount of Rs. 2,26,000/- which was prayed in the said application. Learned Advocate Mr. Munshaw appearing for the petitioners submitted that the learned Judge of the Labour Court has committed an error in allowing the Recovery Application, because the Recovery Application could have been filed only after the dispute was adjudicated upon and there was an amount payable by the petitioners to the workman as per such adjudication. In absence of there being any adjudication in favour the workman, the workman could not have filed any Recovery Application. Even if the petitioners were not present before the learned Judge of the Labour Court, it was the duty of the learned Judge of the Labour Court to consider this very fundamental aspect of the Recovery Application, viz., whether there is any adjudication between the parties. In absence of that the

Recovery Application is not maintainable on the face of it. The learned Judge of the Labour Court ought to have rejected the same even in absence of respondents. Giving further details, the learned Advocate for the petitioners submitted that the respondent-workman was given work in the year 1982. Then came the famous Government Resolution dated 17-10-1988, which is known as "Daulatbhai Parmar Committee's Recommendations". The respondent-workman approached the Civil Court against apprehended termination and filed Regular Civil Suit No. 82 of 1988 and then filed application for interim relief on 31-8-1988 and then all of a sudden he filed a Recovery Application before the learned Judge of the Labour Court which is allowed by the learned Judge in absence of the petitioners. When the petitioners approached the Labour Court by filing Misc. Application, the same is rejected. Therefore, the petitioners are before this Court by filing this petition.

2. Rule was issued by this Court on 24-11-2006 and the Court was pleased to grant ad-interim stay in terms of Para 8(c). Thereafter, the Court observed in order dated 31-1-2007 that,-

"Though served the respondent has not entered appearance.

The ad-interim relief continues."

Though served respondent has chosen not to appear either in person or through an Advocate. It is thereafter that the matter was listed from time to time and it has now come up for consideration before this Court. In the aforesaid facts this Court is of the opinion that not only the order passed in Misc. Application No. 34 of 2005 by the learned Judge, Labour Court, Godhra is required to be quashed, but the order passed in Recovery Application No. 323 of 2001 passed by the learned Judge, Labour Court, Godhra is also required to be quashed. The same are quashed and set aside. Rule is made absolute. No order as to cost.