

(2015) 09 GUJ CK 0017

In the Gujarat High Court

Case No : Special Civil Application No. 7149 of 2015

Dholka Municipality

APPELLANT

Vs

Jayantilal Chunilal Rana and Others

RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 33C(1), 33C(2), 33C(3)

Citation : (2015) 09 GUJ CK 0017

Hon'ble Judges : V.M. Pancholi, J.

Bench : Single Bench

Advocate : Premal R. Joshi, Advocate, for the Appellant; T.R. Mishra, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Pancholi, J.—By way of this petition which is filed under Articles 226 and 227 of the Constitution of India, the petitioner seeks to challenge the order dated 5.12.2014 passed by the Labour Court, Ahmedabad below Exh.45 in Recovery Application No. 18 of 2012.

2. The factual matrix of the present case is as under:

"2.1 The respondents-workers filed Reference (IT) No. 75 of 1997 for regularization and for fixing their pay accordingly from the date of their appointment. The Industrial Court, Ahmedabad by an award dated 30.11.2000 partly allowed the said reference, whereby the petitioner was directed to regularize the services of the respondents-workers on the vacant post from the date of the entry of the said workers as per the seniority and the petitioner was also directed to pay the difference of amount payable to the respondents-workers in the cadre of clerk after pay fixation.

2.2 The petitioner, therefore, challenged the said award by filing Special Civil Application No. 1772 of 2001 before this Court. The said petition was admitted,

however, no stay was granted. The respondents-workers, therefore, filed Civil Application No. 334 of 2002 in the said petition. This Court passed an order on 18.2.2002 in the said Civil Application, whereby the petitioner was directed to implement the award dated 30.11.2000 passed by the Industrial Court in Reference (IT) No. 75 of 1997 subject to outcome of the main petition. The petitioner, therefore, filed Letters Patent Appeal No. 570 of 2002 and challenged the order passed by the learned Single Judge. The petitioner has withdrawn the said appeal and thereafter filed M.C.A. No. 835 of 2003 in Civil Application No. 334 of 2002. Learned single Judge dismissed the said M.C.A. by an order dated 20.3.2003.

2.3 Thereafter, Special Civil Application No. 1772 of 2001 filed by the petitioner also came to be disposed off by judgment dated 6.4.2011.

2.4 The respondents-workers thereafter filed Recovery Application No. 18 of 2012 under the provisions of Section 33C(1) and 33C(3) of Industrial Disputes Act of 1947. The respondents-workers also filed an application for appointment of the Court Commissioner which was allowed and the Court Commissioner submitted his report on 10.7.2013. Thereafter, the petitioner filed written statement Exh.19 before the Labour Court, Ahmedabad in Recovery Application. Labour Court, Ahmedabad by impugned order dated 5.12.2014 allowed the recovery application whereby the petitioner is directed to pay an amount of Rs. 1,81,918/- to respondent No. 1, Rs. 1,73,641/- to respondent No. 2 and Rs. 3,49,319/- to respondent No. 3. The aforesaid amount is not paid by the petitioner and, therefore, the respondents-workers have moved the Labour Court for issuance of recovery certificate as per the order dated 5.12.2014. The Labour Court has, therefore, issued the notice dated 13.2.2015 to the petitioner and therefore, at this stage, the petitioner has filed the present petition challenging the order dated 5.12.2014."

3. Heard learned advocate Mr. P.R. Joshi for the petitioner and learned advocate Mr. T.R. Mishra for the respondents.

4. Learned advocate Mr. Premal Joshi appearing for the petitioner contended that the impugned order is bad, illegal, perverse, arbitrary and, therefore, the same be quashed and set aside. Learned advocate Mr. Joshi would mainly contend that the Labour Court passed an award on 30.11.2000 in Reference (IT) No. 75 of 1997, against which the petitioner filed Special Civil Application before this Court. This Court admitted the petition, however, no stay was granted. Therefore, the respondents-workers filed Civil Application No. 334 of 2002. The said application came to be allowed on 18.2.2002. Thus, there was no stay against the award passed by the Tribunal. However, the respondents-workers filed recovery application under Section 33C(1) for the year 2012. Such type of application is required to be filed within a period of one year from the date on which the money became due to the workers. However, in the present case, such application was filed after a period of one year and the respondents-workers have not shown sufficient cause for not making such application within the

prescribed time limit and, therefore, the Labour Court ought to have rejected the said application only on this ground.

5. On the other hand, learned advocate Mr. Mishra mainly contended that the petitioner had challenged the award passed by the Industrial Court before this Court by filing Special Civil Application No. 1772 of 2001. However, this Court has not granted stay but this Court clarified that the payment is required to be made to the workers by the petitioner subject to the ultimate outcome of the main petition. Thereafter, this Court disposed off the said petition by an order dated 6.4.2011 wherein this Court has observed that the petitioner-Nagarpalika has substantially implemented the award passed by the Labour Court and out of ten workmen, three workmen have already retired from service. The present three respondents have retired from service and, therefore, the petitioner has not implemented the award qua present respondents-workers and therefore, after disposal of the petition, immediately in the year 2012, the recovery application was filed. Thus, there is no delay as alleged by the learned advocate for the petitioner and, therefore, there is no substance in the arguments canvassed on behalf of learned advocate for the petitioner. Hence, he requested that the present petition be dismissed.

6. Learned advocate Mr. Mishra has placed reliance upon the decision rendered by this Court in the case of Botad Municipality v. Dharamsibhai Manjibhai, reported in 2011(3)GCD 2027 and more particularly, paragraphs 13 to 15.

7. I have considered the arguments advanced on behalf of learned advocates for the parties. I have also gone through the impugned order as well as the material produced on record. From the material produced on record, it is revealed that though the award is passed by the Industrial Court in the year 2000, the petitioner has not given the benefit to the respondents-workers mainly on the ground that the petitioner had preferred Special Civil Application No. 1772 of 2001. This Court passed an order in Civil Application No. 334 of 2002, whereby direction was given to the petitioner to implement the award dated 30.11.2000 subject to the ultimate outcome of the main petition. However, thereafter, the petitioner filed Letters Patent Appeal before the Division Bench of this Court which came to be withdrawn. Thereafter, the petitioner filed M.C.A. No. 835 of 2003 in Civil Application No. 334 of 2002 which came to be dismissed by order dated 20.3.2003. Thereafter, the respondents-workers have retired from service in the year 2005-2006. As observed by this Court while disposing off Special Civil Application No. 1772 of 2001 by an order dated 6.4.2011, the petitioner has implemented the substantial part of the award. However, the Labour Court in the impugned award, specifically observed that the same was not implemented fully and, therefore, when this Court has disposed off the main petition on 6.4.2011, the respondents-workers have filed the recovery application within reasonable time. Further, this Court has observed in paragraphs 13 to 15 in the case of Botad Municipality (supra), as under:

"13. Labour Court has jurisdiction to condone delay if sufficient cause is shown

by applicant for not making such application within stipulated period provided under sec. 33C(1) of ID Act, 1947. Recovery applications are filed for claiming back wages of interim period from date of termination till date of award as well as wages from date of award onward which has been found to be due each month because workman is not reinstated in service by petitioner and, therefore, each month, wages are become due which amounts to continue breach committed by petitioner in not paying regular wages to workman on the date on which that amount is becoming due in favour of respondent workman. Therefore, this being continuous breach committed by petitioner by not paying regular wages to workman after publication of award by appropriate Government, workman has filed contempt petition as petitioner has not implemented award in question in favour of respondent workman wherein this court has observed that for implementation of award in question, workman can file recovery application under section 33C(1) of ID Act and, therefore, it is clear that workman has waited because of contempt petition filed by him before this court and he waited upto order passed by this court in contempt petition and thereafter, workman has also waited for further period because award in question has not been challenged by petitioner before this court till special civil application No. 9330 of 2003 was filed by petitioner before this court which has been decided on 21st July, 2004. Therefore, these are the reasons which have been considered to be sufficient cause by labour court, as established by for respondent workman, for entertaining recovery application filed by respondent workman under section 33C(1) of ID Act, 1947. It is also necessary to note that though contention has been raised by petitioner before labour court, Bhavnagar in reply Exh. 7 and 30 in both recovery application to the effect that recovery application is not maintainable beyond period of one year under sec. 33C(1) of ID Act, 1947, however, facts which have been considered by labour court being undisputed facts, meaning thereby that workman was not reinstated in service in terms of award passed in reference No. 785 of 1987 and amount of back wages was also not paid by petitioner to workman and petition challenging award was filed by petitioner after delay of 10 years and, therefore, these are circumstances which have been considered by labour court being sufficient cause for filing recovery application by workman beyond period of one year and, therefore, considering such undisputed facts, contention raised by learned advocate Mr. Joshi for petitioner cannot be accepted.

14. Contention raised by petitioner being technical in nature and facts are not much in dispute between parties, whatever amount has been claimed in recovery application is found to be due in favour of respondent workman and such due amount has not been disputed by petitioner before labour court. Labour Court has jurisdiction to entertain recovery application under section 33C(1) of ID Act, 1947 after expiry of said period of one year if labour court is satisfied that applicant had sufficient cause for not making such application within said period. Therefore, labour court has jurisdiction to condone delay and entertain such application on merits if sufficient cause is established by respondent before

labour court at Bhavnagar. According to my opinion, respondent workman has established sufficient cause which aspect has been rightly appreciated and considered by labour court and accordingly, labour court has rightly entertained applications filed by respondent and in doing so, no error has been committed by labour court, Bhavnagar which would require interference of this court in exercise of powers under Article 227 of Constitution of India.

15. It is necessary to note that such recovery application can also be filed by respondent workman under section 33C(2) of ID Act, 1947 wherein no period of limitation is prescribed for filing such application under sec. 33C(2) of ID Act, 1947. Therefore, though recovery application is filed under section 33C(1) of ID Act, 1947, in substance, it can be considered to be recovery application under sec. 33C(2) of ID Act, 1947 wherein no period of limitation is prescribed for filing such application under sec. 33C(2) of ID Act, 1947. Therefore, while examining these petitions filed by petitioner Municipality, this court has considered substance of claim made by respondent workman on the basis of award passed by labour court in Reference No. 785 of 1987 and this Court has also considered undisputed facts being admitted by petitioner before labour court Bhavnagar and considering substance of claim made by respondent workman on the basis of award passed by labour court in Reference No. 785 of 1987 and also considering undisputed facts being admitted by petitioner before labour court, Bhavnagar, contentions raised by learned advocate Mr. Joshi on behalf of petitioner are purely technical in nature but having no substance on merits of matter and, therefore, on that ground also, contentions raised by learned advocate Mr. Joshi are not accepted by this court."

8. Thus, in the facts of the present case and in view of the decision rendered by this Court in the aforesaid case, it can be said that the application can also be filed by respondents-workers under Section 33C(2) of I.D. Act wherein no period of limitation is prescribed for filing such application and though recovery application is filed under Section 33C(1) of I.D. Act in substance, it can be said to be recovery application under Section 33C(2) of the I.D. Act wherein no period of limitation is prescribed. Thus, in light of the aforesaid observation and discussion and also considering the reasoning given by the Labour Court in the impugned order and also keeping in mind the fact that the petition filed by the petitioner challenging the award rendered by the Labour Court on 30.11.2000 is disposed off after a period of more than ten years which has not been challenged by the petitioner before the higher forum, I am of the opinion that no illegality is committed by the Labour Court while passing the impugned order. The present case is covered by the decision rendered by this Court in the case of Botad Municipality (supra) and, therefore, no interference is required in the impugned order dated 5.12.2014 passed by the Labour Court, Ahmedabad below Exh.45 in Recovery Application No. 18 of 2012. Hence, this petition is devoid of merits and accordingly the same is dismissed. Notice is discharged.

9. However, at this stage, it is to be noted that as per the order dated 24.4.2015

passed by this Court while issuing notice in this petition, the petitioner has deposited the entire amount awarded by the Labour Court before Registry of this Court. The petitioner has also deposited Rs. 15,000/- towards the cost of this petition. Registry is, therefore, directed to pay the amount deposited by the petitioner to the respondents-workers by Account Payee Cheque as per the impugned order dated 5.12.2014. Registry is further directed to pay the cost of Rs. 15,000/- (Rs. 5,000/- each) to the three respondents-workers by Account Payee Cheque.