

(2010) 12 GUJ CK 0021

In the Gujarat High Court

Case No : Special Civil Application No. 14494 of 2010

District Health Officer and Another

APPELLANT

Vs

Sudhirkumar Ashokchandra Joshi

RESPONDENT

Date of Decision : 23-12-2010

Acts Referred:

Citation : (2010) 12 GUJ CK 0021

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Maharshi Patel and H.L. Patel, for the Appellant; Manish J Patel, for the Respondent

Judgement

K.A. Puj, J.—RULE. Mr. Manish Patel, the learned advocate appearing for the Respondent waives service of rule.

2. Looking to the facts and circumstances of the case, the matter is taken-up for final hearing today.

3. The Petitioner has filed this petition praying for quashing and setting aside the award of the Labour Court dated 12th December 2007 and also the order dated 4th February 2010 passed in Misc. Civil Application No. 10/2008.

4. Before filing the present petition, the Petitioner filed Special Civil Application No. 6417/2010 before this Court challenging the award of the Labour Court dated 12th December 2007. However, it was brought to the notice of the Court in that petition that the Misc. Civil Application filed by the Petitioner was also rejected on 4th February 2010 and hence, the said petition was disposed of on 16th June 2010 reserving liberty to the Petitioner to file fresh petition challenging both the orders passed by the Labour Court. Accordingly, the present petition is filed.

5. Heard Mr. Maharshi Patel, the learned advocate appearing for M/s.H.L. Patel Advocates for the Petitioner and Mr. Manish Patel, the learned advocate

appearing for the Respondent.

6. There is no dispute about the fact that the original award passed by the Labour Court on 12th December 2007 was an ex-parte award. It is submitted that the notice was duly served on the Petitioner. However, looking to the illness of the advocate appearing for the Petitioner before the Labour Court, the proper representation could not be made and hence, the Labour Court was constrained to pass an ex-parte award. Even the Misc. Civil Application filed by the Petitioner for setting aside the ex-parte award and to decide the same on merits, was also rejected on 4th February 2010. While rejecting the Misc. Civil Application, the Labour Court has observed that, "no proper explanation was given for not pursuing the reference and hence, the said application is rejected".

7. Considering the facts and circumstances of the case and the submissions made by the learned Counsels, the Court is of the view that interest of justice requires fair opportunities to be granted to the parties. However, looking to the lapses on the part of the Petitioner, the Petitioner is required to be saddled with cost while setting aside the impugned order passed by the Labour Court. Accordingly, the present petition is allowed and the impugned award dated 12th December 2007 as well as the order dated 4th February 2010 are hereby quashed and set-aside with cost of Rs. 10,000=00, which shall be paid by the Petitioner to the Respondent within a period of 30 days from today and the matter is remanded to the Labour Court to decide it afresh and on merits and after giving adequate opportunity to both the parties.

8. The Labour Court shall decide the matter as expeditiously as possible preferably within a period of six months from the date of receipt of the writ or from the date of receipt of the certified copy, whichever is earlier.

9. It is made clear that if the Petitioner fails to pay the cost of Rs. 10,000=00 to the Respondent, this order would not come into operation and the orders passed by the Labour Court would be upheld.

10. Subject to the above directions and observations, this petition is accordingly disposed of.