

(2022) 09 GUJ CK 0093

In the Gujarat High Court

Case No : R/Special Civil Application No. 382 Of 2018

Divisional Controller

APPELLANT

Vs

Hanifaben Kadarbhai Laganiya & 1 Other(S)

RESPONDENT

Date of Decision : 15-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2022) 09 GUJ CK 0093

Hon'ble Judges : A.Y. Kogje, J

Bench : Single Bench

Advocate : HS Munshaw, Anuradha G Rathod, GK Rathod

Final Decision : Dismissed

Judgement

A.Y. Kogje, J

[1] This petition under Article 226 of the Constitution of India is filed by the petitioner challenging the award of the Labour Court dated 20.01.2016 in Recovery Application No.165 of 2013 by the Labour Court, Vadodara.

[2] The petitioner before this Court is the Gujarat State Road Transport Corporation, which has challenged the aforesaid award of the Labour Court by which the Labour Court has held that the respondent was entitled to receive the benefit of Earned Leave during the period for which the respondent was out of service, but was later on reinstated by virtue of the award of the Labour Court.

[3] The main argument of the learned advocate for the Corporation is that the question of Earned Leave cannot be treated to be a pre-existing right of the respondent and therefore, could not have been agitated in an application under Section 33C(2) of the Industrial Disputes Act, 1947 (for short "the Act"). It is submitted that the question of fact is involved as to whether such workman has or would have actually rendered service during that period during which the proceedings for dismissal and challenge to it before the Labour Court were

pending and therefore, as question of fact is involved, it requires adjudication and therefore, cannot be decided under Section 33C(2) of the Act.

[4] Learned advocate appearing for the petitioner has relied upon the decision in case of U.P. State Road Transport Corporation v/s. Birendra Bhandari, reported in (2006) 10 SCC 211 in support of his contention that Section 33C(2) of the Act is not applicable where there is no pre-existing right benefit available to the workman.

[5] As against this, learned advocate appearing for the respondent workman submitted that the respondent was dismissed on the ground of absenteeism and such dismissal was subject matter of challenge before the Labour Court at Vadodara in a separate reference which ordered reinstatement with 25% back-wages and continuity in service. This award of the Labour Court was challenged before this Court both, by the Corporation as well as by the respondent-workman. Ultimately, by an oral judgment and order dated 29.09.2010, both Writ petitions came to be disposed of, wherein the award stood modified by inflicting punishment of withholding of one increment with permanent future effect and denial of 100% back-wages. However, it is submitted this Court had held that the respondent shall be paid all the retiral benefits. The issue with regard to the Earned Leave would be covered under the retiral benefits and therefore, recovery application under Section 33C(2) of the Act, arising out of a pre-existing right as decided by this Court, the Labour Court was justified in holding in favour of the respondent-workman. Learned advocate has relied upon the decision of the Apex Court in support of his contention that as the respondent was prevented illegally from discharging his duty and therefore, he is deemed to have been in service and discharged his duty for that particular period.

[6] Heard learned advocates for the parties and perused the documents placed on record. The respondent who was engaged with the petitioner was proceeded departmentally on the ground of absenteeism for a period between 01.01.1995 and 31.01.1995. On the conclusion of inquiry, the respondent was treated to be unauthorizedly absent for the aforesaid period and was imposed punishment of dismissal.

[7] The order of dismissal was challenged by the respondent by way of Reference (LCB) No. 448 of 1996 before the Labour Court at Vadodara and by the judgment and award dated 20.10.1999, the Labour Court, Vadodara directed reinstatement of the respondent with 25% back-wages with continuity in service. The aforesaid was challenged by the petitioner against the order of reinstatement by filing Special Civil Application No.1839 of 2001. The said award was also challenged by the respondent workman by filing Special Civil Application No.7870 of 2000 against grant of 25% back-wages. Both the petitions came to be decided by oral judgment dated 29.09.2010. This Court in aforesaid decision has held as under:--

"8. Having heard the learned advocates appearing on behalf of the respective parties and considering the period of absenteeism of one month only and in past,

no such defaults are alleged against the respondent-workman and considering the fact that now the respondent-workman had already retired on attaining the age of superannuation on 30/06/2003 and in the facts and circumstances of the case, it appears to the Court that if respondent-workman is denied 100% backwages and punishment of withholding of one increment with permanent future effect is imposed, it will meet the ends of justice and it can be said to be sufficient punishment upon the respondent-workman.

9. In view of the above and for the reasons stated hereinabove, the judgement and award dated 20th October, 1999 passed by Labour Court, Vadodara in Reference (LCB) No.448 of 1996 is hereby modified to the extent that the petitioner to reinstate the respondent-workman without backwages but with continuity in-service and further punishment of withholding of one increment with permanent future effect is imposed. As it is reported that the respondentworkman has already retired on attaining the age of superannuation on 30/06/2003, the respondent shall be paid all retiral benefits accordingly. Rule is made absolute to the aforesaid extent in Special Civil Application No.1839 of 2001 and Rule is discharged in Special Civil Application No.7870 of 2000. No costs."

[8] It would be pertinent to observe that in para-9, this Court has categorically directed that the respondent workman shall be paid all the retiral benefits accordingly. In the opinion of the Court, the Earned Leave is part of the retiral benefits as a result of which, as directed by this court, the entitlement of retrial benefits of the respondent was decided by the aforesaid oral judgment by this Court. Nothing is placed on record to indicate such order of this Court is a subject matter of challenger anywhere and therefore, has attained finality. In the opinion of the Court, as this Court has categorically held in the previous round of litigation about the punishment inflicted by withholding of one increment with permanent future effect and denial of 100% back-wages, the further denial of Earned Leave would be an additional punishment which was not contemplated in the aforesaid decision of this Court.

[9] In view of the aforesaid, the Court is not inclined to interfere with the decision of the Labour Court and therefore, the petition deserves to be and the same is hereby dismissed.

[10] It is observed that the respondent has retired in the year 2003, whereas the order of this Court in earlier round of litigation is of 2010, however, the application under Section 33C(2) of the Act was filed in the year 2013 and was disposed of in the year 2016. Hence, the petitioner is directed to pay interest at the rate of 9% from the date of impugned award 20.01.2016.