

(2006) 01 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No. 4079 of 1989

Divisional Controller Gujarat State Road Transport Corpn.

APPELLANT

Vs

Jayantilal N. Patel and Another

RESPONDENT

Date of Decision : 12-01-2006

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2006) 26 GLH 565

Hon'ble Judges : Sharad D. Dave, J

Bench : Single Bench

Advocate : Hardik C. Rawal, for the Appellant;

Judgement

Sharad D. Dave, J.—By filing this petition under Article 227 of the Constitution of India, the petitioner " Divisional Controller, Gujarat State Road Transport Corporation, Rajkot has challenged the judgment and award dated 13.07.1988 passed by the Industrial Tribunal, Rajkot in Reference (IT) No. 18 of 1984 (old (IT) No. 233 of 1977) and order dated 19.12.1988 in Misc.Application No. 2 of 1988 in Reference (IT) No. 18 of 1984. By the aforesaid judgment and award dated 13.7.1988, the petitioner " Corporation was directed to place the respondent in Matriculate Clerk Grade with effect from 1.7.1977 within one month from the publication of the award and it was also directed that the petitioner " Corporation should pay the difference amount till the date for which the respondent is entitled.

2. It appears from the record that the respondent and other workmen raised an industrial dispute which was referred to the Industrial Tribunal, Rajkot for adjudication. The respondent and other workmen filed statement of claims, wherein a demand was raised that the respondent and other workmen who are matriculate should be placed in the revised pay scale as per Resolution No. 555 passed by the petitioner " Corporation. The petitioner " Corporation filed reply and resisted the demands made by the respondent and other workmen. Ultimately, the Industrial Tribunal, after appreciating the evidence on record and

hearing both the sides, by its judgment and award dated 13.07.1988, directed the petitioner " Corporation to place the respondent in Matriculate Clerk Grade with effect from 1.1.1977 within one month from the publication of the award and also directed to pay the difference amount till the date for which the respondent is entitled.

3. It also appears from the record that the respondent and other workmen, thereafter, filed an application being Misc.Application No. 2 of 1988 for modification of the award dated 13.07.1988 passed by the Industrial Tribunal, Rajkot. Ultimately, the Industrial Tribunal, Rajkot, by its order dated 19.12.1988 modified the award passed on 13.07.1988 and directed the petitioner " Corporation that Shri Jayantilal Patel and other workmen P.K. Mehta, P.V. Bhatt, V.K. Thakore, J.G. Oza, P.N. Pujara, A.K. Zhala, J.T. Chanbar, C.A. Zhala, B.N. Jadeja and Harshadray Ambashankar be placed in Matriculate Clerk Grade within one month from the publication of the award and they be paid differential amount within one month for which they are entitled.

4. Being aggrieved and dissatisfied by the aforesaid judgment and award dated 13.07.1988 as well as the order dated 19.12.1988 passed by the Industrial Tribunal, Rajkot, the petitioner " Corporation has preferred the present petition under Article 227 of the Constitution of India for quashing and setting aside the same.

5. Heard the learned advocates for the parties and perused the material placed on record.

6. It can be noticed from the record that this is a petition under Article 227 of the Constitution of India. The Industrial Tribunal, after appreciating the evidence on record, has come to the conclusion that as per Resolution No. 555, the respondent and other workmen are required to be placed in the Grade of Rs. 55-4-70-5-110. The Industrial Tribunal has also come to the conclusion that the action of the petitioner " Corporation was illegal and arbitrary. The Industrial Tribunal has also recorded the finding that though the respondent was Matriculate Clerk, he was not paid salary as per the grade. Considering the evidence on record as well as having examined Resolution No. 555, the Industrial Tribunal directed the petitioner " Corporation to place the respondent and other workman in Matriculate Clerk Grade with effect from 1.7.1977 within one month from the publication of the award and also directed to pay difference of amount till the date for which the respondent is entitled.

7. In this view of the matter, I am of the opinion that this Court has very limited jurisdiction under Article 227 of the Constitution of India and this Court cannot reappreciate the evidence in a petition under Article 227 of the Constitution of India. Therefore, I do not think it proper to interfere with the judgment and award dated 13.07.1988 passed by the Industrial Tribunal, Rajkot and the same is required to be upheld.

8. So far as the order dated 19.12.1988 passed in Misc.Application No. 2 of 1988

is concerned, the learned advocate appearing for the petitioner has placed reliance on the decision of the Hon''ble Apex Court in the case of Kapra Mazdoor Ekta Union v. Management of M/s Birla Cotton Spinning and Weaving Mills Ltd., and Ors., reported in AIR 2005 SCW 1561 and has submitted that the Industrial Tribunal had become functus officio after passing of the judgment and award dated 13.07.1988. He submitted that in absence of provision conferring power of review on Tribunal either expressly or by necessary implication, the Tribunal has no power to recall or review its earlier award on merits. It is, therefore, requested to allow the present petition by quashing and setting aside the impugned judgment and award dated 13.07.1988 as well as the order dated 19.12.1988 passed by the Industrial Tribunal, Rajkot.

9. The Hon''ble Apex Court in the case of Kapra Mazdoor Ekta Union (supra), has observed in paragraphs 19 and 20 as under :

19. Applying these principles it is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the quasi judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In Grindlays Bank Ltd., v. Central Government Industrial Tribunal and Ors. (supra), it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be re-heard and decided again.

20. The facts of the instant case are quite different. The recall of the Award of the Tribunal was sought not on the ground that in passing the Award the Tribunal had committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the Award, but on the ground that some matters which ought to have been considered by the Tribunal were not duly considered. Apparently the recall and review sought was not a procedural review, but a review on merits. Such a review was not permissible in the absence of a provision in the Act conferring the power of review on the Tribunal either expressly or by necessary implication.

10. Considering the aforesaid judgment of the Hon''ble Apex Court in the case of Kapra Mazdoor Ekta Union (supra), the Tribunal has no power to recall or review of its earlier award on merits in absence of the provision conferring power of review on Tribunal either expressly or by necessary implication.

11. In that view of the matter, I find some force in the contention of the learned advocate appearing for the petitioner that the Tribunal has no power to recall or review its earlier award on merits. Under the circumstances, the order dated 19.12.1988 passed by the Industrial Tribunal, Rajkot in Misc.Application No. 2 of 1988 modifying the award dated 13.07.1988 is required to be quashed and set aside. In the result, this petition is partly allowed. The order dated 19.12.1988 passed by the Industrial Tribunal, Rajkot in Misc.Application No. 2 of 1988 is quashed and set aside and the judgment and award dated 13.07.1988 passed by the Industrial Tribunal, Rajkot in Reference (IT) No. 18 of 1984 is hereby upheld. The petitioner " Corporation is directed to extend the benefits to the concerned workmen flowing from the judgment and award dated 13.07.1988 passed by the Industrial Tribunal, Rajkot in Reference (IT) No. 18 of 1984 as early as possible.

12. Rule is made absolute to the aforesaid extent. No costs.