

(2008) 04 GUJ CK 0024

In the Gujarat High Court

Case No : Special Civil Application No. 6743 of 1997

Factory Manager

APPELLANT

Vs

Kherunbibi @ Sultana Usmanbhai

RESPONDENT

Date of Decision : 29-04-2008

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 33C
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22(1)

Citation : (2008) 04 GUJ CK 0024

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : BR Gupta, for the Appellant; DR Kachhava, for Respondent 1 and Sonal D. Vyas, for Respondent 1, 1.2.1, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned Advocate Mr. BR Gupta for the petitioner and Ms. Sonal D. Vyas, learned Advocate for the respondents.

2. Through this petition under Article 227 of the Constitution of India, the petitioner has challenged the order made by the labour court in Recovery No. 1101 of 1989 dated 27.5.1997 wherein the petitioner herein was directed to pay to the workman his due amount of Rs. 51790.60 ps.

3. The petition was admitted by this Court by issuing rule and also granted interim relief during the pendency of the petition.

4. Learned Advocate Mr. Gupta for the petitioner submitted that unless right is crystallized by any award or settlement or by any other statutory provisions, recovery application u/s 33C(2) of the ID Act, 1947 is not maintainable. As per his submission, claim of the workman herein was not based on any pre existing right and, therefore, labour court has no jurisdiction to grant such benefit in favour of the workman u/s 33C(2) of the ID Act, 1947. Secondly, he raised

contention that the respondent was not an employee of the Mills Company but he was an employee of the contractor who was running canteen and, therefore, labour court has no jurisdiction to decide this disputed question of fact in absence of pre existing right. Next contention raised by learned Advocate Mr. Gupta was that the BIFR Proceedings are pending in respect of the petitioner Mills Company and it has been held to be the sick unit and, therefore, labour court cannot execute order under the recovery proceedings against the petitioner u/s 22 Sub section (1) of the SICA Act. Except these submissions, no other submission was made by learned Advocate Mr. Gupta before this Court and no decision was cited by him in support of the submissions recorded hereinabove.

5. Respondent workman was claiming difference of salary, HRA, increase of pay, EL and Bonus etc. total of which was coming to Rs. 51790.60 ps. on the basis of the award passed by the Industrial Tribunal. Labour Court has considered the contention raised by the petitioner that the respondent is not having pre-existing right and, therefore, not entitled to file such recovery application. It is required to be noted that the recovery application No. 309 of 1985 was filed by the respondent workman against the present petitioner for the period from 1980 to 1984 wherein benefit was granted by the labour court in favour of the respondent and even on that occasion also, muster roll and pay register were not produced by the petitioner before the Labour Court and the Labour Court Judge Shri PR Desai has decided the application on 31.12.88 in favour of the respondent and directed the petitioner to pay Rs. 30925.00 which amount was paid to the respondent workman and in view of these facts, labour court has come to the conclusion while considering the evidence of the witness for the petitioner at Exh. 38 that no salary was paid to the workman by the petitioner and the amount of Rs. 51790.60 is remaining to be paid to the workman by the petitioner. Labour Court has, after appreciating the oral and documentary evidence on record, recorded conclusion that the Mills Company has taken over the charge of the canteen at that time when the respondent workman was working as badli workman and this respondent workman was working with the Mills Company because after 1984, charge of canteen was taken over by the Mills Company. This fact finding given by the Labour Court has not been challenged by the learned advocate Mr. Gupta before this Court. Date of joining of the respondent workman is 3.10.80 and ultimately, labour court has come to the conclusion that mere contention that the respondent workman was an employee of the contractor and, therefore, labour court cannot have jurisdiction to exercise powers u/s 33C(2) of the ID Act, 1947 is not enough and the workman has proved by leading proper evidence before the labour court that he is entitled for the amount of salary and other benefits from the Mills Company and on that basis, labour court has granted the benefits in favour of the workman by relying upon the earlier decision in recovery application No. 309 of 1985 and, therefore, petitioner has challenged the said decision before this Court by filing this petition.

6. I have considered the submissions made by the learned Advocate Mr. Gupta for the petitioner and Ms. Sonal D. Vyas for the respondent workman and also

considered the order in question and the order of this Court passed against the order in recovery case No. 309 of 1985. The respondent was working in canteen department with effect from 7.10.80 as permanent employee. He had continued 240 days continuous service and working on permanent basis on third shift. His provident fund was deducted and he was member of ESI. Amount of Rs. 10.00 was paid as daily wage but according to award which is binding to petitioner, respondent was entitled for daily wage of Rs. 35.00 and, therefore, on the basis of the award, recovery application was filed claiming various benefits including increase in pay, HRA, EL etc. The pay slip given by Mills Company to respondent for last one year. Earlier, on the same basis, recovery application No. 309 of 1985 was filed which was allowed by the labour court and the decision of the labour court allowing said application No. 309 of 1985 was challenged to High Court by the petitioner and petitioner failed therein. Therefore, claim of amounts for subsequent period from 1.2.85 to 28.2.89 for all the benefits come to Rs. 51790.60. Reply was submitted by the petitioner vide Exh. 11 denying claim made by the respondent. Respondent has produced certain documents before the labour court. Pay slip and identity card vide Exh. 4. Mills Company had produced agreement vide Exh. 13 with contractor. The respondent had filed affidavit vide Exh. 6 which was cross examined vide Exh. 14. On behalf of the Mills Company, one witness Shri Rohitchandra Soneri was examined vide Exh. 19 and vide Exh. 22, Jyotindra Sheth and vide Exh. 38, deposition of Dinubhai was recorded on behalf of the petitioner before the labour court. The contention of sick unit raised by the Mills Company before the labour court was replied by the respondent. The contention of sick unit was not raised in written statement by the Mills Company, therefore, that contention of the Mills Company was rejected.

7. The labour court has discussed in detail evidence on record in paragraph 4 of the order. The reasoning given in para 6 by the Labour Court. The contractor was not examined before the Labour Court by the Mills Company. This contention was taken in written statement by the Company that the respondent was employee of the contractor. The charge of canteen was taken over from 1984 and accordingly at the relevant time, respondent was working in canteen as permanent workman. Therefore, he has become permanent employee of the Mills Company. Therefore, Labour Court has rightly appreciated the facts which are on record. The respondent was employee of Mills Company, entitled to claim the amount as pre existing right based on award which is binding to the Mills Company. The labour court has considered pay slips and identity card issued by the Mills Company to respondent which has established the relationship of employer and employee between the Mills Company and the workman herein. These are the findings of fact recorded by the labour court after appreciation of the evidence on record. This Court, in exercise of the powers under Article 227 of the Constitution of India, cannot reappreciate the same unless it is found to be perverse or contrary to the evidence on record. Findings of fact recorded by the labour court in the case before hand are not appearing to be perverse or contrary to the evidence on record and, therefore, this Court cannot reappreciate the same.

Therefore, the labour court has rightly granted the benefits.

8. Submission has been made by the learned Advocate Mr. Gupta before this Court that because the proceedings are pending at the relevant time in BIFR and the Mills Company is a sick unit u/s 22(1) of the SICA Act, therefore, labour court cannot proceed against the company. Such submission cannot be accepted by this Court simply on the ground that mere order passed in recovery application cannot be considered to be execution of the order passed by labour court. So long as the determination of the right of the workman is concerned, labour court can proceed with the matter and decide the matter and there is no such bar to proceed for determination of such right u/s 22(1) of the SICA Act and, therefore, that contention raised by the learned Advocate Mr. Gupta on behalf of the petitioner cannot be accepted and, same is, therefore, rejected.

9. Therefore, considering the entire order passed by the labour court and also considering the order of this Court passed in SCA No. 2633, 2634 and 2658 of 1989 dated 1.10.1999 arising from the order of the labour court in recovery application No. 309 of 1985 dated 31.12.1989 which was impugned in Special CA No. 2633 of 1989, according to my opinion, contentions raised by the learned Advocate Mr. Gupta on behalf of the petitioner cannot be accepted and same are therefore rejected. According to my opinion, labour court is perfectly justified in passing the orders in question as respondent has proved pre existing right to claim the amount of benefits of Rs. 51790.60 from the Mills Company. Labour Court is perfectly justified in passing the order in question and in doing so, labour court has not committed any error warranting interference of this Court under Article 227 of the Constitution of India, therefore, there is no substance in this petition and same is required to be dismissed.

10. Accordingly, this petition is dismissed. Rule is discharged. Interim relief, if any, shall stand vacated with no order as to costs.