

(2009) 03 GUJ CK 0088

In the Gujarat High Court

Case No : Special Civil Application No. 16436 of 2007

General Manager, Indian Rayon (Unit of Aditya Birla Nuvo Ltd.)

APPELLANT

Vs

Saiyad Gulam Rasul Amadmiya Kadri

RESPONDENT

Date of Decision : 16-03-2009

Acts Referred:

Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 226
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 47

Citation : (2009) 122 FLR 962 : (2009) 2 GLH 515 : (2009) 2 GLR 1491 : (2010) 2 LLJ 386

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : Nanavati Associates, for the Appellant; P.V. Hathi, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—Rule. Mr. P.V. Hathi, learned Advocate waives service of rule on behalf of the respondent. With the consent of the learned Advocates appearing on behalf of the respective parties, the petition is taken up for final hearing today.

2. By way of this petition under Article 226 of the Constitution of India the petitioner-Indian Rayon (Unit of Aditya Birla Nuvo Ltd.) through its General Manager has prayed for an appropriate writ, direction and/or order quashing and setting aside the impugned order dated 6-10-2006 passed by the Court of Commissioner for Disabled Person, Gandhinagar in Case No. 213 of 2006 directing the petitioner to pay respondent-workman benefit of pension considering his last service as notional from the date of his appointment till he attains the age of superannuation and if that arrangement could not be made then to pay some reasonable amount as ex-gratia which is just and proper from petitioner company's community betterment fund and employment welfare scheme considering respondent's disablement acquired during his service, long

term unemployment and having no offspring, within a period of 60 days as a special case.

3. That the petitioner is a Company incorporated under the provisions of the Companies Act. That the respondent was serving with the petitioner-Company and while on service colour fell in his eyes and was unable to do colour work and in fact he lost vision. It is the case on behalf of the petitioner that respondent was in employment of the petitioner-Company upto year 1996 and during the said period the respondent has availed all the benefits, wage-rise, leave, bonus, L.T.C. etc. as per the applicable rules of the petitioner-Company. It is also the case on behalf of the petitioner that respondent was found sleeping in the rest room during the tea-break and was warned by the petitioner-Company vide letter dated 19-2-1991. It is submitted that though it was serious misconduct as defined under the Standing Orders Act, considering respondent's condition i.e. colour-blindness the petitioner-Company had taken a very lenient and sympathetic view. It is the case on behalf of the petitioner that respondent remained absent unauthorizedly from the service since long, and therefore, the petitioner-Company was constrained to relieve him from service on the ground of continuous ill-health vide letter dated 29-11-1996. That the respondent reached age of superannuation on 11-7-2006. That respondent filed complaint in the Court of Commissioner (For Disabled Persons), Gandhinagar on 25-7-2006 for getting relief under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "the Act, 1995") and claiming salary/pension/wages till the date of his retirement as he was not able to work due to colour-blindness which was developed during the course on duty. The application was opposed by the petitioner-Company by submitting that provisions of the Act, 1995 would not be applicable to the petitioner-Company and that the Court of Commissioner (For Disabled Persons), Gandhinagar has no jurisdiction as said Act is applicable to Government employees only. It was submitted that aforesaid Act would be applicable to only Government establishments and the petitioner-Company being non-Government establishment is not governed by the aforesaid Act. That in spite of above the Commissioner (For Disabled Person), Gandhinagar granted aforesaid reliefs under the Act, 1995 considering Section 47 of the Act. Being aggrieved and dissatisfied with the impugned order dated 6-10-2006 passed by the Court of Commissioner (For Disabled Person), Gandhinagar in Case No. 213 of 2006, the petitioner-Company has preferred present Special Civil Application under Article 226 of the Constitution of India.

4. Learned Counsel appearing for Nanavati Associates for the petitioner has vehemently submitted that the Court Commissioner has materially erred in passing the impugned order under the provisions of the Act, 1995. It is submitted that even considering definition of "establishments" u/s 2(k) of the aforesaid Act, it would be applicable to Government establishments and the petitioner-Company being non-Government establishment is not governed by the aforesaid Act and thus the Court had no jurisdiction to entertain and adjudicate

the dispute raised by the respondent as the petitioner-Company does not fall under the category of "establishment" as defined in the aforesaid Act. Learned Counsel for the petitioner tried to make submission on merits also but for the reasons stated hereinafter as this Court proposes to take the view that the aforesaid Act would not be applicable to the petitioner-Company, this Court is not further considering merits of the case as this Court is of the opinion that the Court of Commissioner (For Disabled Person), Gandhinagar had no jurisdiction to adjudicate the dispute between the parties under the provisions of the aforesaid Act. Learned Counsel for the petitioner has relied upon decision of the Delhi High Court in the case J.B. Kumar v. Brijesh Sethi and Anr. reported in 2007 (II) LLJ 882 (Del.). Relying upon aforesaid decision, it is requested to allow present Special Civil Application.

5. Petition is opposed by Mr. P.V. Hathi, learned Advocate appearing for the respondent. Relying upon decision of the Bombay High Court in the case of Shree Satish Prabhakar Padhye Vs. Union of India (UOI) and Others, it is submitted that as held by the Bombay High Court any Company incorporated under the provisions of the Companies Act, 1956 which is incorporated under the Central Legislature can be said to be Government establishment, and therefore, the Act, 1995 would be applicable. It is to be noted that said decision of the Bombay High Court in the case of Satish Prabhakar Padhye (supra) is held to be per incuriam by the subsequent Division Bench of the Bombay High Court in the case of Fancy Rehabilitation Trust, Bombay and Anr. v. Union of India through the Fancy Rehabilitation Trust and Shri Sebastian Anthrajan, Managing Trustee of Fancy Rehabilitation Trust Vs. Union of India (UOI), State of Maharashtra, Ministry of Rehabilitation, Venture Infotek Global Private Ltd. and The Commissioner for Handicapped, Mr. Hathi, learned Advocate for the respondent has submitted that considering pitiable condition of the respondent-workman and considering the fact that he has lost vision and was developed colour-blindness while on duty, it is requested to direct the petitioner to pay all the benefits available to the respondent till he attains the age of superannuation. It is submitted that even some of the medical bills submitted by the respondent is still remained unpaid. Therefore, it is requested to dismiss present Special Civil Application.

6. Heard the learned Advocates for the respective parties.

7. It is not in dispute that the respondent has approached Court of Commissioner (For Disabled Persons), Gandhinagar by submitting application under the provisions of the Act, 1995 more particularly invoking Section 47 of the said Act.

Section 47 of the Act, 1995 is as under:

47. Non-discrimination in Government employment :- (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service.

Provided that, if any employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay-scale

and service benefits.

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability.

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this Section.

Section 47 of the Act, 1995 would be applicable to the establishment and establishment is defined u/s 2(k) of the Act, 1995. Section 2(k) is as under:

(k) "establishment" means a corporation established by or under a Central Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government Company as defined in Section 617 of the Companies Act, 1956 (1 of 1956) and includes departments of a Government.

7.1. Therefore, on fair reading and on perusal of aforesaid provisions, aforesaid provisions will be applicable in case of Government establishment and it is not applicable in case of private establishment. It is not the case of the respondent that petitioner is a Government establishment and/or Government-aided establishment. The petitioner is a Company incorporated under the provisions of the Companies Act, 1956. The petitioner is not Government establishment and/or Government-aided establishment or a Government Company as defined u/s 617 of the Companies Act, 1956. Therefore, the petitioner is not "establishment" within the definition of Section 2(k) of the aforesaid Act, and therefore, the provisions of the Act, 1995 would not be applicable to the petitioner-Company, and therefore, the Court of Commissioner (For Disabled Persons), Gandhinagar has no jurisdiction to grant any relief in favour of the respondent under the provisions of the aforesaid Act. Under the circumstances, impugned order dated 6-10-2006 passed by the Court of Commissioner (For Disabled Person), Gandhinagar in Case No. 213 of 2006 u/s 47 of the Act, 1995 deserves to be quashed and set aside as the same is without jurisdiction.

8. It is to be noted that pursuant to the order passed by this Court and looking to the pitiable condition of the respondent, this Court directed the petitioner to pay Rs. 10,000/- to the respondent vide order dated 20-7-2007 and it is reported that said amount is already paid to the respondent. During the final arguments on perusing the Management had offered an amount of Rs. 70,000/- to the respondent irrespective of the order dated 6-10-2006 passed by the Court of Commissioner (For Disabled Person), Gandhinagar in Case No. 213 of 2006 being set aside, and accordingly, the petitioner-Company has deposited Rs. 70,000/-

before this Court and is lying idle. It appears that the respondent has refused to accept the said amount. I consider that although impugned order deserves to be quashed and set aside but keeping in view of facts and circumstances of the case, it would be appropriate that aforesaid amount is accepted by the respondent as welfare measure.

9. For the reasons stated above, the petition succeeds. Impugned order dated 6-10-2006 passed by the Court of Commissioner (For Disabled Person) Gandhinagar in Case No. 213 of 2006 is hereby quashed and set aside. However, in the facts and circumstances of the case, amount of Rs. 70,000/- (Rupees Seventy Thousand only) deposited by the petitioner-Management deposited with this Court is to be paid to the respondent as welfare measure in order to help the respondent. As and when the respondent approaches Registry for withdrawal of said amount, Registry is directed to pay same to the respondent by Account Payee Cheque on proper identification and verification by the learned Counsel appearing for the respondent. Rule is made absolute to the aforesaid extent. No costs.