
(2012) 10 GUJ CK 0029
In the Gujarat High Court

Case No : Special Civil Application No's. 9692 and 9860 to 9869 of 1993

Gujarat Electricity Board

APPELLANT

Vs

Ashokkumar P. Patel

RESPONDENT

Date of Decision : 10-10-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 227
Industrial Disputes Act, 1947 — Section 10, 33(C), 33(C)(2)

Citation : (2013) 137 FLR 444

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : Premal R. Joshi, for the Appellant; R.K. Mishra, for the Respondent

Final Decision : Allowed

Judgement

S.R. Brahmbhatt, J.—In this group of petitions, the petitioner is common i.e. employer erstwhile Gujarat Electricity Board and respondent in

the Recovery Application Nos. 118/1986 to 128/1986 in the Labour Court, Kalol has approached this Court under Article 227 of the

Constitution of India, challenging the award and common order passed by the Court on 29.7.1993 allowing those applications and directing the

petitioner to pay Compensatory Local Allowance and House Rent Allowance (herein after referred to as ""CLA"" and ""HRA"" for the sake of

brevity). The workmen were found to be entitled to receive these benefits under the Circular No. 297 dated 1.5.1979.

The applications were consolidated and disposed of by the common judgment and award which is the subject matter of challenge in this group of

petitions and hence all petitions are being disposed of by this common judgment and order.

Facts in brief leading to filing these petitions, as could be culled out from the memo of respective petitions, deserve to be set out as under.

The respondent workmen in these petitions were workmen working in the sub-station of petitioner company situated at village Randheja, which is

situated within 8 km distance from the Township of Gandhinagar which was at the relevant time notified area under Notified Area authority. The

petitioner vide Resolution/Circular No. 297 of 1.5.1979 extended benefits of HRA and CLA to the workmen and employees working in village,

located within 8 km radius of qualified city provided that the villages were depend upon the amenities available in the City so situated to the sub-

station at Randheja was commissioned. The workmen were given benefit of CLA and HRA from 1984, which continued upto September, 1986.

Thereafter, it was realised by the concerned authority of the petitioner that the employees/workmen working at Randheja Sub Station of the

company were not entitled to the benefit of CLA and HRA and hence the benefits were stopped from September 1986. The recovery as it is

alleged, was also ordered. The workmen of various villages located within distance of 8 km within the Gandhinagar Township were constrained to

raise industrial dispute in the form of Reference (IT) No. 273 of 1986.

This dispute was infact raised by the employees working in the various villages namely, Pethapur, Randheja, Vavol, Uvarsad, Dholekuva, Borej,

Palaj, indroda, Vasan, Chiloda, Alampura, Lakwada, Jakbori, Adivada, Fethpur, Tarapur, Sargasan and Kudasan etc. Out of these villages, the

dispute qua few villages namely, Dholekuva, Borej, Palaj, indroda, Vasan, Chiloda, Alampura, Lakwada, Jakbori, Adivada, Fethpur, Tarapur

villages were given up all the award and order confined to the dispute about remaining villages only. The competent Court namely, Industrial

Tribunal vide its order and award dated 28.10.1991 dismissed the said reference after elaborate discussion about non-eligibility and entitlement of

such employees to beneficiary under Circular No. 297 dated 1.5.1979 of the Board. The present workmen filed Recovery Application invoking

section 33(C)(2) of the Industrial Disputes Act, 1947 (herein-after referred to as "I.D. Act" for the sake of brevity) and claimed that they be given

the benefit of these two allowances namely, HRA and CLA and in the year 1984 these benefits were granted and they were abruptly terminated

from September 1986. In view of this demand, the recovery applications were lodged. They were permitted to be consolidated and after perusing the applications and examining the witnesses the Court came to the conclusion that as the factum of admissibility of such allowances in Chiloda are proved, the applications were required to be allowed and accordingly they were allowed as per the impugned order which is under challenge before this Court.

Learned advocate for the petitioner - board contended that the Recovery Applications were not maintainable as normally existence of right to receive the benefit was conspicuously absent so far as the respondent workmen are concerned. The learned advocate for the petitioner, thereafter contended that the full fledged Reference No. 273/1986 was decided by the competent Court under the provisions of I.D. Act in respect of very same Circular No. 297 dated 1.5.1979 and after elaborate discussion thereunder, the competent Tribunal came to the conclusion that the workmen covered by the reference were not eligible to receive the benefits of HRA and CLA. This judgment and award was rendered on 28.10.1991 and it was pressed into service for resisting recovery applications. Unfortunately, the Court while deciding the Recovery applications, did not appreciate this aspect. In Recovery applications, the reasons adopted by the Court under reference who have persuaded the Court not to allow recovery applications.

Learned advocate for the petitioner contended that the principle of res-judicata is also attracted and recovery applications could not have been allowed when there exist a judgment and order referred by the competent forum between the parties on the same subject matter.

Learned advocate for the petitioner invited this Court's attention to the Circular No. 297 dated 1.5.1979 and contended that plain reading of the circular would say that the admissibility of CLA and HRA is not automatic on the fact that village is situated at 8 km in radius. In order to allow all these benefits, the village should depend upon the City for the basic amenities and services. This aspect needs to be examined by the Court. The Court while passing the order in recovery application has been impressed by non-availability of proper documents qua Chiloda employees and therefore award and order is required to be quashed and set aside.

2. None is present for the respondent. However, if one looks on the affidavit-in-reply available on the record it can be seen that the present

petitions have sought to be resisted on the following grounds namely.

The petition is required to be rejected on preliminary ground that the petitions are filed under Article 227 of the Constitution of India and on

account of settled legal position, the High Court did not entertain the petition because the petitions are filed after the recovery Court has passed

reasoned order, which is based upon facts and findings. The Court, therefore while exercising its power under Article 227 of the Constitution of

India would not appreciate or re-appreciate the findings recorded by the Court below. The reliance is placed upon the case of Mohd. Yunus Vs.

Mohd. Mustaqim and Others, . Paragraph No. 7, which is set out as under in support of this contention.

A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227. The supervisory

jurisdiction conferred on the High Courts under Art. 227 of the Constitution is limited ""to seeing that an inferior Court or Tribunal functions within

the limits of its authority"", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our

opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge

to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with

the procedure established by law. In exercising the supervisory power under Art. 227, the High Court does not act as an Appellate Court or

Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior Court or tribunal purports to be based or to

correct errors of law in the decision.

The second contention is that Labour Court has exercised its jurisdiction within the provisions conferred u/s 33(C) of the I.D. Act and therefore

the Court has exercised its jurisdiction rightly. There is no jurisdictional error so as to invoke Article 227 of the Constitution of India at the end of

the petitioner.

The ground is taken that even if there is a plausibility of two views, one view has been taken on the facts and Court under Article 227 of the

Constitution of India would not set out its own view, for that of the Court below and the reliance is placed on the decision taken by the Apex

Court in the case of Khalil Ahmed Bashir Ahmed Vs. Tufelhussein Samasbhai Sarangpurwala, .

It is further submitted in the affidavit-in-reply that, the Court has appreciated that the allowances were paid and abruptly they were stopped. The

Randheja village is within 8 km radius of Gandhinagar and therefore employees are entitled for the allowances.

One more ground was raised indicating that they were protected by various Government Resolutions of Finance Department indicating that the

allowances of such nature were admissible to those employees when they were working in 8 km radius of Gandhinagar and G.E.B. being part and

parcel of the State Government, there is violation of Articles 14 and 16 of the Constitution of India.

One more ground is taken that when the Court has taken into consideration all the things, the decision of the Court is based upon the facts and it

has honestly exercised its jurisdiction and this Court should not interfere with the decision of the Court below. In this connection reliance has been

placed upon the decision taken in the case of Collector of Customs, Bombay Vs. Swastic Woollens (P) Ltd. and Others, .

The Court has perused the petition and accompanied documents, the Court is inclined to allow this petition for the following reasons namely;

(1) The decision in the recovery applications was essentially posted upon the right to receive two allowances namely HRA and CLA on the basis

of Circular No. 297 dated 1.5.1979. The mere granting of these allowances from 1984 to 1986 may create all rights requiring adjudication but

when the stand is taken by the employer that the said circular did not entitle the workmen of Randheja to receive the same and earlier granting of

such benefit was under mistake then the right to receive HRA and CLA cannot be said to be vested right so as to entitle the workmen to

straightway approaching the Labour Court under provisions of section 33(C)(2). The jurisdiction u/s 33(C)(2) of the Court is covered by the plain

provision, which makes it incumbent upon the Court to record its unequivocal finding qua pre-existence of right or privilege flowing from the

judgment, award, and old practice for years and settlement of any commitment of such nature. The HRA and CLA were paid from 1984 upto

September 1986 may be treated as a practice but that practice had not been brought into effect on account of right and least vested right, it was on

account of a mistake, which can be rectified. The recovery is different aspect, therefore the same aspect is not delve upon elaborately, at this stage.

(2) Having come to the conclusion, there exist no pre-existence right, the question arise as to whether the Labour Court is justified in embarking

upon the adjudicatory process examining as to whether the benefit of Circular No. 297 dated 1.5.1979 was admissible to workmen especially

when the competent Court namely Industrial Tribunal of Ahmedabad had undertaken detailed exercise of very same circular and came to the

conclusion after examining the evidence on that behalf that the benefit is not automatically effected. It is clearly held that the Randheja village

employees were not entitled to receive benefits under the same circular, then in that light of the decision, in my view it was not open to Labour

Court that they have come to an independent conclusion without adverting to any reasoning which would make some decision to undertake such

exercise. In other words, I am of the clear opinion that the Labour Court on embarking upon the jurisdiction vested u/s 33(C)(2) and hence award

was clearly exercise of power and jurisdiction which did not vested in the Labour Court and hence petition under Article 227 of the Constitution of

India aptly maintainable and rightly maintained.

(3) The principle of res-judicata is applied and in depth examination of aspects like lease between the parties, subject matter of the lease, whether

the case is concluded by the competent Court and parties were bound or whether there was bar on account of even the constructive res-judicata.

Those aspects have not been pleaded and proved and therefore strictly the examination of the controversy by the Labour Court cannot be said to

be wholly barred on the provisions of principle of res-judicata but the principle of judicial comity and on account of fact that the broader

jurisdiction which vested u/s 10 of the I.D. Act adjudication and as a result, labour inquiry and authorise aspects in its depth. The competent forum

came to the conclusion that the Randheja village employees were not entitled the Court as limited jurisdiction u/s 33(C)(2) surely undertake this

issue afresh. Therefore, on this ground also the petitions are allowed under Article 227 of the Constitution of India while quashing the award

impugned.

(4) Citations and the grounds raised by learned advocate for respondent are of no avail as the Court is not accepting the submissions qua non

requirement of interference under Article 227 with the impugned order in this petition. The Court has observed that Labour Court exercised its

jurisdiction for adjudicating the dispute, therefore Article 227 is squarely attracted and accordingly while the impugned judgment has been passed,

then the parameters of Article 227 of the Constitution of India would squarely follow and impugn judgment cannot be interfered in any manner and

it is required to be quashed and set aside. It is quashed and set aside. The Petitions are allowed. Rule made absolute in each matter. There shall be

no order as to costs.