

(2010) 09 GUJ CK 0092
In the Gujarat High Court

Case No : Special Civil Application No. 7272 of 1993

Gujarat Electricity Board

APPELLANT

Vs

Doorsing A. Makwana

RESPONDENT

Date of Decision : 03-09-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 09 GUJ CK 0092

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : Premal R. Joshi, for the Appellant; H.C. Patel, for the Respondent

Judgement

M.R. Shah, J.—By way of this petition under Article 227 of the Constitution of India, the petitioner-Gujarat Electricity Board has prayed for an appropriate writ, direction and order quashing and setting aside the impugned judgment and award dated 12.4.1993 passed by the Industrial Tribunal, Ahmedabad passed in Reference (IT) No. 111 of 1988 by which the Tribunal has allowed the said Reference by directing the petitioner to pay the salary in the pay-scale of Heavy Vehicle Driver to the respondent w.e.f. 5.3.1988.

2. The facts leading to the present Special Civil Application in nutshell are as under:

2.1 The respondent was serving as a Heavy Vehicle Driver. It appears that he was not keeping good health, he submitted the application before the appropriate authority along with medical certificate to give him light work and same has duly considered by the petitioner and by order dated 4.7.1984 the petitioner was given the duty as light vehicle driver in the pay scale of Rs. 315-877. The said order was further modified vide order dated 17.7.1984 putting the respondent in the salary of Rs. 551/-. That thereafter, after a period of 4 years, the respondent raised the industrial dispute alleging inter alia that petitioner has reverted the respondent to the post of Light Vehicle Driver. The

Tribunal by judgment and award dated 12.4.1993 partly allowed the said Reference by further directing the petitioner to pay the pay scale of Heavy Duty Vehicle to the respondent w.e.f. 5.3.1988 solely on the ground that unless the respondent was declared as unfit he could not have been reverted to the post of Light Vehicle Driver. Being aggrieved and dissatisfied with impugned judgment and award passed by the Industrial Tribunal dated 12.4.1993 passed by the Industrial Tribunal, Ahmedabad passed in Reference (IT) No. 111 of 1988, the petitioner has preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. Shri Joshi, learned advocate for the petitioner has submitted that as such there is no question of reverting the petitioner to the post of Light Vehicle Driver on the ground that the respondent was unfit. It is submitted that as such the respondent himself submitted an application to give him light work as he was not keeping good health and consequently said application came to be considered by the petitioner and respondent was given work of Light Vehicle Driver. Therefore, it is submitted that there was no question of declaring the respondent unfit as he himself submitted application. It is submitted that even the industrial dispute was raised by the respondent after a period of four years. It is submitted that if the respondent would have any grievance, he would have immediately raised an industrial dispute putting him in the pay scale of Light Vehicle Driver. Therefore, it is requested to allow the present Special Civil Application.

4. Shri H.C. Patel, learned advocate for the respondent has tried to support the judgment and award passed by the Tribunal by submitting that as rightly observed by the Tribunal unless and until respondent was declared unfit, he could not have been reverted to the post of Light Vehicle Driver and consequently the Tribunal has rightly passed the order directing the petitioner to pay salary to the respondent of Heavy Vehicle Driver. As respondent has raised dispute in the year 1988, even the Tribunal has directed the petitioner to pay salary of Heavy Vehicle Driver in the year 1988 only. Therefore, it is requested to dismiss the present Special Civil Application.

5. Having heard the learned advocates for the respective parties and considering the impugned judgment and award as well as documents on record, it appears that it was the respondent who submitted the application before the Chief Engineer of the petitioner board on 30.4.1984 and 5.6.1984 to give him light duty by submitting that he is not keeping good health. That along with the said application he submitted the medical certificate also. The aforesaid application came to be considered by the petitioner and by order dated 4.7.1984, respondent was assigned duty of Light Vehicle Driver in the pay scale of Rs. 315-877 and his pay was fixed at Rs. 551. The said order came to be modified by the order dated 17.7.1984. That thereafter, petitioner was paid salary in the pay scale of Rs. 315-877 and respondent accepted the same and respondent never objected to the same. That all of sudden and after a period of four years, respondent raised an industrial disputes making a grievance that he ought not to

have been reverted to the post of Light Vehicle Driver unless he is declared as unfit. The aforesaid came to be accepted by the Industrial Tribunal and passed an impugned order. It is to be noted that once the respondent himself submitted the application along with medical certificate and requested to assign him light duty work, and when the same to be accepted, there was no question of reversion on the ground of unfitness of the respondent. There was no question of further declaring the respondent as unfit as heavy vehicle driver. The respondent himself submitted the application, which came to be accepted. Under the circumstance, the Industrial Tribunal has committed a grave error in passing the impugned judgment and award on the ground that unless and until respondent would have been declared unfit he could not have been reverted. It is also required to be noted that even the respondent raised an industrial dispute after a period of four years. If the petitioner would have any grievance with respect to putting him in the pay scale of Rs. 315-877, in that case, he would have immediately challenged the same and/or objected the same. Under the circumstance, impugned judgment and award passed by the Industrial Tribunal deserves to be quashed and set aside.

6. In view of the above and for the reasons stated above, petition succeed. The impugned judgment and award dated 12.4.1993 passed by the Industrial Tribunal, Ahmedabad passed in Reference (IT) No. 111 of 1988 is hereby quashed and set aside. Rule is made absolute. No costs.