

(1997) 04 GUJ CK 0013

In the Gujarat High Court

Case No : Special Civil Application No. 8412 of 1995

Gujarat State Road Transport Corporation

APPELLANT

Vs

Mahendrakumar M. Trivedi

RESPONDENT

Date of Decision : 24-04-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33

Citation : (1997) 3 GLR 1935

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : Shraddha Trivedi, for the Appellant; Party in person and D.J. Chauhan, for the Respondent

Judgement

R. Balia, J.—The brief facts and circumstances in which this petition had arisen may be noticed. Respondent had filed an application u/s 33C(2) of the Industrial Disputes Act, 1947, before the labour Court. Baroda alleging that on 3.1.1949 he was employed in the office of Bharuch Collector where he discharged duties until 1.9.1950. Thereafter, he discharged duties as card writer in the Rationing Office of Civil Supplies Department from 1.9.1950 to 31.12.1952 from which place he was retrenched on 31-12-1952. Fifteen days thereafter he was registered as unpaid candidate in the office of Mamlatdar and discharged duties at various places. He was appointed on 8.5.1958 as a retrenched employee from the Civil Services Department in the Mumbai State Road Transport Corporation as Writer, later came to be allotted to Gujarat State Road Transport Corporation on formation of State of Gujarat. He superannuated on 30.9.1985. He claimed that in terms of circular of the Government dated 17.11.1972 he was paid the arrears amount to Rs. 8000/- from 3.1.1949 to 31.8.1958 on account of increments for service between 3.1.1949 to 31.8.1950. However, he was not granted increment for the period of service between 1.9.1950 to 31.12.1952. He claimed that he is entitled to two increments of Rs. 7/- for that period. Accordingly, he required the Labour Court to direct the Corporation to pay him the amount payable to him which according to him came to Rs. 20,000/-.

2. In reply thereto on behalf of the Corporation it was stated that there is nothing on record of the Corporation to show that the applicant-workman was in service with Rationing Department between 1.9.1950 to 31.12.1952. It was clarified that Rs. 8000/- were paid to petitioner for period with effect from his services with Corporation. It denied any liability for payment for any period prior to period of his employment with the Corporation. It was also stated, that in lieu of all his claim at retirement, the petitioner accepted a sum of Rs. 25,000/- and odd at the time of superannuation and nothing is due.

3. In substance, the claim of the petitioner was that in terms of circular dated 17.11.1972 he has not been awarded two increments for two years between 1.9.1950 to 31.12.1952 for which he was entitled to and consequential payment of arrears on that account, which claim was denied inter alia on the ground that there was nothing on record of the Corporation to suggest that the applicant was in employment with Civil Supplies Department during the disputed period. While, the Corporation was content with rising these pleas in the reply, the applicant-workman led certain documentary evidence in support of his claim. The Tribunal relying on Exh. 7/5, the copy whereof has been filed along with rejoinder affidavit, pertaining to determination of arrears payable in terms of Circular dated 17.11.1972, held that though it speaks of two increments from Rs. 45/- to Rs. 51/- at the rate of Rs. 3/- per annum, between 1.4.1949 to 31.8.1950, there being no evidence that such increments have been actually paid, accepted the claim of the workman and ordered that sum of Rs. 18,551.50 ps. is payable on account of these two increments with effect from 11.9.1958 to 1.9.1985.

4. The award has been challenged in this Special Civil Application on two-fold grounds. Firstly, the applicant raised the dispute which may be properly called an Industrial dispute to be adjudicated u/s 10 of the Industrial Disputes Act which fall beyond the scope of determination u/s 33C(2) and secondly, that the award on merit suffers from error apparent on the face of the record, as it is founded on no evidence and finding on the material issue about the workman having actually worked with Civil Supplies Department between 1.9.1950 to 31.11.1952. Contention as to jurisdiction u/s 33C(2), though not raised before the Labour Court, was permitted to be raised here as it goes to the root of the matter and did not require investigation into any facts.

5. Respondent-workman who was appearing in person was heard and at the request of the Court Mr. D. J. Chauhan, learned Advocate, rendered his services gratis to the respondent in support of his contentions.

6. Having heard learned counsels for the parties at some length, I find substance in both the contentions noted above.

7. Section 33C(2) reads as under :-

"33C(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which

such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months :

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit".

It is obvious from perusal of the provision that the jurisdiction under the aforesaid provision is not to decide the entitlement to any claim capable of being expressed in terms of money, but, predetermined entitlement is condition of jurisdiction to determine the money or other claim capable of being expressed in terms of money under such entitlement. Whether claimant is entitled to money claims is not the subject-matter of determination but what is in dispute is about the quantum or the money sum payable in terms of such entitlement. The question of entitlement to a sum of money or benefits capable of being expressed in terms of money properly falls in the category of industrial dispute which may be appropriately determined u/s 10 on a reference being made in that regard. The dispute as to quantum of the entitlement is in the nature of execution of a decree, while dispute as to entitlement is in the nature of suit for decree, for declaration of right itself.

In Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, , the Supreme Court said :

"A proceeding u/s 33C(2) is a proceeding, generally, in the nature of an execution proceeding wherein the labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or, otherwise, duly provided for. In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liability of the defendant, including whether the defendant is, at all, liable or not and (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination No. (iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). Since a proceeding u/s 33C(2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally, outside its scope. It is true that in a proceeding u/s 33C(2) as in an execution proceedings, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely

"incidental". Therefore, when a claim is made before the Labour Court u/s 33C(2) that Court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as "Incidental" to its main business of computation. In such cases determinations (i) and (ii) are not "incidental" to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal".

The view was reiterated by the Supreme Court in *Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal*, reported in 1994 I CLR 28, wherein the Court said that disputed question about entitlement to full pay and allowance for the period when the employee was deemed to have been suspended due to his involvement in a criminal case till "his reinstatement on acquittal was beyond the scope of Labour Court; while acting u/s 33C(2) of the Act, it had no jurisdiction to decide the said question. The Court held that since the Labour Court in the present case took upon itself the task of deciding the said question, it clearly exceeded its jurisdiction. The order was set aside.

8. Applying the aforesaid test to the, facts of the present case, it is apparent that before question of computation of amount to which the workmen had laid claim could be taken up it was required to be determined whether the applicant was in employment with the Civil Services Department between 1-9-1950 to 31-12-1952 and whether the period was covered under the Circular dated 17-11-1972. It is only after determination of these two questions any finding whether the workman is entitled thereto could be reached. Thereafter only question of extent to which he was entitled to monetary sum could be undertaken. As the first two questions tell to be determination of the nature falling under items (i) and (ii) explained in *Central Inland Water Transport Corporation* case referred to above and clearly fall outside the scope of jurisdiction u/s 33C(2). The Labour Court could not have embarked upon that enquiry in exercise of its jurisdiction u/s 33C(2). In doing so obviously the Labour Court had exceeded its jurisdiction.

9. Even otherwise, the document referred to by the Tribunal on the basis of which determination has been made does not support the conclusion reached by the Tribunal in any manner whatsoever. The document is a computation sheet of amount which has been determined and paid to the workman in terms of the said circular resulting from fixation of his pay with effect from 9-5-1958 by considering the admissible increment under the Circular. The document reveals that at the time of initial appointment the workman was employed at Rs. 45/- per month. Considering increment for the period between 3-1-1949 to 31-8-1950 his pay was fixed at Rs. 51/- and thereafter annual increments with effect from the date of his appointment, namely, 9-5-1958 further increments had been

worked out upto the date of computation and arrears in terms thereof had been paid. From this document, it is nowhere to be found out that the applicant was employed with the Civil Supplies Department between 1-9-1952 to 31-12-1952. It would also be interesting to note that while the applicant in his claim petition has suggested that Rs. 8000 paid to him as arrears of salary as a result of increment between 3-1-1949 to 31-8-1950 was relatable to period to his appointment with the Corporation. One does not know wherefrom this suggestion has emanated. So far as the Circular under which the fixation and arrears become payable, namely, Standing Order dated 23-11-1971 and Circular dated 17-11-1972, the Ex-Bombay Government Civil Supplies Department employees were absorbed in the Ex-Bombay State represented Transport Corporation and subsequently allotted to Gujarat State Road Transport Corporation were given benefit of counting their past services for the purposes of increments after their appointment provided they were re-employed to a post carrying identical time scale. Then the Circular provided the manner of computing past service and other incidental matters. The Circular dated 17-11-1972 was issued to compute the benefits envisaged under Standing Order dated 23-11-1971 who had not been given such benefit of increment on the basis of past services for any reason by categorising them in two groups, namely, where the scales of Ex-Civil Supplies Department personnel were identical with the scales of the corporation and records of Ex-Civil Supplies Department are available and secondly, in cases where Ex-Civil. Supplies Department personnel who were absorbed in Gujarat State Road Transport Corporation and the scales of pay in the Ex-Civil Supplies Department were higher and absorption was made in lower scale of pay. Both the Circulars do not envisage any payment in respect of period prior to the date of absorption. It was admitted case of the applicant in his claim petition itself that in terms of fixation made by taking into consideration increment between 1-4-1949 to 31-8-1950 had been paid. In spite of this clear position, under the Circular, which was also before the labour Court and the pleadings and documents that were before it, Labour Court reached the conclusion that notwithstanding that, there is no evidence of payment in terms thereof. The document nowhere states that employee was also employed in Civil Supplies Department between 1-9-1950 to 31-12-1952. No other material has been referred to about this period of employment. Assertion in the claim, which is denied in reply cannot take the place of evidence to prove it. Burden to prove such assertion by the claimant was on the claimant. On the basis of the material on which the Tribunal has reached its conclusion no reasonable person could have reached such a conclusion. Such finding cannot be accepted as binding. In reaching this finding the Court has not applied its mind at all to the question whether in view of the issue between the parties any evidence has been led which could be believed for the purpose of finding that the applicant was in service of Civil Supplies Department during the disputed period ? No evidence in fact in that regard has been referred to. Therefore, even if the lower Court had jurisdiction to go into the question, the order suffers from error apparent on the face of the record, inasmuch as, it has been made without considering the real

issue between the parties in any manners.

10. It may be stated that the petitioner - Corporation has produced before this Court a copy of the application submitted by the workman at the time of his appointment giving details of his past employment which does not disclose the period in question as part of his past employment. This has been stated only as a matter of record. Otherwise, as the document was not before the Tribunal, I leave the matter at that without expressing any opinion about its effect on the merit of the case.

11. As a result of the aforesaid discussion, this petition succeeds. The order of the Labour Court dated 4-1-1995 is quashed. No order as to costs.

12. Rule made absolute.