

(2012) 06 GUJ CK 0005

In the Gujarat High Court

Case No : Special Civil Application No. 891 of 2003

Gujarat State Road Transport Corporation

APPELLANT

Vs

Shabir Hussain G. Shaikh

RESPONDENT

Date of Decision : 20-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 33(1)(a), 9

Citation : (2013) 2 LLN 401 : (2013) 1 SCT 220 : (2013) 2 SLJ 110

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

Bench : Single Bench

Advocate : Sanghavi for Mr. Ashish and M. Dagli, for the Appellant; G.K. Rathod, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.—Heard learned advocates for the parties. The petitioner, G.S.R.T.C. the opponent in Complaint No. 211 of 2001 in Reference I.T. No. 16 of 2001 has approached this Court only under Article 226 of the Constitution of India challenging the order dated 5.12.2002 passed by the Industrial Tribunal accepting the complaint of the workman that during pendency of the Reference of the subject matter, the order of reversion was passed on 6.7.2001, which amounted to gross violation of provision of Section 33(1) (a) of the Industrial Disputes Act, 1947 (hereinafter referred to as the ID Act" for short).

2. The facts in brief, as could be summarized from the narration in the petition deserve to be set out as under:

The respondent workman along with other employees had to raise industrial dispute in respect of regularization of his service on a promotional post of Assistant Traffic Inspector (ATI) as though he joined as a conductor, he came to be promoted as Traffic Controller and thereafter came to be promoted as ATI. This promotion was not being regularized and hence, he along with other similarly situated workmen constrained to raise industrial disputes which was

sent for adjudication, wherein, it was registered as Reference I.T. No. 16 of 2001 in the Industrial Tribunal. During pendency of said Reference, vide order dated 6.7.2001, the workman was reverted on ground that promotion was not regularized one and he was continued till the regular incumbent was available. Therefore, this reversion order in view of the workman amounted to violation of mandatory provisions of Section 33(1)(a) of ID Act, which unequivocally provided for obtaining permission for effecting any change in the condition of the workman on the subject matter of dispute. The workman was therefore constrained to file complaint No. 211 of 2001 being aggrieved on account of his reversal order dated 6.7.2001, which was admittedly passed without obtaining any permission as envisaged u/s 33(1)(a) of the ID Act for effecting change in the service condition. The Tribunal vide order dated 5.12.2002 accepted the complaint and quashed and set aside the order dated 6.7.2001 and ordered restoration of the workman in service as ATI. Being aggrieved and dissatisfied with said order dated 6.7.2001, the present petition is preferred only under Article 226 of the Constitution of India with following relief.

(A) Admit this Special Civil Application (B) Allow this Special Civil Application by issuing a writ of mandamus or any other appropriate writ in the nature of mandamus quashing and setting aside the impugned order passed by learned Judge in Reference of 16 of 2001 in complaint No. 211 of 2001 dated 5.12.2002 annexed at Annexure - A to this petition in the interest of justice. (C) Allow this Special Civil Application by holding that the impugned order dated 5.12.2002 passed by the learned Judge in Reference No. 16 of 001 in complaint No. 211 of 2001 is against the principles of equity and against the principles of natural justice. (D) Pending admission and till final disposal of this Special Civil Application, this Hon"ble Court may be pleased to grant stay as to execution, implementation or order passed by learned Judge in complaint No. 211/2001 in Ref. No. 16 of 2001 decided on 5.12.2002 at Annexure - A to this petition in the interest of justice. (E) Kindly direct the office to place the present matter along with SCA No. (st) 982 of 2003 in the interest of justice. (F) Grant such other and further relief(s) as deemed just and proper in the interest of justice.

3. Learned advocate for the petitioner contended that the adhoc continuation of the workman as ATI did not confer upon the said workman any right to be continued on said post. The workman did not have as per prevalent service rules and regulations any right to be continued on the post as ATI as it is now well settled provisions of law that ad-hoc or stopgap workman are not to be treated as conferring any right whatsoever on the incumbent and therefore, this important aspect has not been considered by the tribunal for upsetting order dated 6.7.2001, where-under, the workman was ordered to be placed on his original post of conductor.

4. Learned advocate for petitioner further contended that provisions of law qua the promotee who has been permitted purely on adhoc basis has no right needs no elaborate submission. The judgment of the Tribunal which is proceeded on the

basis of so called changed in the service condition, therefore, required to be quashed and set aside.

5. Learned advocate for the petitioner further contended that the change which is envisaged u/s 33(1)(a) in service condition is changed in the service condition, which is covered under the provisions of service as well as Section 9 of the ID Act. In the instant case, this change cannot be classified to be a change so as to invoke provisions of Section 33(1)(a) of ID Act. The workman did not have any right to be continued even on the post as workman had not cleared the departmental examination required to be cleared for holding post of ATI or for promotion of ATI.

6. Learned advocate for respondent workman contended that the decision of the Tribunal cannot be considered to be in any way incorrect as the Tribunal was under an obligation to note that the order of reversion amounted to change being brought about by the employer during the pendency of the dispute and as it was the dispute with regard to regularization on the post of ATI and therefore, it was incumbent upon the employer to first obtain permission before bringing about any change in the service or condition on service or status of the employee workman during the pendency of the dispute.

7. Learned advocate for respondent workman further submitted that assuming for the sake of argument without conceding that section 9 of the ID Act could not have been invoked as this change cannot be classified to be a change in the service condition invoked u/s 9 of the Act. Yet section 33(1)(a) of the ID Act in its simplest form also would make it incumbent upon the employer not to disturb the existing condition of the workman during pendency of the dispute, which is at large before the Tribunal and therefore, this amounted to clear breach of Section 33(1)(a) of the ID Act and therefore, the order impugned cannot be sustained.

8. Learned advocate for respondent further submitted that nothing prevented Corporation from obtaining permission. Unfortunately the Corporation did not come forward for permission and bring about change in blatant violation of Section 33(1)(a) of the ID Act and hence order impugned cannot be said to be perverse so as to interfere under Article 226 of the Constitution of India.

9. Heard learned advocates for the parties and perused the order impugned.

10. The Court is of the considered view that this petition is required to be dismissed as it is absolutely merit-less for following reason namely - the provisions of Section 33(1)(a) of the ID Act reads as under:

[33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.-(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,-

(a) in regard to any matter connected with the dispute, alter, to the prejudice of

the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) for any misconduct connected with dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending." The plain reading of Section 33(1)(a) emphatically indicate that the salutary provision and protection enshrined in provision so as to provide the employer for bringing about any change, which might effect the existing condition of the workman in subject matter of the dispute. Admittedly, the fact is that the petitioner did not care to obtain written permission before terminating and effecting the order of reversion dated 6.7.2001. The submission with regard to workman's right to be continued on ad-hoc basis dispute, he being not eligible to continue, was not the subject matter of consideration before the Tribunal nor could same be matter of consideration by this Court under Article 226 of the Constitution of India or else it would amount to condoning the willful breach of statutory provisions at the end of petitioner and therefore, same cannot be exercised under Article 226 of the Constitution of India.

11. The petitioner has chosen to file this petition under Article 226 of the Constitution of India and sought the relief which have been stated hereinabove. The Court under Article 226 of the Constitution of India is to examine as to whether the order passed by the Tribunal is in any way unjust, improper or has resulted into miscarriage of justice or has been so perverse as to persuade this Court for issuance of appropriate writ including writ of certiorari. The answer would be emphatic "NO" as the petitioner has deliberately and willfully violated the statutory condition and the petitioner cannot be permitted to maintain the petition on the ground that action which is required to be approved by the authority was otherwise justified in eye of law. The court hastened to add here that the Court did not opine upon the legality of the order dated 6.7.2001 per-se but implementation and operation of this order was required to be preceded by the approval and permission from the court before which the reference of the said matter was large. Therefore, in my view, the order impugned cannot be said to be in any manner illegal call for any interference by this Court.

12. The petition being bereft of merits, deserves dismissal and is accordingly dismissed with costs. Rule discharged. Interim relief granted earlier is discharged. At this stage, learned advocate for the petitioner submits that Court may observe that the Industrial Court may not influence by the observations made by this court in this order. It goes without saying that this Court has passed the aforesaid order and observations in light of the admitted fact that there was no permission obtained by the employer before implementing the order and therefore, this observations are confined to that effect only and naturally, aforesaid observations would not affect the pendency of the issue before the Industrial Tribunal.