
(1999) 10 GUJ CK 0056

In the Gujarat High Court

Case No : Special Civil Application No. 2464 of 1989

Gujarat State Road Transport Corporation, Valsad

APPELLANT

Vs

Bhanabhai B. Patel

RESPONDENT

Date of Decision : 15-10-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(C)(2)

Citation : (2000) 2 GLR 1358

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Hardik C. Raval, for the Appellant; J.R. Nanavati, for the Respondent

Judgement

H.K. Rathod, J.—Mr. Raval, the learned Advocate is present for the petitioner-Corporation. Mr. J. R. Nanavati, the learned Advocate is

appearing for the respondent-workman. The facts of the present petition are that the respondent was working in the workshop in the Valsad

Division as Head Mechanic. The respondent was initially working in the then Great Eastern Transport Co. as a Body Fitter and thereafter, as the

said company came to be closed on 1.4.1953, he was appointed in the services of the petitioner-Corporation as Art Body Fitter on 1.8.1973. On

1.8.1973, he was promoted to the post of Head Mechanic and the respondent reached the age of 58 years in accordance with the rules of the

Corporation on 30.8.1978, the respondent retired from the service of the Corporation. The respondent feeling aggrieved by the said order of

retirement from the petitioner-Corporation and on his belief that he has a right to continue in the service of the petitioner-Corporation till upto

30.4.1980 till he attain the age of 60 years, he made complaint before the conciliation officer. As no conciliation could be arrived at in the said

proceedings, the conciliation officer made failure report to the Labour Commissioner on 15.11.1980. The Government had not referred the dispute

before the Labour Court as it did not find merit and against this inaction, the respondent had not taken up any legal proceedings whatsoever but

instead, he straightway filed Recovery Application No. 156 of 1984 before the Labour Court u/s 33(C)(2) of the Industrial Disputes Act, 1947.

2. After appreciating the evidence on record, the Labour Court, under its judgment and award dated 13.1.1989, held that the respondent was

entitled to remain in service upto the age of 60 years as he was absorbed from the private transport operator and according to the policy of the

Corporation, the respondent is entitled to continue and remain in service upto the age of sixty years and, therefore, the Labour Court has set aside

the order of retirement and directed the petitioner-Corporation to treat the respondent-workman in service upto 30.4.1980 and pay all wages and

service benefits for the said period.

3. Said judgment and award passed by the Labour Court has been impugned by the petitioner in this petition under Art. 226 and/or 227 of the

Constitution of India. While admitting this petition, this Court has granted interim relief as prayed for.

4. The learned Advocate appearing for the petitioner has raised the contention that the Labour Court has no jurisdiction to decide a new right or to

adjudicate the dispute while exercising the powers u/s 33(C)(2) of the I.D. Act. The Labour Court while exercising the powers u/s 33(C)(2) of the

Act, being the executing Court, has no power and/or authority to adjudicate the dispute and decide the legality of any order passed by the

petitioner-Corporation and, therefore, the order impugned in this petition is an order as passed without jurisdiction and is beyond the scope and

ambit of S. 33(C)(2) of the Act. The learned Advocate appearing for the respondent workman has also raised contention that it was the policy of

the Corporation to retire an employee who has been absorbed from private transport operators at the age of sixty years and according to the said

policy, the respondent-workman is entitled to remain in service upto the age of sixty years and, therefore, this Court should not interfere with the

order of the Labour Court.

5. After considering the submissions made from both the sides, according to my

view, the law is quite settled that in a recovery proceedings, the Labour Court has no power or authority to decide or adjudicate any dispute between the parties while exercising the powers u/s 33(C)(2) of the I.D. Act. Before the Labour Court, the workman must prove pre-existing right for getting due amounts from the employer. After considering the award in question, the Labour Court has gone into the merits of the matter and has come to the conclusion that the respondent is entitled to remain and continue in service of the petitioner-Corporation upto the age of sixty years and, based on such conclusion, the labour court has set aside the order passed by the petitioner-Corporation. Said exercise of the Labour Court is without jurisdiction and the same cannot be done by the Labour Court while exercising the powers u/s 33(C)(2) of the I.D. Act.

6. The law which has been decided by the Hon''ble Apex Court in case of Municipal Corporation of Delhi v. Ganesh Razak, reported in 1995 I

CLR 170 wherein it was held that this decision itself indicates that the power of the Labour Court u/s 33(C)(2) extends to interpretation of the

award or settlement on which the workmen's right rests like executing Court's power to interpret the decision for the purpose of execution where

the basis of the claim is referable to the award or settlement but it does not extend to determine a dispute or entitlement or the basis of the claim, if,

there be no prior adjudication or recognition of the same by the employer. In paragraph 12 of the said judgment, it has been further held that the

Labour Court has no jurisdiction to first decide the entitlement of the workmen and then to proceed to compute the benefit so adjudicated on that

basis in exercise of its powers u/s 33(C)(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer

and, thereafter, for the purpose of implementation, execution or enforcement thereof, the Labour Court has power u/s 33(C)(2) like that of

executing Court's power to interpret decree for the purpose of its execution. In course of such exercise, the Labour Court may interpret the basis

of the claim made by the workman. However, it has no power or jurisdiction to consider and adjudicate whether the workman is entitled to such

benefit. Similarly, recently, in case of Tara and Others Vs. Director, Social Welfare and Others, , the case of Municipal Corporation, Delhi (supra)

has been considered. Recently, this Court has also considered the case of

Municipal Corporation, Delhi (supra) in the decision reported in 1998 II CLR 327 (Naranji Peraji Transport Co. v. Ramnikbhai B. Waghela).

7. In view of these facts, the view taken by the Labour Court in deciding the status of the respondent being an employee of private operator or not

and whether he is entitled to remain in service upto the age of 60 years cannot be permitted u/s 33(C)(2) of the Act and, therefore, according to

my opinion, the Labour Court has erred in law in deciding the question and also in adjudicating the process while determining the question whether

the respondent is entitled to the benefit of remaining in service upto the age of sixty years being an employee of the private transport operator. The

Labour Court ought not to have adjudicated the entitlement of the respondent in the proceedings under S. 33(C)(2) of the Act and, therefore, the

Labour Court has committed gross error which is apparent on the face of the record calling for interference of this Court in exercise of the powers

under Art. 226 and/or 227 of the Constitution of India.

8. This petition is allowed. The impugned order of the Labour Court passed in Recovery Application No. 156 of 1984 dated 13.1.1989 is hereby

quashed and set aside. Rule is made absolute with no order as to costs.

9. Since this is an old matter, in the larger interest of justice, it is clarified that if the respondent-workman having any legal right which is required to

be adjudicated, then, it will be open for the respondent-workman to raise industrial dispute before the appropriate forum in accordance with law

and in such event, the appropriate forum shall decide the same in accordance with law without raising question of delay in raising such dispute.

10. Petition allowed.