

(2011) 09 GUJ CK 0137
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1994 of 2004 In Special Civil Application
No. 7355 of 2004

Mahendrkumar Ravjibhai Rathod

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 09 GUJ CK 0137

Hon'ble Judges : V.M. Sahai, J;K.S. Jhaveri, J

Bench : Division Bench

Advocate : Kishor M. Paul, for the Appellant; N.J. Shah, AGP, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Sahai, J.—We have heard Mr. Kishor M. Paul, learned Counsel for the Appellant and Mr. N.J. Shah, learned Assistant Government Pleader for Respondent.

2. By way of this Intra-Court Letters Patent Appeal, the Appellant - original Petitioner has challenged the judgment and order dated 29.06.2004 passed by the Learned Single Judge in Special Civil Application No. 7355 of 2004 by which the Learned Single Judge has dismissed the writ petition by holding that the Appellant has alternative efficacious remedy of raising Industrial Dispute.

3. The Appellant was appointed as peon on 01.09.1986. He was terminated by order dated 18.04.1988. The Appellant challenged the said order by filing Reference (LCR) No. 265 of 1990 before the Labour Court, Rajkot. The Labour Court vide award dated 10.04.2011 allowed the reference and granted reinstatement with 100% back wages. The Respondent challenged the said order by preferring writ petition being Special Civil Application No. 8912 of 2001. The Learned Single Judge disposed of the writ petition on 16.01.2003 with a direction to the Respondent to deposit Rs. 7,500/-and the matter was remanded back to

the Labour Court, Rajkot.

3.1. Thereafter, the Labour Court passed award dated 15.12.2003 and held that the Appellant is entitled for reinstatement with continuity of service and 50% back wages. In pursuance of the said award, the Appellant was reinstated on 04.05.2004. On 01.06.2004, the Respondent issued cheque of Rs. 37,700/- in favour of Appellant towards back wages. Thereafter, the services of the Appellant were terminated vide order dated 09.06.2004. The Appellant challenged the said termination order by preferring Special Civil Application No. 7355 of 2004. The Learned Single Judge vide impugned judgment and order dated 29.06.2004 dismissed the said writ petition.

4. Learned Counsel for the Appellant has placed reliance on the decision of the Hon'ble Supreme Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, and has urged that alternative remedy is not a constitutional bar to High Court's jurisdiction but is a self-imposed restriction.

It is No. doubt true that alternative remedy is No. bar, but where there are disputed questions of fact involved, in such a situation, the finding of fact cannot be recorded by the High Court and it has to be recorded by some other Court or Tribunal.

4.1. Learned Counsel for the Appellant has further placed reliance on another decision of the Apex Court in the case of Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, and on the strength of this judgment, he urged that where the question of bread and butter of the workman is involved, in such cases, alternative remedy would not be a bar.

We have carefully gone through this judgment. It does not lay down the proposition that in such cases, the Court should itself record a finding of fact after considering the entire evidence and take statement of witnesses etc. The proposition laid down by the Apex Court is not disputed, but the principles are not applicable to the facts of the instant case.

4.2. Learned Counsel for the Appellant has further placed reliance on the decision of the Apex Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, wherein the Apex Court in paragraph 21 has held that mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found.

This decision also does not lay down the proposition that alternative remedy is to be surpassed and finding of fact should be recorded by High Court under Article 226 of the Constitution of India.

5. We have gone through the impugned order of the Learned Single Judge. The Learned Single Judge has specifically observed that there are large number of disputed questions of fact involved in the petition and therefore the writ petition would not be a proper remedy. Hence, while holding that the Appellant has

alternative efficacious remedy of raising Industrial Dispute, the Learned Single Judge has dismissed the writ petition. It is No. doubt true that alternative remedy is No. bar, but where there are disputed questions of fact involved, in such a situation, the finding of fact cannot be recorded by the High Court and it has to be recorded by some other Court or Tribunal.

6. For the aforesaid reasons, we do not find any illegality in the impugned judgment of the Learned Single Judge. This appeal is devoid of any merit and is accordingly dismissed.