

(2011) 03 GUJ CK 0130

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1198 of 2009 in Special Civil Application No. 7819 of 2008

Manager, Naaz Cinema

APPELLANT

Vs

Vasantben Rameshbhai Ghumadiya

RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, 34, 47
Constitution of India, 1950 — Article 14, 226, 227, 32
Industrial Disputes Act, 1947 — Section 2(rr), 33(C)(1) , 33(C)(2) , 39

Citation : (2011) 130 FLR 895 : (2011) 2 GLH 523

Hon'ble Judges : S.J. Mukhopadhaya, C.J.;J.B. Pardiwala, J

Bench : Division Bench

Advocate : J.V. Japee, for the Appellant;

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—The Appellant original Petitioner by way of this appeal under Clause 15 of the Letters Patent calls in question the legality, validity and propriety of the order passed by the learned Single Judge dated 18th June 2008 in Special Civil Application No. 7819 of 2008 wherein the learned Single Judge has dismissed the petition filed by the Appellant challenging the award passed by the Labour Court, Nadiad dated 4th December 2007 under the Industrial Disputes Act, 1947.

2. The brief facts relevant for the purpose of deciding this appeal can be summarised as under:

3. The Appellant - original Petitioner is engaged in the business of running a cinema known as Naaz Cinema in Kheda Town, Taluka Mehmdavad, District Kheda. The deceased husband of the Respondent raised an industrial dispute against the Appellant as his services were illegally terminated with effect from 1st May 1983. The deceased workman prayed for reinstatement to his original post with continuity of service and full back-wages. The industrial dispute was

referred to the Labour Court, Nadiad vide Reference (LCN) No. 1080 of 1983. On 15th June 1998 the Labour Court, Nadiad passed an award directing reinstatement of the deceased workman to his original post with continuity of service and 75% of the back-wages from the date of termination till 16th June 1992. The deceased workman preferred Recovery Application No. 385 of 1999 u/s 33C(1) of the Industrial Disputes Act, 1947 ("I.D. Act", for short) to recover an amount of Rs. 68,885.93 with 18% interest towards outstanding dues of the back-wages, bonus, gratuity and leave encashment. It appears from the record that during the pendency of Recovery Application No. 385 of 1999 deceased workman preferred Payment of Wages Application No. 13 of 1999 before the Payment of Wages Authority in respect of the same claim. The record reveals that Recovery Application No. 395 of 1999 was rejected for non prosecution on 14th February 2002 and 11th September 2006 the Payment of Wages Authority rejected the Application No. 13 of 1999 on the ground that the application was not maintainable for the claims made by the deceased workman for the recovery of the amount as per the award. A fresh Recovery Application No. 80 of 2006 was filed before the Labour Court, Nadiad u/s 33C(1) of the Act claiming the outstanding back-wages of Rs. 39,486.03 and leave encashment amount of Rs. 1,920.00 along with 18% interest.

4. The Labour Court, Nadiad vide order dated 4.12.2007 allowed the Recovery Application holding that the Respondent was entitled to get an amount of Rs. 1,26,863 as claimed in the Recovery Application and interest of Rs. 1,06,567 with costs of Rs. 300/-.

5. It is this order dated 4.12.2007 passed by the Labour Court, Nadiad allowing Recovery Application No. 80 of 2006 u/s 33C(1) of the Act which was made subject matter of challenge before the learned Single Judge by way of Special Civil Application No. 7819 of 2008.

6. It deserves to be noted that what was challenged by the Appellant - original Petitioner is the order passed by the Labour Court, Nadiad in Recovery Application based on the substantial award passed by the Labour Court way back on 16th June 1998. At no point of time the said award was challenged by the Appellant-original Petitioner. Even as on today it remains unchallenged. It is only because of requisite amount as ordered to be paid by way of award was not paid that the Respondent had to prefer recovery applications. While adjudicating the recovery application the Labour Court functions substantially as an executing court. We take notice of the fact that from 1983 onwards this litigation is being pursued by the Appellant and the workman without reaping the fruits of award passed by the labour court. Even after the death of the workman, they did not spare the helpless widow and continued with the litigation. The record reveals that she has been made to run from pillar to post. We also take notice of the fact that she has not been able to appear before us though served and the reason appears to be quite obvious. A poor widow would not be able to meet with the expenses which she would have incurred if she appears by engaging a

lawyer. In this background, we now consider as to whether the learned Single Judge has rightly rejected the petition or not.

7. Before the learned Single Judge the Appellant-original Petitioner put forward three principal contentions. They are as under: The Labour Court being an executing court has no jurisdiction to grant interest.

8. The Labour Court has not condoned the delay as no prayer is made by the workman though the application filed u/s 33C(1) of the ID Act was filed after a period of one year.

9. Leave encashment claimed by the workman in recovery application was covered by the third schedule and not second schedule and therefore the labour court has no jurisdiction to grant such amount.

10. Having gone through the exhaustive judgment delivered by the learned Single Judge on all three counts, we are of the opinion that the learned Single Judge has not committed any error, much less an error of law which would warrant interference in this appeal under Clause 15 of the Letters Patent.

11. So far as the first contention as regards interest is concerned, learned Counsel for the Appellant - original Petitioner has relied upon the judgment of the Apex Court in the matter of Punjab State and Others Vs. Harvinder Singh, He has relied upon this judgment to make good his contention that the executing court does not have power to award interest if not mentioned in the decree. We take notice of the fact that in this judgment the Apex Court was dealing with Sections 47 and 34 and Order 21 Rule 1 of the CPC Code. This judgment would not be of any help to the Appellant and would not be applicable to the provisions of Industrial Disputes Act, 1947. The learned Single Judge, therefore, rightly negated this contention by holding that the provisions of Order 21 of the CPC are not applicable to the proceedings of the Labour Court. The learned Single Judge in paragraph 30 of the judgment has held as under:

30. ... Accordingly, that application was rejected on 11th September 2006 by the Payment of Wages Authority. Thereafter, a recovery application No. 80 of 2006 was filed by Respondent workman on 16th October 2006. The Labour Court has granted 75% back wages for the period from 1st May 1983 to 16th September 1994. The date of award is 15th June 1998. The due and undisputed amount is not paid by employer without any valid justification for a period of 9 years and 4 months. Therefore, this much amount is utilized by employer or earned the interest, then, on the principles of restitution, Labour Court has rightly exercised equitable jurisdiction in granting interest in favour of Respondent workman. The Labour Court has jurisdiction u/s 33C to decide, if any question arise as to the amount of money due or being an incidental power or ancillary power which give an equitable jurisdiction to Labour Court in case of unnecessary delayed in due payment without justification, then, Labour Court can grant interest upon such amount. The Labour Court is having wide power if satisfied that due and undisputed amount of the workman withheld by employer without justification,

then, Labour Court has certainly power to grant interest upon due amount.

12. We are in complete agreement with the view which has been taken by the learned Single Judge and which is in consonance with the objects of social welfare legislation like ID Act. We are of the opinion that while answering this issue as regards awarding of interest the learned Single Judge has kept in mind that that Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in mind the goals set out in the preamble of the Constitution and the provisions contained in Part-IV thereof in general and Articles 38, 39(a), 43, 43A in particular which mandate that the State should secure a social order for the promotion of the welfare of the people, ensure equality between men and women, equitable distribution of material resources of the community to sub serve the common good and also ensure that the workers get their dues.

13. As regards the second contention that the application was filed after a period of one year and that too without any prayer for condonation of delay and without condoning the delay the labour court ought not to have adjudicated the application u/s 33C(1) of the I.D. Act, the learned Single Judge has taken the view that in preferring an application u/s 33C(2) of the Act no limitation has been prescribed by the statute. In the absence of any statutory provisions providing for limitation for making an application of the u/s 33C(2) of the ID Act, the application of the workman cannot be said to be time-barred. On this ground also we are in complete agreement with the finding recorded by the learned Single Judge.

14. As regards third contention that the leave encashment claimed and awarded in recovery application is governed by the third Schedule and not by the Second Schedule and therefore the Labour Court has no jurisdiction to grant such amount is also devoid of any merits. The learned Single Judge has taken into consideration the two notifications issued by the Labour and Employment Department dated 21st April 1982. Firstly, while answering this contention, the learned Single Judge took notice of the fact that this contention was never raised by the original Petitioner before the Labour Court and the learned Single Judge has also found that the said contention is not even taken in the memo of the petition also. However, the learned Single Judge took pains to consider this contention and ultimately has held that two notifications which have been referred in the judgment of the learned Single Judge at page 27 and 28 is a clear answer to the contention of the Appellant that from 1982 onwards the power has been delegated to the Labour Court upon appropriate Government while exercising the power u/s 39 of the Industrial Disputes Act, 1947. The learned Single Judge has further held that considering the definite definition of wages where except bonus and contribution paid or payable to the pension fund or provident fund or for the benefit of the workman for the time being in force and amount of gratuity is not included in the definition payment, but except that all kinds of allowances and service benefits including traveling concession and

commissions are covered by the definition of wages given in Section 2(rr) of the I.D. Act, 1947 meaning thereby all kinds of remuneration being covered in definition of wages which includes a benefit of leave encashment and therefore the workman was justified in claiming it as part of back-wages.

15. We are in complete agreement with the findings recorded by the learned Single Judge on all counts. As a matter of fact, we deem it fit and proper to state in our judgment the message of the Supreme Court while dealing with the matter under the Industrial Disputes Act, 1947 and other similar legislative instruments, which are social welfare legislations. In a recent pronouncement of the Supreme Court in the matter of Harjinder Singh Vs. Punjab State Warehousing Corporation, the Honorable Supreme Court in paragraphs 17, 18, 19, 26, 27, 28 and 29 has held as under:

17. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to sub serve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J., opined that "the concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State" - The State of Mysore Vs. The Workers of Gold Mines,

18. In Y.A. Mamarde and Nine Ors. and Ghanshyam and Others Vs. Authority under the Minimum Wages Act (Small Causes Court) Nagpur and Another, this Court, while interpreting the provisions of Minimum Wages Act, 1948, observed:

The anxiety on the part of the society for improving the general economic condition of some of its less favoured members appears to be in super session of the old principle of absolute freedom of contract and the doctrine of laissez faire and in recognition of the new principles of social welfare and common good. Prior to our Constitution this principle was advocated by the movement for liberal employment in civilised countries and the Act which is a pre-constitution measure was the offspring of that movement. Under our present Constitution the State is now expressly directed to endeavour to secure to all workers (whether agricultural, industrial or otherwise) not only bare physical subsistence but a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure. This Directive Principle of State Policy being conducive to the general interest of the nation as a whole, merely lays down the foundation for appropriate social structure in which the labour will find its place of dignity,

legitimately due to it in lieu of its contribution to the progress of national economic prosperity.

19. The preamble and various Articles contained in Part IV of the Constitution promote social justice so that life of every individual becomes meaningful and he is able to live with human dignity. The concept of social justice engrafted in the Constitution consists of diverse principles essentially for the orderly growth and development of personality of every citizen. Social justice is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic devise to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation of every section of the society. In a developing society like ours which is full of unbridgeable and ever widening gaps of inequality in status and of opportunity, law is a catalyst to reach the ladder of justice. The philosophy of welfare State and social justice is amply reflected in large number of judgments of this Court, various High Courts, National and State Industrial Tribunals involving interpretation of the provisions of the Industrial Disputes Act, Indian Factories Act, Payment of Wages Act, Minimum Wages Act, Payment of Bonus Act, Workmen's Compensation Act, the Employees' State Insurance Act, the Employees' Provident Funds and Miscellaneous Provisions Act and the Shops and Commercial Establishments Act enacted by different States.

26. Judges of the last Court in the largest democracy of the world have a duty and the basic duty is to articulate the Constitutional goal which has found such an eloquent utterance in the Preamble. If we look at our Preamble, which has been recognised, a part of the His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, we can discern that as divided in three parts. The first part is a declaration whereby people of India adopted and gave to themselves the Constitution. The second part is a resolution whereby people of India solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic. However, the most vital part is the promise and the promise is to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

And to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

(See Justice R.C. Lahoti, Preamble - The Spirit and backbone of the Constitution of India, Anundoram Barooah Law Lectures, Seventh Series, Eastern Book Company, 2004, at p. 3).

27. Judges and specially the Judges of the highest Court have a vital role to ensure that the promise is fulfilled. If the Judges fail to discharge their duty in making an effort to make the Preambular promise a reality, they fail to uphold and abide by the Constitution which is their oath of office. In my humble opinion, this has to be put as high as that and should be equated with the conscience of this Court."

28. As early as in 1956, in a Constitution Bench judgment dealing with an Article 32 petition, Justice Vivian Bose, while interpreting the Article 14 of the Constitution, posed the following question:

After all, for whose benefit was the Constitution enacted?

Bidi Supply Co. Vs. The Union of India (UOI) and Others,

29. Having posed the. question, the Learned Judge answered the same in his inimitable words and which I may quote:

I am clear that the Constitution is not for the exclusive benefit of Governments and States; it is not only for lawyers and politicians and officials and those highly placed. It also exists for the common man, for the poor and the humble, for those who have businesses at stake, for the "butcher, the baker and the candlestick maker". It lays down for this land a "rule of law" as understood in the free democracies of the world. It constitutes India into a Sovereign Democratic Republic and guarantees in every page rights and freedom to the individual side by side and consistent with the overriding "power of the State to act for the common good of all. (Ibid, Emphasis supplied)

16. For the reasons recorded above and more particularly keeping in mind that this Court has a duty to interpret statutes with social welfare benefits in such a way as to further the statutory goal, the appeal deserves to be dismissed. The same is hereby dismissed with costs of Rs. 10,000/- imposed upon the Appellant - original Petitioner to be paid to the widow of the deceased workman i.e. Respondent herein either by cash or by cheque and produce the receipt of the same with the Registry of this Court within a period of 15 days from today.