

(2011) 04 GUJ CK 0081
In the Gujarat High Court

Case No : Letters Patent Appeal No. 581 of 2011 in Special Civil Application No. 610 of 2009, Civil Application No. 4225 of 2011 in Letters Patent Appeal No. 581 of 2011, Letters Patent Appeal No. 582 of 2011 in Special Civil Application No. 2939 of 2009, Civil App

Nadiad Nagarpalika

APPELLANT

Vs

Arvindbhai I. Goswami and Others

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 19, 19(2), 19(6)

Citation : (2011) 04 GUJ CK 0081

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : Mehul Sharad Shah, for LPA Nos. 581, 582, 634, 635, 636 and 637 of 2011, for the Appellant; Ashish H. Shah and D.G. Chauhan, for the Respondent

Final Decision : Dismissed

Judgement

V. M. Sahai, J.—We have heard Mr. Mehul Sharad Shah, learned Counsel appearing for the Appellants and Mr. D.G. Chauhan, learned Counsel appearing for the Respondents. These intra-court Letters Patent Appeals have been filed challenging the order of learned Single Judge dated 18th August, 2010 passed in Special Civil Application No. 21865 of 2007 connected with other five Special Civil Applications.

2. Brief facts are that Respondents had claimed the amount of gratuity on the basis of the Award passed by the Industrial Tribunal in Reference (IT) No. 174 of 1974. The employees of the Appellants raised general demands which were referred in the aforesaid Reference. A settlement was arrived at between the parties on 17th February, 1974 and in pursuance of the settlement arrived at between the parties, an Award was pronounced by the Industrial Tribunal on 18th February, 1975. It appears that by the Award, the employees of the Appellant municipality were to be paid gratuity being one month's pay for each

completed years of service subject to maximum 25 months salary. Thereafter, the employees of the Appellant Municipality again raised demands which were referred to the Industrial Tribunal being Reference (IT) No. 200 of 1977. In this Reference also, settlement was arrived at between the parties on 9.3.1978. On that basis, the Industrial Tribunal passed the Award on 13.3.1978. As per this Award, the Appellant Municipality had agreed to adopt the pay scales as per Desai Pay Commission.

3. The contention of the Appellant Municipality is that they have terminated the said both the Awards on 4th December, 2003 by giving notice to the Union showing their intention to terminate the settlement and Award. The argument of the learned Counsel appearing for the Appellant is that since the notice for termination of settlement and Award has been given, the Award is no more in existence and the gratuity could not be paid to the Respondents in pursuance of the earlier Awards. The learned Counsel appearing for the Appellant has urged that pursuant to the application made by the Municipality to the Government to refer the matter to appropriate Government, the Reference was not made as in spite of the notice, the Respondents were not present. This question cannot be raised by the Appellants before us as it was not raised before the learned Single Judge. There were no pleadings before the learned Single Judge and there was no material found before the learned Single Judge and for the first time, this material has been found in these Appeals. It has been repeatedly held by the Apex Court and in case of *Rajasthan Pradesh Vaidya Samiti v. Union of India* (2010) 12 SCC 609 and more particularly in para-15 that in the writ petition or counter affidavit, not only the facts but also evidence in proof of those facts has to be pleaded and annexed to it. In the present case, there was no foundation laid in the counter affidavit and no material was annexed by the Municipality. Therefore, the learned Single Judge was not in a position to appreciate the argument of the learned Counsel for the Appellant in absence of any material. The material has been filed for the first time in this Appeal and it cannot be considered as it was not placed before the learned Single Judge. The Appellants had not filed any review petition before the learned Single Judge, that any material was ignored by the learned Single Judge and which could not be considered by him. For the aforesaid reasons, we do not find any reason to accept the argument of the learned Counsel for the Appellant.

4. On the other hand, the learned Counsel appearing for the Respondents urged that the Awards are still in existence and the Appellant Municipality could not unilaterally modify or terminate them.

5 The learned Counsel appearing for the Appellant has placed reliance on the decisions of this Court in *Gujarat State Road Transport Corporation Vs. Karsan Meghji Dabhi*, and in *Master Silk Mills Private Ltd. vs. Ibrahim Habib*, reported in 2000(2) GLH 388 . We have gone through these decisions. These decisions do not deal with the scope of Section 19 of the Act. Therefore, they are not applicable to the facts of the instant case. The learned Counsel for the

Respondents has placed reliance on the decision of Apex Court in Gujarat Agricultural University Vs. All Gujarat Kamdar Karmachari Union, wherein in paragraphs 19 and 20, the Apex Court has held as under:

19. The question now to be considered is whether the settlement dated August 22, 1980, became inoperative on expiry of its tenure for which a notice was given by Banaskantha General Workers Union. The answer has to be in the negative. In the case of Life Insurance Corporation of India Vs. D.J. Bahadur and Others, this Court held:

34. The core question that first falls for consideration is as to whether the Settlements of 1974 are still in force. There are three stages or phases with different legal effects in the life of an award or settlement. There is a specific, period contractually or statutorily fixed as the period of operation. Thereafter, the award or settlement does not become non east but continues to be binding. This is the second chapter of legal efficacy but qualitatively different as we will presently show. Then comes the last phase. If notice of intention to terminate is given u/s 19(2) or 19(6) then the third stage opens where the award or the settlement does survive and is in force between the parties as a contract which has superseded the earlier contract and subsists until a new award or negotiated settlement takes its place. Like nature, law abhors a vacuum and even on the notice of termination u/s 19(2) or (6) the sequence and consequence cannot be just void but a continuance of the earlier terms, but with liberty to both sides to raise disputes, negotiate settlements or seek a reference and award. Until such a new contract or award replaces the previous one, the former settlement or award will regulate the relations between the parties. Such is the understanding of industrial law at least for 30 years as precedents of the High Court and of this Court bear testimony. To hold to the contrary is to invite industrial chaos by an interpretation of the ID Act whose primary purpose is to obviate such a situation and to provide for industrial peace. To distil from the provisions of Section 19, a conclusion diametrically opposite of the objective, intendment and effect of the section is an interpretative stultification of the statutory ethos and purpose. Industrial law frowns upon a lawless void and under general law the contract of service created by an award or settlement lives so long as a new lawful contract is brought into being. To argue otherwise is to frustrate the rule of law. If law is a means to an end-order in society-can it commit functional harakiri by leaving a conflict situation to lawless void ?

20. It is an admitted position that no new settlement has been entered between the employer and the workmen subsequently nor any award has replaced the settlement dated August 22, 1980. In this view of the matter, it has to be held that the settlement dated August 22, 1980 continues to regulate the conditions of service of the workmen covered thereby. The contract of service or the conditions of service provided in the settlement holds the field until new lawful settlement is brought into being. As a matter of fact, the employer was well aware of this legal position and, therefore, the daily rated laborers governed by

the settlement were continued to be given only a day off in a week until the change was effected vide circular dated October 3, 1991. Thus, the Industrial Tribunal as well as the High Court cannot be said to have erred in relying upon the settlement dated August 22, 1980.

6. It is not disputed by the learned Counsel for the Appellant Municipality that they have granted 25 months' gratuity to other similar situated employees up to the year 2003. However, the decision of the Apex Court clinches the issue in favor of the Respondents. However, we are of the considered view that the learned Single Judge has not committed any error in allowing the writ petition for the reason that the orders passed by the Gratuity Authority as well as the Appellate Authority were illegal and required to be quashed and set aside and the Respondents were entitled to get benefit of the Awards passed in Reference (IT) No. 174 of 1974 and Reference (IT) No. 200 of 1977. We do not find any merit in these Appeals. These Appeals fail and are dismissed. Civil Applications in the respective Appeals are also dismissed.