

(2014) 09 GUJ CK 0106
In the Gujarat High Court

Case No : Letters Patent Appeal No. 407 of 2011

Narendrakumar Shankerlal Chavda

APPELLANT

Vs

Bhavnagar Municipal Corporation

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 145 FLR 654 : (2014) LabIC 4219 : (2015) 1 LLJ 536

Hon'ble Judges : Jayant M. Patel, J;C.L. Soni, J

Bench : Division Bench

Advocate : Y.V. Shah, Advocate for the Appellant; H.S. Munshaw, Advocate for the Respondent

Judgement

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Jayant M. Patel, J.—The present appeal is directed against the order dated 22.07.2010 passed by the Learned single Judge of this Court in Special Civil Application No. 5915 of 1997, whereby, the learned single Judge has dismissed the petition against the award passed by the labour Court. We have heard learned advocate Mr. Shah for the petitioner.

2. It is undisputed position that the main Special Civil Application was preferred by the petitioner challenging the award passed by the labour Court. Further, the petitioner had raised the dispute under the Industrial Disputes Act (hereinafter referred to as "the Act") and had invoked the jurisdiction of the authority and subsequently of the Court and therefore, it was not a matter where the labour Court passed the award without jurisdiction.

3. The perusal of the contention raised and the reasons recorded by the learned single Judge shows that labour Court had recorded the finding that the petitioner did not complete 240 days and the learned single Judge found that the petitioner had not proved that he has completed 240 days of service and therefore, the learned single Judge did not interfere with the award passed by the labour Court

and dismissed the petition. No direction has been issued of any type which may lead the Court to consider that the order passed by the learned single Judge is originated for the first time in exercise of powers under Article 226 of the Constitution of India. Under the circumstances, the petition was essentially under Article 227 of the Constitution and learned single Judge did consider the matter by exercising powers under Article 227 of the Constitution of India.

4. The aforesaid is coupled with the aspect that the labour Court was not impleaded as the party respondent and therefore, even otherwise also, it could not be said that the petitioner intended to invoke the jurisdiction of this Court for the writ of certiorari.

5. At this stage, learned advocate Mr. Shah, learned counsel for the petitioner, attempted to contend that the appellant may be permitted to join labour Court as party in the present proceedings, so that he can maintain his appeal.

6. We are afraid such contention can be accepted in view of the decision of the larger Bench of this Court in case of Gujarat State Road Transport Corporation Vs. Firoze M. Mogal and 1 Another, . In the said decision, the larger Bench of this Court has observed in para No. 244 as under:

"244. At this stage, it may not be out of place to state that many times the Tribunal may not have been impleaded in the main writ application, but for the first time in the Letters Patent Appeal, the Tribunal is joined as a party respondent. We are of the opinion that by impleading the Tribunal as a party respondent for the first time in the Letters Patent Appeal, the nature or the character of the proceedings before the learned single Judge would not change. If the Tribunal was not made a party respondent in the main petition then the learned single Judge is left with no other option but to treat it not as a writ application under Article 226 of the Constitution but just a simple petition under Article 227 of the Constitution. Once, the learned single Judge treats the petition as one under Article 227 of the Constitution and decides the same in exercise of its supervisory jurisdiction then no appeal would lie under Clause 15 of the Letters Patent even if the Letters Patent Bench has permitted the appellant to join the Tribunal for the first time in appeal. We are of the firm opinion that the Letters Patent Bench should not permit the Tribunal to be impleaded for the first time in appeal."

7. Concluding observations in para 254(x) reads as under:

"254(x) If the Special Civil Application is described as one not only under Article 226 of the Constitution, but also under Article 227 of the Constitution of India and the Court or the Tribunal whose order is sought to be quashed, is not made a party, the application is not maintainable as one for the relief of certiorari in the absence of the concerned Tribunal or Court as party, but the same may be treated as one under Article 227 of the Constitution of India. If the Court or Tribunal is not impleaded as a party respondent in the main petition, then by merely impleading such court or tribunal for the first time in the Letters Patent

Appeal will not change the nature and character of the proceedings before the learned single Judge. By merely impleading such a Court or Tribunal for the first time in the LPA, the appeal could not be said to be maintainable, if the proceedings before the learned single Judge remained in the nature of supervisory proceedings under Article 227 of the Constitution."

If the facts of this case are considered in light of the aforesaid judgment of larger Bench of this Court, it can be said that if exercise of powers was under Article 227 of the Constitution of India, the appeal under Clause 15 of the Letters Patent Appeal cannot be entertained. Hence, the present appeal is disposed of as not maintainable. Considering the facts and circumstances, no order as to costs.