
(2010) 03 GUJ CK 0005

In the Gujarat High Court

Case No : Special Civil Application No. 11741 of 2000

President, Sanand Municipality

APPELLANT

Vs

Vaghela Babubhai Samabhai

RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

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

Citation : (2010) 127 FLR 937

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Prakash K. Jani, for the Appellant; G.K. Rathad, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.

1.The short facts of the case appears to be that the petitioner is the President of the Sanand Municipality and the respondent-workman appears was engaged by Sheth C.K. High School for cleaning of the school as sweeper. As per the petitioner Municipality, the expenses of the school are being maintained from the grant provided by the Government and as per the school record, the respondent was engaged as a part timer for one hour and he has being paid salary of Rs. 100/- per month. Whereas in the deposition of the correspondent, it has been stated that he was additionally paid the amount of Rs.50/ -- on the other voucher. It appears that no dispute under the Industrial disputes Act (hereinafter "the Act") was raised, but the respondent-workman straightaway filed application u/s 33-C(2) of the Act before the Labour court for recovery of the amount Rs. 3,66,624/-. The Labour Court issued notice the Municipality, but nobody appeared on behalf of the Municipality. The labour Court proceeded ex parte against the Municipality and upon the position of the respondent-workman, the Labour Court passed the order for suance of the Recovery Certificate of Rs. 3,66,624/- on 14.03.2000. It is under these circumstances, the present petition before this Court.

2. Heard Mr. K.V. Vyas for Mr. Jani for the petitioner and Mr. Rathod for correspondent.

3. It is true that the Labour Court proceeded ex parte on account of the fact that nobody defended on behalf of the Municipality. However, the pertinent aspect which was required to be taken into consideration by the Labour Court was as to whether there was any crystallised right created in favour of the workman or not. It is only after the right is crystallised by the order of the competent authority or forum, the recovery application may be maintainable.

4. It is the case of the respondent that no appointment order has been issued.

5. Whereas the petitioner contended that he was engaged by the School on lumpsum basis.

6. Therefore, under these circumstances, if the stand of the petitioner is taken into consideration, the application u/s 33-C(2) cannot be maintained. However, as no evidence was led before the Labour Court on behalf of the Municipality and the matter proceeded ex parte, the Labour Court also had no opportunity to examine the same.

7. In above view of the matter, it appears to the Court that as the matter has proceeded ex parte for default in not defending the proceedings before the Labour Court well in time, the matter can be remanded to the Labour Court upon awarding suitable cost to compensate the default by the petitioner. I am inclined to take such view in light of the peculiar circumstance that on merits if the case of the opponent before the Labour Court-petitioner herein is examined, it may alter the final result than, ordered by the Labour Court for issuance of the Recovery Certificate.

8. Considering the facts and circumstances that the application was of 1993 and the petition has also remain pending before this Court for about 10 years, it would not be a case to decline the relief to the petitioner on the ground that there was already an alternative remedy available to the petitioner Municipality of moving same Court for setting aside the ex parte order below the recovery application.

9. Hence, it appears to the Court that the amount of cost of Rs. 5,000/- would be just and proper for compensating the default on the part of the Municipality. However, the Municipality should be left to the liberty to recover the amount from the defaulting officer after holding the necessary inquiry as may be permissible in law.

10. In view of the aforesaid, the impugned order passed by the Labour Court below recovery application. Recovery Application No. 253/93 is quashed and set aside on the condition that the petitioner-Municipality pays the cost of Rs. 5,000/- to the respondent-workman within a period of one month, from the receipt of the order. After the cost is paid by the Municipality, the matter shall stand restored to the Labour Court and the Labour Court shall give opportunity of

leading the evidence to the petitioner-Municipality as well as to the workman and shall decide the matter afresh as early as possible, preferably within a period of 6 months from the reporting by the either side that the condition has been complied with. It is also observed that the Municipality shall be at the liberty to recover the amount of Rs. 5,000/- from the erring officer after holding necessary inquiry, in accordance with law.

Rule made absolute to the aforesaid extent.