

(2015) 07 GUJ CK 0013

In the Gujarat High Court

Case No : Special Civil Application (For Direction) No. 12076 of 2014 in Special Civil Application No. 10929 of 2014

Rajendrakumar Govindlal Raval

APPELLANT

Vs

Executive Engineer and Others

RESPONDENT

Date of Decision : 23-07-2015

Acts Referred:

Constitution of India, 1950 — Article 12
Industrial Disputes Act, 1947 — Section 17-B, 33(2)(b)

Citation : (2015) 3 GLR 2256

Hon'ble Judges : S.R. Brahmbhatt, J.

Bench : Single Bench

Advocate : Shalin Mehta, Sr. Advocate and Dimple A. Thaker, for the Appellant;
Lilu K. Bhaya, for the Respondent

Final Decision : Allowed

Judgement

S.R. Brahmbhatt, J.—Heard learned Counsels appearing for the parties. The applicant, who happens to be respondent No. 1 in Spl.C.A. No. 10929 of 2014, has taken out this application for following prayers:

- (a) That the Hon"ble Court be pleased to direct the opponent company to pay full wages to the applicant from 23-12-2013 till today;
- (b) That the Hon"ble Court be pleased to hear this application before the main matter as there is non-compliance of the order dated 5-7-2014 of the Industrial Tribunal pending the hearing of the Special Civil Application No. 10929 of 2014;
- (c) for costs;
- (d) For such other and further reliefs as the circumstance of the case may require.

Thus, what is essentially prayed for is the direction to the original petitioner-employer for paying full wages to the applicant, as the order of termination

which was subject-matter of approval, has not been effective on account of non-granting of approval, which is subject-matter of challenge in the main matter.

Facts in brief, as could be gathered from the Civil Application as well as main petition, would indicate that the applicant's services came to be terminated vide order dated 23-12-2013 pursuant to departmental inquiry held against him and holding him guilty of the charges levelled against him. However, there was a reference pending in respect of the dispute qua transfer from one circle to other circle. The employer chose to prefer an application for seeking approval to the order of termination by way of the application being Application (I.T.) No. 231 of 2013 in Reference (I.T.) No. 84 of 2001, which came to be rejected by the Court vide its order dated 5-7-2014, which order of refusal to grant approval is subject-matter of challenge in Spl.C.A. No. 10929 of 2014, wherein this Court on 13-8-2014, while issuing Rule recorded its reasons for not granting any interim relief in favour of the petitioner-employer. This order was subject-matter of challenge in Letters Patent Appeal No. 1118 of 2014, wherein the Division Bench after observing that the observations of learned single Judge being prima facie, would not affect the final decision in the matter, rejected the same vide order dated 11-11-2014. The applicant was without any remedy, as he was not reinstated, despite there being no approval to the order of termination. He preferred present application for seeking appropriate direction, as mentioned hereinabove. The affidavit subsequently filed making averments that workman being not gainfully employed anywhere since the date of order of termination. The reply had been filed resisting this application.

2. Learned Counsel appearing for the applicant submitted that the Court's order, whereunder the interim relief is not granted, needs to be construed appropriately so as to compel the petitioner to abide by the provision of law, and either reinstate the workman or pay full wages to him, as in light of the established provision of law, the workman is to be treated as continuous in service.

3. Learned Counsel appearing for the workman contended that Sec. 17-B of the Industrial Disputes Act is applicable to the cases arising out of non-granting of approval under Sec. 33(2)(b) of the Industrial Disputes Act and reliance is, therefore, placed upon the Full Bench decision rendered in case of Anvarkhan Ghafurkhan Pathan Vs. Transport Manager, . The Counsel placed reliance upon the observations made in Paragraph Nos. 40, 41 and 42 of the said judgment in support of his aforesaid contention.

4. Learned Counsel appearing for the applicant thereafter invited Court's attention to the decision and order, whereunder the Court recorded its reasoning for rejecting the prayer for interim relief, and contended that this order cannot be said to be declining the requisite relief to the workman which otherwise also required to be read into the reasoning and the tenor of the order in question.

5. Learned Counsel appearing for the applicant invited this Court's attention to the decision of the Supreme Court in case of Jaipur Zila Sahakari Bhoomi Vikas

Bank Ltd. Vs. Ram Gopal Sharma and Others, , and laid emphasis upon the observation made in Paragraph No. 14 to support his contentions that the scope of scrutiny at the end of Labour Court under Sec. 33(2)(b) approval procedure is well laid down and which would indicate that the same procedure is not mechanical, as sought to be made out on the part of the employer. The Counsel further submitted that by these observations the Supreme Court has in an unequivocal terms laid down a law that when the approval application is rejected the relationship of employer and employee remains intact, which would entitle the employee to be in service and therefore on that ground the case of the present applicant is on a better footing than the workman, who is merely entitle for seeking last drawn wages under Sec. 17-B of the Industrial Disputes Act.

6. Learned Counsel appearing for the applicant thereafter submitted that the scope of inquiry in the proceeding under Sec. 33(2)(b) approval application is succinctly laid down by this Court in case of Gujarat State Road Transport Corporation Vs. Ambaram M. Chaudhari--> , and emphasis was laid upon the observations in Paragraph No. 17.

7. Learned Counsel for the applicant thereafter contended that in fact the prayers made in this application would permit the Counsel to even urge that the petition is required to be dismissed as there is a clear non-compliance with not only statutory provision, but also the constitutional provision as it was urged on behalf of the workman that this Court has taken a view in case of Bhavnagar Municipal Corporation v. Jignesh Prataprai Dave, in Spl.C.A. No. 485 of 2011 with Civil Application No. 8816 of 2012 on 3-9-2012, that non-compliance with Sec. 17-B of the Industrial Disputes Act, would disentitle the employer to continue the petition, as it amounts to flouting the statutory provision.

In that view of the matter, it was urged that the opponent-original petitioner employer has no right to continue in this petition and the petition is required to be dismissed for default and may not be restored till there is complete compliance with the provision of law.

8. Learned Counsel appearing for the opponent original petitioner contended that in fact the interim order, which declined the relief to the petitioner, contains specific observation qua the main matter to be heard expeditiously and, therefore, it ought to have been in fitness of things that the main matter should have been taken for final disposal.

9. Learned Counsel appearing for the opponent original petitioner further submitted that the scope of Sec. 33(2)(b) , as could be read from the statute, would indicate that the Tribunal ought not to have undertaken the task of examining it in the way it has examined.

10. Learned Counsel appearing for the opponent original petitioner invited this Court's attention to page No. 151, wherein the impugned order is annexed and drew the attention of the Court to the recording of the fact that the workman and his Counsel passed up a pursish unequivocally indicating that they did not

challenge the legality or propriety of the departmental inquiry, nor did they press into service any breach of principle of natural justice. The Counsel laid greater emphasis upon the Court's observation that in light of that purview of such a nature, the Court did not examine the aspect of validity and procedural legality of the departmental inquiry. When the Court in unequivocal terms decided not to go into the aspect of legality and procedure of departmental inquiry, then it was not open to the Court to enlarge the scope of scrutiny and embark upon merits of the matter, as the Court has recorded perversity in the findings, and therefore, to that extent the order impugned in the main petition was an order beyond jurisdiction of the Tribunal.

11. Learned Counsel appearing for the opponent original petitioner further contended that the departmental inquiry conducted against the workman was elaborate and the workman was found to be guilty of the charge, which would justify his termination, and therefore, when the workman was facing such a serious charge and when he was found guilty in the departmental proceeding, wherein he had not challenged the legality of the procedural aspect, there is no scope for the Tribunal to go beyond those aspects and examine the matter on merits. The workman, if permitted to be reinstated or permitted to be given full wages, then it would amount to giving premium to his attitude which was found to be not proper.

12. Learned Counsel appearing for the employer thereafter contended that the appellate Bench in Letters Patent Appeal proceeding did not interfere with the order on account of maintainability, but that in itself cannot be said to be a decision on the merits so as to take away the right of the employer to resist this application.

13. Learned Counsel for the employer relying upon decision of the Supreme Court in case of Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd. and Another, , contended that the Supreme Court has clearly laid down the scope of scrutiny under Sec. 33(2)(b) , as could be seen from the observations of the Court in Paragraph Nos. 12 and 13 and based thereupon it was urged that bearing those aspects the Tribunal ought not to have looked into any other aspect.

14. Learned Counsel appearing for the opponent original petitioner hereinabove invited this Court's attention to the observation of the Supreme Court in case of P.H. Kalyani Vs. Air France Calcutta, , and submitted that the scope of Sec. 33(2)(b) is restricted to examining of the aspects mentioned thereunder, and therefore, when the Tribunal has gone on merits of recording so-called perversity in the findings of the Inquiry Officer, it can well be said that the Tribunal has exceeded its jurisdiction and therefore there was no requirement of any relief in form of Sec. 17-B or like respite to the workman during the pendency of the main matter.

15. Learned Counsel appearing for the employer petitioner invited Court's

attention to the observations of the Supreme Court in case of Rajasthan State Road Transport Corporation and Another Vs. Satya Prakash, , and laid emphasis upon the observations in Paragraph Nos. 23 and 24 to support his submission that the scope of Sec. 33(2)(b) did not permit the Tribunal to go into merits of the matter and in that case the Court observed that the charges were proved, the Court could not have ordered reinstatement of the workman only on account of breach of Sec. 33(2)(b) .

16. This Court is of the view that this application is required to be allowed for the following reasons namely:

(i) The Court has perused the interim order of issuance of Rule, but declining any relief in favour of the employer. That order also has bearing upon the prima facie satisfaction of the Court for not granting any relief to the petitioner. The said order was subject-matter of scrutiny under Letters Patent Appeal proceedings and the Letters Patent Appeal Bench also did not think it fit to disturb it in any manner. Meaning thereby, the petitioner-employer did not receive any interim relief in respect of the challenge to the order in question. The order in question refuses approval and if that order is viewed in light of the observations of the Supreme Court in case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra), then the proposition of law is not far to seek, it can well be said that the workman is in the employment of the petitioner. The workman is deemed to be in employment of the petitioner and when the challenge to the order has not yielded any result in form of any interim orders in favour of the employer, a question arises as to whether can employer be permitted to grant stay, and to that itself the answer is obviously "No". The law, as it stands, will have to be given effect whereunder the workman is required to be reinstated. Unfortunately, the employer has chosen a stand which is not befitting an agency of the State under Art. 12 , to say the least, it evinced unpardonable ignorance of law or deliberate disregard of law, as the provision of law led down in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (supra) and declining of interim relief by this Court in the main petition proceedings, would leave no scope to the employer but to invite workman for discharging his duties, as if the order of termination has not been effected at all.

(ii) The employer has chosen not to reinstate the workman and has also chosen not to pay him his wages which otherwise would have been admissible. Therefore, in my view, it amounts to flouting the provision of law with impunity, which cannot be permitted to be continued at all.

(iii) The Court is of the view that the decisions cited at the Bar would be of no avail to the employer for sustaining its stand which on the face of it, appears to be illegal and unsustainable. The decision in case of Lalla Ram (supra) cannot be said to be in any manner restricting the scope of the inquiry as sought to be propounded on behalf of the employer rather the following observations of the Court enlisted in Paragraph No. 12, would go to show that the Tribunal is under obligation to record its satisfaction qua the employer establishing his case of

justifying result of domestic inquiry which has resulted into termination and whereunder the approval is sought. This aspect is enumerated in Item No. 2, in my view, would go to show that the scope as sought to be propounded, is not restricted and if that observation is viewed from the angle of the bona fide and lack of victimization on the part of the employer, would persuade this Court to say that the perversity in recording of the findings at the end of the Inquiry Officer cannot be said to be a scope outside the purview of the scrutiny under Sec. 33(2)(b) of the Industrial Disputes Act.

(iv) The decision in case of Kalyani (P.H.) (supra) also would be of no avail, as could be seen from the observations made by this Court hereinabove.

(v) The decision cited at the Bar in case of Rajasthan State Road Transport Corporation (supra), would indicate that the facts therein were clear to indicate that the Tribunal had in fact recorded its satisfaction qua even the guilt of the workman in domestic inquiry, but ignoring that factor the Tribunal had ordered reinstatement only on account of breach of non-compliance with the condition of Sec. 33(2)(b) and that was found to be not justified these facts, would rather help the employee-workman, as in the instant case, the Tribunal has in unequivocal terms held that the findings were perverse, and therefore, the approval was declined. In that view of the matter, the Court is of the considered view that the application is required to be allowed.

(vi) This brings the Court to the submission canvassed on behalf of the workman that the main petition is required to be dismissed. The Court is of the view that instead thereof, let there be an opportunity to the employer to abide by the provision of law, and hence, while disposing of this application, the following directions are issued:

(i) The opponent, original petitioner in the petition, is hereby directed to treat the applicant-workman, as if, he is in service and accord him all the benefits including wages, as if, the termination order has not been effected at all, which would of course subject to final outcome of the petition.

(ii) The arrears of wages be calculated and communicated to the workman within a week from now and the arrears be paid on or before 31-7-2015. Thereafter, on or before 7th of every month, the complete full wages be paid to the workman till final disposal of the petition, and it would be subject-matter of final decision that may be rendered in the petition.

17. In case, if these directions are not complied, it would amount to employer rendering him disqualify to continue the petition and hence the main petition shall stand dismiss for default without any reference to the Court. In view of these observations and directions, the Civil Application is allowed. Rule is made absolute. However, there shall be no order as to costs.

FURTHER ORDER:

Learned Counsel appearing for the original petitioner submitted that as the order

is yet not signed, Court may grant little more time, any date after 31-7-2015. This request is strongly objected by the learned Counsel for the workman on a ground that she has already communicated it to the workman.

The Court is of the view that instead of 31-7-2015, let the arrears be paid by 7-8-2015 that is the date which the Court has fixed for regular payment of 12-B wages. Hence, instead of 31-7-2015, let it be 7-8-2015.