

(2021) 08 GUJ CK 0032

In the Gujarat High Court

Case No : R/Letters Patent Appeal No. 722 Of 2021 In R/Special Civil Application No. 7231 Of 2021, Civil Application (For Interim Relief) No. 1 Of 2021

Rasiklal Polabhai Dhandhukiya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 11-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 17, 29, 33(c)(2)

Citation : (2021) 08 GUJ CK 0032

Hon'ble Judges : R.M.Chhaya, J; Nirzar S. Desai, J

Bench : Division Bench

Advocate : UT Mishra

Final Decision : Dismissed

Judgement

R.M.Chhaya, J

1. Feeling aggrieved and dissatisfied by the order dated 16.7.2021 passed by the learned Single Judge in Special Civil Application no.7231 of 2021

dismissing the said Writ Petition, the appellant - original petitioner has preferred this intra-Court appeal under Clause 15 of the Letters Patent.

2. Following facts emerge from the record of the appeal:-

2.1 That, the appellant came to be appointed in the year 1984 as Peon-cum-Chokidar. It is the case of the appellant that his services came to be

terminated in the year 1985. The appellant raised a dispute and the same was referred to the Labour Court and registered as Reference no.1442/1986,

which culminated into an award directing the respondents to reinstate the appellant on original post with continuity and backwages and accordingly, the

appellant came to be reinstated on 27.2.1992.

2.2 It appears that thereafter, the appellant raised an industrial dispute seeking regularization, which came to be ultimately referred to the Labour

Court and came to be registered as Reference (LCD) no.20 of 1995 before the Labour Court at Rajkot. The Labour Court, Rajkot, by an award dated

13.6.2005, was pleased to allow the Reference and directed the respondents to regularize the services of the appellant on completion of 240 days from

the date of initial appointment and grant all the benefits of permanency on the post of Peon-cum-Chokidar.

2.3 Record indicates that the said award came to be challenged by the respondent no.2 before this Court by way of filing Special Civil Application

no.17413 of 2005, which came to be dismissed by the learned Single Judge of this Court vide judgment and order dated 17.3.2017. While dismissing

the said Writ Petition, the learned Single Judge provided that all the benefits to the appellant be accrued from the date of the impugned award. It was

also provided in the judgment that the services of the appellant shall be counted from the date of his appointment. The learned Single Judge also

further pleased to observe that the appellant would be given increments from the date of the impugned award and not from the date of his

appointment. The learned Single Judge also provided that the period for which the appellant has not served the respondentâ?" Board shall be treated

as dies non. The said judgment and order passed by the learned Single Judge was challenged by the respondentâ?" Board by way of filing intra-Court

appeal being Letters Patent Appeal no.1224 of 2018.

The Coordinate Bench of this Court, vide order dated 22.4.2019, disposing of the said Letters Patent Appeal, observed as under:-

â??10. Having heard learned advocates appearing for the respective parties and having perused the award of the Labour Court and the judgement of

the learned Single Judge, what is apparent is that the respondent workman had been working with the employer Board since the year 1984. Having

been terminated in the year 1985, he approached the Labour Court; succeeded therein; got an award of reinstatement which was confirmed by this

Court in Special Civil Application No. 658 of 1992; was subsequently reinstated after 7 years with continuity of service. Having worked on a

sanctioned post without any break, considering the judgements of the Apex Court which have been referred to by the learned Single Judge, we see no

reason to interfere with the findings of the Labour Court as confirmed by the learned Single Judge.

11. However, Mr. D.G. Chauhan, learned advocate for the employer Board has fairly stated that pending these appeals the employee workman has

retired from service on 29.09.2018 and has been paid Rs.2,22,843/- towards the amount of gratuity. He however states that the Board would pay all

retirement benefits on the basis of his last revision of pay treating him continuous in service from the date of his appointment till the date of his

retirement i.e. 29.09.2018. The amount of gratuity paid shall be deducted from the retirement benefits and that he shall not be entitled to any amount

of arrears.

12. Mr. Mishra, learned advocate for the respondent though has reservations on the above, however, in the interest of justice, we are of the opinion

that it shall be in the fitness of things to modify the award of the Labour Court and the judgement of the learned Single Judge, particularly when the

employee has already retired from service in 2018 and the award of the Labour Court is to a substantial extent being honoured by the employer

Board. The following order is accordingly passed:

(I) The Board would treat the respondent in continuous service as a regular employee from the date of his appointment till the date of his retirement.

(II) The Board would pay all retiral benefits on the basis of the last revision of pay treating him continuous in service.

(III) The amount of gratuity of Rs.2,22,843/- already paid to the workman shall be deducted from the retiral benefits.

(IV) The respondent shall not be entitled to any amount of arrears.â??

2.4 Record further indicates that according to the appellant, the directions issued by this Court were not complied with and therefore, the appellant

approached this Court by way of filing a Review Application being Misc. Civil Application no.1 of 2019 in Letters Patent Appeal no.1224 of 2018 for

verification/modification of the order. The Coordinate Bench of this Court dismissed the said application and observed as under:-

â??6. Considering the reply filed by the board and particularly when there was a specific direction that the applicant is not entitled to any amount of

arrears, in exercise of powers under review/recall, this court cannot sit and interpret an order passed by the authorities in compliance of the directions

of the Division Bench. If according to the perception of the applicant, the order is inconsistent with the directions of the order passed by the Division

Bench, the applicant would have an appropriate remedy but not seeking clarification of the order under the guise of filing a review/recall application.

For the aforesaid reasons, application is dismissed.â??

2.5 After dismissal of the Review Application, the present Writ Petition came to be filed challenging the Office Order dated 28.6.2019 and inter-alia,

prayed as under:-

â??(A) That Your Lordships be pleased to issue an order, direction and/or writ in the nature of certiorari/mandamus and/or any other appropriate

writ, order or direction, quashing and setting aside Office Order dated 28-6-2019, as being illegal and against the Award passed by the Labour Court,

Rajkot, confirmed by this Honâ??ble Court and be pleased to direct the respondents to pay all benefits of regularization to the post of Peon-cum-

Chowkidar from the date of Award till the date of retirement i.e. 29-9-2018 along with 10% simple interest;

(B) That Your Lordship be further pleased to direct the respondents to immediately complete office formalities of the P.F. Department, so that the

petitioner can get family pension;â??

2.6 As the said Writ Petition is dismissed, the present appeal is filed.

3. Heard Mr. U.T. Mishra, learned advocate for the appellant and Mr. Tirthraj Pandya, learned Assistant Government Pleader for the respondent-

State on advance copy. Mr. Mishra, learned advocate for the appellant was also permitted to file written submissions and accordingly, Mr. Mishra has

filed written submissions dated 3.8.2021, which is taken on record, which is made basis of this order.

4. Relying upon the factual matrix arising in this appeal, Mr. Mishra, learned advocate for the appellant has contended as under:-

4.1 Referring to Section 17 of the Industrial Disputes Act, 1947, it is contended that after expiry of 30 days, the award becomes enforceable and the

workman is entitled for regular pay scale on the post of Peon-cum-Chokidar which is not paid by the respondents.

4.2 To buttress his argument, Mr. Mishra has relied upon the judgment of the Hon'ble Apex Court in the case of R.K. Nigam Vs. Swadeshi Cotton

Mills & Ors., reported in (2003) 10 SCC 245. Relying upon the Division Bench

judgment of this Court in the case of Tulsidas Ramdas Vs. General

Manager rendered in Special Civil Application no.7737 of 1997, more particularly, observations made in Paragraph 7 thereof, Mr. Mishra has

contended that the present Writ Petition under Articles 226 and 227 of the Constitution of India is maintainable and it is not a rule of law, nor a rule of

thumb which can be applied in any case to non-suit the petitioner irrespective of nature of his grievance. Relying upon the said judgment, it is

contended that the remedy under Sections 29 and 33(c)(2) of the Industrial Disputes Act, 1947 cannot be considered as equally efficacious remedy

which could be made to deny relief to the petitioner under Article 226 of the Constitution of India. It is therefore contended that the present appeal

may be allowed.

5. Mr. Tirthraj Pandya, learned Assistant Government Pleader for the respondent â?" State has supported the impugned order and has submitted that

the appeal, being merit-less, deserves to be dismissed.

6. No other or further submissions, averments, grounds and/or contentions are made by the learned advocates appearing for the respective parties.

7. It appears from the impugned order that even before the learned Single Judge, similar contentions were raised. However, before reverting to the

said submissions, it would be appropriate to refer to the order dated 26.2.2021 passed by the Coordinate Bench in Misc. Civil Application (for

clarification) no.1 of 2019 in Letters Patent Appeal no.1224 of 2018. The Coordinate Bench, after considering the contentions raised by the appellant

that the directions issued by the Division Bench in Letters Patent Appeal no.1224 of 2018 in the order dated 22.4.2019 are not adhered to and

complied with, has already been rejected by the Coordinate Bench and as can be seen from the observations made by the Coordinate Bench in its

order dated 26.2.2021 in Paragraph 6, as observed hereinabove. The learned Single Judge, considering these very submissions made before the Court,

has observed thus:-

â??8. Considering the record of the present case and the different orders passed by this Court as also Division Bench in Letters Patent Appeal and in

Misc. Civil Application for clarification, it appears that judgment and award passed by the Labour Court, which was passed in favour of the petitioner

is complied with. Not only that challenging by way of this petition, office order

dated 28.06.2019, which is an order paying difference of gratuity calculated as per the 7th Pay Commission, another order which has been placed on record at page no.90, it is clear that he is ordered to be paid leave encashment. Over and above that as recorded in para no.3 of the order passed in Misc. Civil Application, which is at page No.91, all the benefits have been paid to the petitioner as per his entitlement. Under the guise of challenging payment of differential amount of gratuity, petitioner seeks to claim benefit of regularization as per his perception, that too, by way of petition under Article 226 of the Constitution of India.

9. If the petitioner perceived that he is entitled for any monetary benefit, as ordered by the Labour Court and confirmed up to this Court, he may prefer an appropriate proceeding as recorded in the order passed by the Division Bench of this Court in Misc. Civil Application No.1 of 2019 as referred to hereinabove, but in no case, by way of this petition, that too, under Article 226 of the Constitution of India. By such prayer, petitioner wants this Court to execute an award, as according to his perception, is not fully complied with, whereas considering the affidavit-in-reply filed by the respondent in Misc. Civil Application referred to hereinabove, they claimed that they have fully complied with the judgment and award. Therefore, even according to the perception of the petitioner that award is not fully complied with, is again a disputed question of facts, which cannot be entered into in this petition under Article 226 of the Constitution of India.

10. At the same time, reliance placed on the decision in the case of Tulsidas Ramdas (supra) to assert that this writ petition would be maintainable for execution of award is misplaced. As recorded in later part of Para No.8 of the aforesaid decision, in view of peculiar facts of that case, it was held that the petitioner does not have efficacious remedy at all. More particularly, as observed in para No.10 of the said decision, in the said case, respondent-employer did not file any affidavit-in-reply and it was considered to be total absence of justification for not implementing the award, which justified the conclusion that the respondent therein has failed to carry out his duty, resulting into clear infringement of legal right of the petitioner and therefore, writ of mandamus was held to be maintainable.

11. However, as observed earlier, even petitioner claimed that he has been paid his other dues and judgment and award fully complied with. Those

facts are coming out from the litigation between the petitioner and respondent before this Court. Thus according to the respondents, judgment and award is fully complied with its true letter and spirit and therefore, if the petitioner by way of this petition asserts that it is yet not complied with, which is disputed question of facts and most equally efficacious statutory remedy is available to the petitioner, the writ petition filed before this Court would not be maintainable.

12. Another decision relied on by the petitioner in the case of R.K.Nigam (Supra) which was determined on its own facts and therefore, it is not applicable. In that case, the Labour Court refused backwages though order of reinstatement was passed on the old terms and conditions of the service as he had committed irregularity, the writ petition against the said award filed before the High Court, it upheld the award made by the Labour Court reinstating the appellant therein. Further, there is clarification that he would be entitled to his regular salary from the date of reinstatement and he would not be entitled for his regular salary for the intervening period. On facts of that case, the Supreme Court set aside the order of the High Court to the extent it denied back wages contrary to the award of the Labour Court. As such learned advocate for the petitioner failed to show that what principle is established in the aforesaid decision so as to follow it as precedent. At any rate, the said decision is on its own facts and therefore, not applicable in the present case. Therefore, if the petitioner perceived that any part of the judgment and order passed by the Labour Court and confirmed by this Court is yet not fully implemented, he may resort to any other remedy, that may be available under the Law, but in no case, as discussed hereinabove, he can seek implementation of the award as per his perception, that too, by way of a petition under Article 226 of the Constitution of India. Hence, this petition is rejected summarily.â??

8. We find that the learned Single Judge has threadbare considering the contentions raised by the appellant on the contrary found that time and again disputes as regards the payment is being raised by the present appellant. This Court is of the opinion that the learned Single Judge has committed no error in coming to the conclusion that in totality of facts and more particularly, considering the observations made in Paragraph 6 of the order dated 26.2.2021 passed in Misc. Civil Application no.1 of 2019 in Letters Patent Appeal

no.1224 of 2018 by the Coordinate Bench, the contentions raised by the appellant would constitute disputed questions of facts. Even considering the ratio laid down by the Division Bench of this Court in the case of *Tulsidas Ramdas (supra)*, relied upon by Mr. Mishra, learned advocate for the appellant, the facts of this case are different and distinct and the observations made in Paragraph 7 would not apply to the facts of the present case. It is no doubt true that alternative efficacious remedy is not a matter of rule, but at the same time, there is no straight jacket formula that in every case, a petition under Article 226 of the Constitution of India has to be entertained. In facts of this case, the entitlement of the appellant has been firstly examined by the Division Bench in Letters Patent Appeal no.1224 of 2018, wherein the order has been modified and accordingly, the impugned Office Order has been passed by the respondent "Board. The disputes raised by the appellant were also reexamined by the Coordinate Bench in Misc. Civil Application no.1 of 2019 and have not found favour with the Coordinate Bench. We are in total agreement with the observations and conclusions arrived at by the learned Single Judge. The decision rendered in the case of *Tulsidas Ramdas (supra)* would not be applicable to the facts of the present case. All the contentions raised by Mr. Mishra, learned advocate for the appellant therefore deserves to be negated.

9. Resultantly, the appeal fails and is hereby dismissed. Connected Civil Application also stands dismissed. However, there shall be no order as to costs.