

(2022) 08 GUJ CK 0113
In the Gujarat High Court

Case No : R/Special Civil Application No. 3121 Of 2020

Sarpanch Shree

APPELLANT

Vs

Gajaraben Prakashbhai Valodara

RESPONDENT

Date of Decision : 24-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 33(C)(2)

Citation : (2022) 08 GUJ CK 0113

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Y J Patel, Mamta R Vyas

Final Decision : Dismissed

Judgement

Biren Vaishnav, J

1. Heard learned advocates for the parties.
2. In this petition, under Article 226 of the Constitution of India, the challenge is to the award passed by the Labour Court dated 05.10.2019 in Recovery Application No. 2 of 2018 filed by the respondent Gajaraben Valodara claiming minimum wages for the period from 10.07.2013 to 01.02.2018.
3. Perusal of the award of the Labour Court would indicate that the Labour Court by the order under challenge directed the petitioner Chuda Gram Panchayat to pay the respondent an amount of Rs.3,90,263.40. That order is under challenge.
4. Mr. Y.J. Patel, learned advocate appearing for the petitioner would assail the order on the following grounds:
 - (i) Reading the order would indicate that the order has been passed without giving an opportunity to the panchayat to place evidence on record and or oppose the application;

(ii) The second ground of challenge is that an application under Section 33(C)(2) of the Industrial Disputes Act, 1947 would not lie unless the right is crystallized;

(iii) The entitlement to a minimum wage is a dispute which has to be referred to the appropriate authority. A reference under Section 10 has to be adjudicated and only thereafter that based on an award would the respondent workman be entitled to the minimum wages;

(iv) The order is unjust inasmuch as pursuant to the award passed by the Labour Court where the respondent had challenged her termination the Labour Court had only granted order of reinstatement on the same post without backwages. On a challenge to the award by the Panchayat and on a civil application filed by the respondent, the court had specifically observed that the respondent can lodge a claim by raising a reference or approaching the competent authority under the Minimum Wages Act.

4.1 Mr. Patel, learned advocate appearing for the petitioner would also through an additional affidavit/ affidavit in rejoinder submit that the respondent has filed FIRs against the Sarpanch under the Atrocities Act and is not discharging her duties efficiently.

5. Since a request was made by learned counsel for the parties to ascertain whether in fact the award was made ex-parte, Records and Proceedings were called for from the court below. Perusal of those records indicate that with the application under Section 33(C)(2) of the Act asking for a minimum wage, the respondent had set out in a table the basic minimum wage that a Sweeper is entitled to namely Rs.134/- and subsequent amounts as revised from time to time and a figure of Rs.3,90,263.40 was set out. To the argument of the learned counsel for the petitioner Mr. Patel that despite an application for adjudication being made at Ex. 14, the Labour Court proceeded to pass an award without giving an opportunity to the petitioner's advocate to produce on record evidence, from the record it is apparent that on the application for adjudication, an endorsement has been made by the advocate for the panchayat that the counsel for the panchayat is willing to proceed with the hearing of the application from the stage where it had stopped. Admittedly, therefore, the panchayat gave up its claim to contest the application and therefore the Labour Court in my opinion rightly closed the stage of adducing evidence below Application Ex. 15.

6. It is also worthy to note that on a Civil Application filed by the respondent workman for the prayer of granting regular wages, this court passed an order extensively referring to the provisions of Section 33(C)(2) of the Act. The order reads as under:

"1. When the application is called out and taken up for hearing learned advocate for the applicant is not present. Mr. Patel, learned advocate for the respondent No.1 and Mr. Deepak Aloria, learned AGP for respondent No.2 are present.

2. In present application the applicant has prayed, inter alia, that:-

2(A) Your Lordships may be direct the Resp. No. 2 to pay the minimum wages from October, 2014 till today within the stipulated time and further be pleased to direct the Resp. No. 2 to pay regular wages every month as per the rules.

3. So as to justify the request the applicant has averred and stated that:-

"1. The applicant original petitioner was appointed as a daily wager Safai Kamdar which is a permanent in nature. Without following the procedure since she was restrained from attending the duty, she had filed Reference (LCS) No. 114/2004 which was allowed by an order dated 10/07/2013. The aforesaid order was not complied with by the Resp. No. 2 nor she was allowed to resume the duty, therefore, after various letters, she filed an application for compliance before the Resp. No.1. After issuance of the notice by the Resp. No. 1 various dates were given for hearing but the Resp. No.1 did not remain present nor the order was complied with. Therefore, the applicant filed the aforesaid Special Civil Application wherein Rule has been issued by this Hon'ble Court. During the pendency of the petition, the applicant was allowed to resume the duty on 26.9.2014. The award of the Labour Court was passed on 10/07/2013 and therefore, as per the Award, she is entitled for the salary from 10/07/2013. However, only Rs.12,500/-was paid by the Resp. No. 2 by a cheque dated 29/11/2014 and thereby there is a due of Rs.92,000/- upto November, 2014. As per the rules, minimum wage is required to be paid from the date of the order till reinstatement and further Resp. No. 2 is duty bound to pay the minimum wages. However, from October, 2014 till today though she is on duty and discharging her duty regularly, not a single rupee is paid to her. Resp. No. 2 is informing that she is to obtain the order from the Hon'ble Court. The applicant had written a letter dated 04/06/2016 but till today, she is not paid a single salary...."

4. In view of absence of learned advocate for the applicant this Court has considered the relief prayed for by the applicant and the justification made out in paragraph No. 1 of the application. Except said details any other details are not mentioned in the application.

5. Having regard to the purpose for which the application is filed, Rule. Returnable forthwith. Mr. Patel, learned advocate and Mr. Deepak Aloria, learned AGP have waived service of Rule on behalf of the respondents. With consent of Mr. Patel, learned advocate and Mr. Deepak Aloria, learned AGP the application is taken up for final hearing and appropriate order today.

5.1 The applicant herein is the petitioner in Special Civil Application No. 7621 of 2014.

5.2 In the said petition present applicant i.e. original petitioner has, on the allegation that the said respondent is neglecting his duties, prayed for direction against present opponent that he should perform the duty cast upon him and should take appropriate action against present opponent for not complying the award of learned Labour Court.

5.3 Differently put, the applicant herein i.e. original petitioner has taken out Special Civil Application No. 7621 of 2014 for execution and implementation of the award dated 10.7.2013 passed by learned Labour Court in Reference (LCS) No. 114 of 2004.

5.4 By the said award dated 10.7.2013 learned Labour Court directed present opponent to No.2 to reinstate the claimant i.e. present applicant on her original post and to assign work in the similar manner as was being assigned prior to termination of her service.

6. Mr. Patel, learned advocate for the opponent No. 2 submitted that earlier claimant was engaged by opponent No. 2 Panchayat as daily wager and after the award the panchayat has reinstated her on her original post i.e. as daily wager and she has been allowed to work as daily wager and accordingly award is already complied. He further submitted that the panchayat is paying wages to the applicant on daily wage basis at the applicable rate prescribed by the Government.

7. From the relief prayed for in present application it appears that the claimant demands that she should be paid regular wages at prescribed rate of minimum wage.

8. The details of the category in which the claimant is employed (i.e. skilled, semi skilled or unskilled) and the nature of duty which she performs and / or whether she is engaged as full time daily wager or part time daily wager and other relevant details are not available before this Court.

8.1 Even otherwise, it appears that there is dispute between the parties with regard to the said / relevant aspects and that therefore the applicant will have to establish her claim for appropriate rate of minimum wage either before authority constituted under the Minimum Wage Act or before the Court competent to decide disputes / claims related to and arising under Minimum Wage Act.

9. The claimant has statutory remedy available to pursue i.e. either bay way of application before Minimum Wage Inspector or approach the learned Labour Court under Minimum Wage Act or file application under Section 33(c) (2) of the Industrial Disputes Act, 1947 where the dispute can be adjudicated and decided. The said dispute cannot be decided or considered in present application.

10. Having regard to the submission by learned advocate for the opponent No.2, more particularly the fact that the claimant is already reinstated and is being paid wages as per applicable rules prescribed by Government, present application is not entertained at this stage on the ground of availability of statutory alternative remedy and also on the ground that disputed issues are involved in present case which can be adjudicated only by way of oral / documentary evidence before authority constituted under the Minimum Wages Act or Industrial Disputes Act. The said issue / aspect cannot be entertained or decided in collateral proceedings i.e. in Civil Application.

11. Therefore present application is not entertained and is hereby disposed of with the clarification that it will be open to the claimant to take appropriate proceedings before appropriate authority / forum in accordance with applicable rules and provisions and such authority / forum will consider such claim on its own merits in accordance with law and without being influenced by the fact that this Court has not entertained application at this stage for abovementioned reasons.

With the aforesaid clarifications the application is disposed of. Rule is discharged.

Orders accordingly.”

7. Special emphasis needs to be drawn to the observations of the court while relegating the respondent to an appropriate remedy. The court opined that it was open for the respondent to file an application under Section 33(C)(2) of the Act where the dispute can be adjudicated and decided. Even otherwise, entitlement to minimum wages cannot be a matter of dispute or a contest which needs to be adjudicated under a reference. It is a right crystallized to which a Safai Kamdaar working with a panchayat is entitled to. On these counts, therefore, the order passed below Recovery Application impugned in this petition need not be interfered with. Since the averments made in the affidavit in rejoinder by the panchayat are with regard to complaints filed by the respondent under the Atrocities Act, the same need not be gone into.

8. Ms. Mamta Vyas, learned advocate for the respondent workman at this stage states that after the order passed under the Recovery Application, the respondent was constrained to file an Execution Application in which also the Labour Court on 21.01.2020 has issued a certificate to the Collector for recovery of amount of Rs.3,90,263.40. The Collector too has on 04.03.2020 addressed a communication to the District Development Officer, District Panchayat, Surendranagar to enforce the award.

9. Accordingly, the petition is dismissed. Since the petition is dismissed, consequential action shall be taken by the petitioner panchayat to comply with the award of the Labour Court within a period of eight weeks from the date of receipt of the writ of the order of this court. It is clarified that if any amount towards minimum wages for the period which is the subject matter of Recovery Application is already paid, the same shall be set off. No costs.