

(2019) 07 GUJ CK 0145
In the Gujarat High Court

Case No : R/Special Civil Application No. 2238 Of 2009, 2575 Of 2015

Sarpanchshri

APPELLANT

Vs

Shivabhai Baria

RESPONDENT

Date of Decision : 19-07-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C, 33C(2)
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 07 GUJ CK 0145

Hon'ble Judges : G.R.UDHWANI, J

Bench : Single Bench

Advocate : Bg Patel, As Asthavadi

Final Decision : Dismissed

Judgement

1. Award dated 13.01.2009 awarding a sum of Rs.1,25,000/- (Rupees One Lakh Twenty Five Thousand Only) with the cost of Rs.1,000/- to the workman under Section 33C(2) of the Industrial Disputes Act, 1947 ('I.D.Act', for short) in Recovery Application No.107 of 2000 is sought to be assailed in this petition under Article 226/227 of the Constitution of India by the employer panchayat. At the same time, the employer has sought recovery of the said amount after obtaining the recovery certificate from the Labour Court in the petition being Special Civil Application No.2238 of 2009 making a grievance that despite such certificate, recovery is not being effected by the Collector.

2. On considering the submissions made by learned counsel for the petitioner Mr.Ashtawadi and learned counsel Mr.H.S.Munshaw, this Court finds that the impugned order has no basis to stand inasmuch as it proceeded on the premise; without any evidence that the workman - the petitioner was entitled to a sum of Rs.1,25,000/- towards arrears of salary and other dues like overtime and admissible leaves with effect from 01.04.1997 i.e. the date on which allegedly the said benefits were discontinued by the employer.

3. Whereas the workman did not produce any evidence except the bare statement that he was entitled to a sum of Rs.1,25,000/-, it was contended by the employer that the workman was paid at the rate of Rs.450/- per month between the year 1997-98 and before that period he was paid at the rate of Rs.350/- per month. During the course of argument learned counsel for the workman Mr.Ashtawadi contended that the claim of Rs.1,25,000/- was computed at the rate of Rs.1900/- per month which according to the workman was the minimum wage. While no justification for such computation was given by the workman, even the Labour Court did not bother for the one, and awarded the said amount placing reliance on the sole statement of the workman. In the opinion of this Court, the entitlement to the salary and related benefits must be borne from the record and cannot be a matter of guesswork, it was for the workman to justify the same by necessary material. True that the workman requisitioned certain document from the panchayat for the period between 01.05.1994 and 30.09.1999; but no material produced with the Court; nor the Gram Panchayat provided any assistance to the Labour Court; the fact however remains that justification by the workman for the entitlement of minimum wage at the rate of Rs.1900/- per month as a Bore Operator was not placed in the material by the workman.

4. There is one more obstacle against the workman. Concededly he reached the age of superannuation in the year 1989 and was subsequently continued, according to the Panchayat at the rate of Rs.350/- per month until 1996 and at the rate of Rs.450/- per month between the year 1997-98. In absence of the statutory rules justifying the continuation of the employee on his original post after the age of superannuation, his employment can only be treated as fresh employment subject to the terms and conditions agreed between the parties. The workman did not produce any material to justify the terms and conditions of his continuation as Bore Operator with the Panchayat. Had that been proved no such question would have been arisen as to the minimum wage, as there could be no minimum wage beyond the date of superannuation such appointments would be strictly governed by terms of the contract between the parties. Such questions were never raised nor addressed by the Labour Court and as indicated above the order was rested only on oral statement of the workman that he was entitled to Rs.1,25,000/-. Also, the Labour Court failed to determine the said amount under Section 33C of the I.D. Act by holding inquiry which it is empowered to do. The provision even contemplate the appointment of the Commissioner for determining the value of benefit after recording proper evidence and after hearing the parties. Even that provision was not resorted to.

5. For the forgoing reasons, the impugned award being baseless, is required to be quashed and set aside. Accordingly ordered. Special Civil Application No.2238 of 2009 thus succeeds. Special Civil Application No.2575 of 2015 fails and is ordered to be dismissed.