

(2004) 02 GUJ CK 0024
In the Gujarat High Court

Case No : Special Civil Application No 5433 of 2002 in Letters Patent Appeal No. 21 of 2004

Saurashtra University Karmachari Parivar

APPELLANT

Vs

Saurashtra University

RESPONDENT

Date of Decision : 25-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Gujarat University Service Tribunal Act, 1983 — Section 7, 7(3), 8
Industrial Disputes Act, 1947 — Section 1(1), 2

Citation : (2004) 02 GUJ CK 0024

Hon'ble Judges : K.A. Puj, J; J.N. Bhatt, J

Bench : Division Bench

Advocate : Pankaj R. Desai in Letters Patent Appeal No. 21 of 2004, for the Appellant; J.R. Nanavati and A.R. Thacker, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—This Letters Patent Appeal is filed by the appellant, Saurashtra University Karmachari Parivar, under Clause 15 of the Letters Patent Act against the order and judgment dated 26.06.2003 passed by the learned Single Judge (Coram :- R.R. Tripathi, J.) of this Court in S.C.A. No. 5443 of 2002 allowing the petition by quashing and setting aside the order dated 04.12.2001 passed by the Deputy Labour Commissioner, Saurashtra Kutch at Rajkot making a reference of the dispute mentioned in the schedule attached thereto and the order dated 07.03.2002 passed by the Industrial Tribunal, Rajkot in Reference (I.T.) No. 10 of 2002 directing the Saurashtra University to maintain status quo qua the five workman and further directing the Industrial Tribunal, Rajkot to return the papers of reference to the present appellant - Union within two weeks from the date of receipt of the said order so as to file the same before the Tribunal constituted under the Gujarat Universities Services Tribunal Act, 1983.

2. The said reference was registered with the Industrial Tribunal, Rajkot being

Reference (IT) No. 10/2002 and statement of claim along with interim relief application dated 07.03.2002 was filed by the appellant Union praying to the Tribunal that services of five workman should not be terminated. On this interim relief application, the Industrial Tribunal, Rajkot passed an exparte order on 07.03.2002 directing the respondent University to maintain status quo.

3. Being aggrieved by the said order of the Deputy Commissioner of Labour, Rajkot dated 04.11.2001 and the order of the Industrial Tribunal, Rajkot to maintain status quo passed on 07.03.2002, the respondent University has filed S.C.A. No. 5433 of 2002 before this Court and after hearing the learned advocates appearing for the respective parties and also after considering the Civil Application No. 1649 of 2003 moved by the present appellant, the learned Single Judge vide his order dated 26.06.2003 quashed and set aside the order making the reference passed by the Deputy Commissioner of Labour, Rajkot and also the order of the Industrial Tribunal, Rajkot granting exparte order of status quo and also directing the Industrial Tribunal to return the papers to the appellant - Union.

4. It is this order of the learned Single Judge dated 26.06.2003 which is under challenge in the present Letters Patent appeal filed under Clause 15 of the Letters Patent.

5. Mr. Pankaj R. Desai, learned advocate appearing for the appellant submits that exercise of powers under Article 226 & 227 of the Constitution of India by the High Court is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice and that the High Court should not work as an appellate Court and substitute its own judgment in place of that of the subordinate court to correct an error which is not apparent on the face of the record. He has, therefore, submitted that the learned Single Judge ought not to have interfered with the order of the Deputy Commissioner of Labour, Rajkot as well as order of the Industrial Tribunal. Mr. Desai has further submitted that though the order of the Deputy Commissioner of Labour was under challenge before the learned Single Judge, he has not been joined as a party in the petition and hence, the petition ought to have been dismissed on the ground of misjoinder of parties. Mr. Desai has further submitted that as per the decision rendered by the Hon'ble Supreme Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, wherein it is held that University is an industry as per Section 2(j) of the I.D. Act, 1947 and as such, the dispute between employee and employer can be referred to the Labour Court or Industrial Tribunal by the appropriate Government, as the case may be. He has further submitted that this aspect was not considered by the learned Single Judge. He has further submitted that where there is conflict between the State and Central law, the Act passed by the Parliament will prevail over the State Act. The Industrial Dispute Act was enacted by the Parliament and as per the definition of Section 1(1) of the I.D. Act, it extends to the whole of India while the Gujarat Universities Services Tribunal Act, 1983 is applicable only in State of Gujarat. He has, therefore, submitted that the conclusion arrived at by the

learned Single Judge to the effect that only the University Services Tribunal can entertain the dispute between the employee and the University and that the Industrial Tribunal has no jurisdiction, is not correct conclusion and hence, the said order deserves to be quashed and set aside. He has further submitted that word workman is defined in Section 2(s) of the Act. The industrial dispute is defined in Section 2(k) of the Act. The combined reading of Section 2(j), 2(k) and 2(s) of the I.D. Act make it clear that the Industrial Tribunal has jurisdiction to conduct the dispute between Union and University and hence, it is open for the appellant Union to choose the alternative remedy available to the Union. He has further submitted that in the University Services Tribunal Act, 1983, there is no provision regarding permanency of workman and hence, Union has to resort to the Industrial Tribunal. For this purpose, he relied on the decision of the Apex Court in the case of Gujarat Agricultural University Vs. Rathod Labhu Bechar and Others, wherein the issue involved was with regard to the regularisation of the workman and despite the fact that University Services Tribunal was in existence, the issue was decided by the Industrial Tribunal and it was nowhere observed by the Hon"ble Supreme Court that Industrial Tribunal has no jurisdiction to decide the dispute between the workman and University.

6. Mr. Desai has further submitted that Section 7 (3) of the University Services Tribunal Act does not bar or exclude the jurisdiction of the Labour Court or Industrial Tribunal and, therefore, the judgment of learned Single Judge deserves to be quashed and set aside. What is barred is the jurisdiction of authority or other person or officer and not the jurisdiction of the Industrial Tribunal. The jurisdiction of Civil Court is barred and not the jurisdiction of Industrial Tribunal as per Section 7 of the Act. Mr. Desai has relied on the decision of the Apex Court in the case of Jai Bhagwan Vs. Management of The Ambala Central Co-operative Bank Ltd. and Another, wherein it is held that once a dispute is referred to an Industrial Tribunal, it has to adjudicate the same. It is further observed that the statute-recognized mode of redress should not be denied to a workman because of the existence or availability of another remedy. It is further observed that once a dispute has been referred to the Industrial Tribunal for adjudication, it cannot refuse to adjudicate upon it and surrender jurisdiction which it undoubtedly has to some other authority. While the Govt. may exercise its discretion in deciding whether to refer or not to refer a dispute for adjudication, the Tribunal to whom the dispute has been referred has no discretion to decide whether to adjudicate or not. Once a reference has been properly made to an Industrial Tribunal, the dispute has to be duly resolved by the Industrial Tribunal.

7. Mr. J.R. Nanavati with Mr. A.R. Thacker, learned advocates appearing for the respondent University submitted that the order passed by the Deputy Commissioner of Labour making reference to the Industrial Tribunal and also exparte order passed by the Industrial Tribunal, Rajkot are contrary to the provisions of law and the Industrial Tribunal has no jurisdiction to decide the matter pertaining to an employee and the University as the subject matter of the said issue is covered under the Gujarat University Services Tribunal Act, 1983.

He has further submitted that the object of the Act is to provide for the constitution of a Tribunal for the purpose of determining disputes relating to condition of service of the members of the teaching, other academic and non-teaching staff of Universities in the State of Gujarat for procedure and for imposition of penalty on any such member and for matters connected therewith. He has, therefore, submitted that when a specific forum is constituted under the Act for resolving the dispute relating to the conditions of service of the members of the teaching and non-teaching staff of the University, the Deputy Commissioner of Labour was not justified in referring the dispute to the Industrial Tribunal and the Industrial Tribunal was also not justified in entertaining the said reference and granting the interim relief to the present appellant.

8. Mr. Nanavati has further invited our attention to the definition of "University employee" as contained in Clause (g) of Section 2 of the Act which reads as under :-

(g) "University employee" means any member of the teaching, other academic and non-teaching staff of a University (whether confirmed or temporary or on probation) in the service of such University and for the purpose of any proceeding under this Act in relation to a dispute referred to in section 8, includes any such member who has been dismissed, or removed or whose services are otherwise terminated."

9. Mr. Nanavati has further invited our attention to Section 8 of the Act which provides that a dispute is to be decided by the Tribunal. It reads as under :-

8. "Where there is any dispute between the University and any University employee, which is connected with the conditions of service of such University employee, the University or, as the case may be the University employee may make an application to the Tribunal for the decision of the dispute."

10. Mr. Nanavati has further submitted that Sub-section (3) of Section 7 bars the jurisdiction of other forums. It reads as under :-

(3) "Notwithstanding anything contained in any other law for the time being in force, where the Tribunal has jurisdiction to entertain and decide a dispute as aforesaid, no other person, officer of authority shall have jurisdiction to entertain and decide such dispute and any such dispute pending before any person, officer, or authority on the appointed day shall, as soon as may be, be transferred to the Tribunal for its decision."

11. On the basis of the provisions contained in Clause (g) of Section 2, Sub-section (3) of Section 7 and Section 8, Mr. Nanavati has submitted that there is no question of any other forum having jurisdiction to decide a dispute between the University on the one hand and its employees on the other. Considering these provisions, the learned Single Judge has rightly decided the issue by allowing the petition and by holding that the Industrial Tribunal has no jurisdiction to decide

the reference concerning the dispute between the University and its employees.

12. We have heard learned advocates appearing for the respective parties and we have very closely and scrupulously considered their respective submissions. We have also gone through the impugned order and judgment passed by the learned Single Judge. We have also given our anxious thoughts to the relevant statutory provisions and authorities cited before us. We are of the view that the learned Single Judge has come to the just and proper conclusion both on law as well as on facts and the impugned judgment and order does not call for any interference by us while exercising our appellate powers under Clause 15 of the Letters Patent Act. The provisions contained in Section 8 are very clear which states that Where there is any dispute between the University and any University employee, which is connected with the conditions of service of such University employee, the same can be decided by the Tribunal on an application being moved either by the employee or by the University to the Tribunal for its decision on the dispute so raised in that application.

13. The word "any dispute" covers the controversy arose between the appellant and the University and such dispute can certainly be decided by the Gujarat University Services Tribunal. The Industrial Tribunal can not decide this dispute which arose between the University employee and the University by virtue of the restriction imposed in Sub-section (3) of Section 7 of the Act. We, therefore, found sufficient force in the argument of Mr. Nanavati that in view of the provisions contained in Clause (g) of Section 2, Sub-section (3) of Section 7 and Section 8 of the Act, there is no question of any other forum having jurisdiction to decide the dispute between the University and the employee of the University.

14. We are also not much impressed by the submission of Mr. Desai to the effect that the Industrial Dispute Act is a Central Act and Gujarat University Services Tribunal Act is a State Act and hence, the Central Act would prevail upon the State Act in case of any repugnancy. It is for the simple reason that the State Act has received the assent of the President on 06.01.1988 and by virtue of the provisions contained in Article 254(2) of the Constitution of India, the provisions contained in the State Act would prevail upon the provisions contained in an earlier law made by Parliament. The reliance placed by Mr. Desai on the decision of the Hon'ble Supreme Court in the case of GUJARAT AGRICULTURAL UNIVERSITY V/S. RATHOD LABHU BECHAR (SUPRA) is also not of much avail to the appellant as Section 2(f) of the Act defines University which means an University constituted under the relevant University Act and includes any institution of higher education in the State other than University, declared u/s 3 of the University Grants Commission, 1956 to be a deemed University for the purposes of the said Act. The Gujarat Agricultural University does not fall within the ambit of this definition and hence, observations made by the Hon'ble Supreme Court in that case would not be pressed into service so far as the issue pertaining to the present appellant and the Saurashtra University is concerned. The reliance placed by Mr. Desai in the case of JAI BHAGVAN V/S. MANAGEMENT

OF AMBALA CENTRAL COOPERATIVE BANK LIMITED (SUPRA) would also not of much assistance to the appellant as the basic issue which arose before the learned Single Judge and before us is as to whether a reference has been properly made or not. The Hon''ble Supreme Court has also observed in the said decision that once a reference has been properly made to the Industrial Tribunal, the dispute is to be duly resolved by the Industrial Tribunal. In other words, if the reference has not been properly made or if the Industrial Tribunal has no jurisdiction and still reference has been made, then in that case, it cannot be argued that once the reference having been made, a decision taken by the Industrial Tribunal on the dispute referred to it cannot be questioned on the ground of jurisdiction. If on proper interpretation of the relevant statutory provisions, the learned Single Judge has come to the conclusion that the dispute raised can only be decided by the Gujarat University Services Tribunal, then in that case, if any decision is taken by the Industrial Tribunal that can certainly be challenged on the ground of jurisdiction and that challenge would certainly weigh with the Court and in this view of the matter, we do not find any infirmity in the view taken by the learned Single Judge while allowing the petition.

15. In the above view of the matter, in our considered opinion, the learned Single Judge has taken the correct decision on the facts and circumstances of the case and in light of the relevant statutory provisions and the settled legal position and it does not require any interference by us while exercising our appellate powers under Clause 15 of the Letters Patent Act. The appeal is, therefore, dismissed. Notice discharged without any order as to costs.