

(2016) 01 GUJ CK 0047

In the Gujarat High Court

Case No : Special Civil Application No. 2690 of 2006

Sharda Vidyapith

APPELLANT

Vs

Bachusinh Fatesinh Solanki

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(s)

Citation : (2016) 01 GUJ CK 0047

Hon'ble Judges : K.M. Thaker, J.

Bench : Single Bench

Advocate : Mukesh H. Rathod, Advocate, for the Appellant; HCLS Committee and Shrikar H. Bhatt, Advocates, for the Respondent

Final Decision : Disposed off

Judgement

K.M. Thaker, J.—1. This petition was listed in the cause list of Final Hearing yesterday, i.e. on 6.1.2016. When the matter was called out, learned advocate for the petitioner was not present. It was informed that, learned advocate for the petitioner had filed sick-note and hearing was adjourned with a view to granting opportunity to the petitioner to attend the hearing and conduct the matter on merits. Accordingly, the petition came to be adjourned to today.

2. Today also, when the matter is called out and taken up for hearing, learned advocate for the petitioner is not present. Mr. Bhatt, learned advocate for the respondent, is present. Today also, it is informed that learned advocate for the petitioner has filed sick-note.

2.1 Having regard to the fact that the petition is taken out against interlocutory order and also having regard to the fact that the petition is pending since 2006 and is already adjourned for 31 times, the Court considers it appropriate to decide the petition after taking into account the material on record.

2.2 Therefore, instead of adjourning the petition, the Court has proceeded to decide the petition on merits.

3. In present petition, the petitioner has prayed, inter alia, that:--

"16(B) Quash and set aside order passed by Labour Court below Exh. 44 in Reference No. 1 of 2004 dated 13.12.2005 and be further pleased to reverse the said order by allowing application Exh. 44."

4. The petitioner has challenged order dated 13.12.2005 passed by learned Tribunal below application (Exh. 44) in Reference No. 1 of 2004 whereby the learned Labour Court rejected the application (Exh. 44) whereby present petitioner raised preliminary objection against maintainability of the reference and the learned Labour Court decided the said application after hearing the parties.

4.1 The learned Labour Court vide order dated 13.12.2005 rejected the said application (Exh. 44) whereby the petitioner had raised preliminary objection against maintainability of the reference.

4.2 From the averments in the petition, it has emerged that the petitioner is an education institution and is running a secondary school in the name and style of Sharda Vidya Mandir.

4.3 It is alleged that the said school is registered with the Gujarat Secondary Education Board, Gandhinagar.

4.4 It has also emerged from the record that the respondent was in the employment with the petitioner school.

4.5 The petitioner has alleged that the respondent was engaged temporarily as hostel supervisor.

4.6 The petitioner has further alleged that the respondent was not reporting for work and that therefore, the petitioner had presumed that the respondent had left the job voluntarily.

4.7 It is also alleged that the respondent was called upon to show cause as to why he was not remaining present and for the said purpose, three notices were forwarded to the petitioner by registered post. It is also alleged that despite the said notices, the respondent did not report for duty.

5. Subsequently, the respondent raised an industrial dispute under the provisions of the Industrial Disputes Act. The said dispute came to be referred by appropriate Government for adjudication to the learned Labour Court. The reference came to be registered as Reference No. 1 of 2004.

6. While the said reference was pending for adjudication before the learned Labour Court and after the respondent had filed his statement of claim, the petitioner school filed an application dated 28.4.2004 and raised preliminary objection against maintainability of the reference on the ground that the reference is not maintainable before the learned Labour Court because the petitioner school is governed by the provisions under the Gujarat Secondary

Education Act and that therefore, the jurisdiction to decide the dispute raised by the respondent would lie with the Secondary Education Tribunal and not with the learned Labour Court.

7. The said application dated 28.4.2004 was taken on record at Exh. 44.

8. The learned Labour Court heard the petitioner school and the respondent with regard to the said preliminary objection. One of the contentions raised by the respondent appears to be that he was working in the hostel as hostel supervisor and that therefore, the reference could not be maintainable before the learned Labour Court. It appears that it was also claimed that considering the nature of the duties performed by him, he would not come within purview of the term "workman" under Section 2(s) of the Industrial Disputes Act and that therefore also, the reference was not maintainable before the learned Labour Court.

8.1 After hearing the parties, learned Labour Court noticed from the record that the dispute was originally registered as Reference No. 928 of 1987 and thereafter, the dispute was renumbered as Reference No. 68 of 1996.

8.2 The learned Labour Court also noticed that in the said reference an award was passed.

8.3 The learned Labour Court further noticed that, subsequently, Misc. Application was moved and the proceedings of the reference were restored and the reference was heard afresh.

8.4 The learned Labour Court further noticed that in the proceedings of the reference, a deposition of the respondent workman was recorded and after passage of all these proceedings, application (Exh. 44) came to be passed after passage of almost 11 years.

8.5 The learned Labour Court also reached to the conclusion that the respondent was an employee in the hostel run by the trust and that therefore, the said establishment would not fall within purview of Secondary Education Act. Having reached such conclusion, learned Labour Court for the reasons recorded in the order dated 13.10.2005, dismissed the application (Exh. 44) dated 28.4.2004.

9. Feeling aggrieved by the said order, the petitioner has preferred this petition.

10. After hearing the petitioner, the Court passed below quoted order dated 21.2.2006.

"Rule. The proceedings before the Labour Court will be subject to the result of this petition."

11. Since then, the petition is pending before this Court and by now, the proceedings have been adjourned 31 times during past 9 years.

12. Today, at the time of hearing, learned advocate for the respondent submitted that the proceedings before the learned Labour Court are almost concluded.

12.1 He also submitted that the stage of evidence of both sides is concluded and the arguments are also submitted and the matter is reserved for order.

13. Thus, from the submission by learned advocate for the respondent it has emerged that the proceedings before the learned Labour Court are on the verge of conclusion.

14. It is in this backdrop of facts that present petition, which is taken-out against the interlocutory order is to be considered, does not deserve to be entertained and this Court is not inclined to interfere with and disturb the interlocutory order dated 13.12.2005, more particularly when the proceedings before the learned Labour Court are already concluded and the case is reserved for order. In this view of the matter, it is not necessary to entertain present petition against the interlocutory order and decide the issue of maintainability of the reference.

14.1 Instead, it appears appropriate that without prejudice to the petitioner's right to raise contention against jurisdiction of the learned Labour Court to entertain the dispute raised by the petitioner on the ground that the dispute can be decided by the Education Tribunal in light of the provision under the Gujarat Secondary Education Act, present petition can be disposed of. Therefore, following order is passed:--

15. Without expressing any final view with regard to the objection against learned Labour Court's jurisdiction to decide the dispute and considering the fact that the petition is taken out at interim stage against interlocutory order, the petition is disposed of.

15.1 It is clarified that if the final award and the final direction by the learned Labour Court are against present petitioner and if the petitioner challenges the said award, then, it will be open to the petitioner to raise contention as regards learned Labour Court's jurisdiction and disposal of this petition would not stand in way of the petitioner in raising the contention about learned Labour Court's jurisdiction and/or this order will not stand in way of the petitioner in challenging the award on the grounds, as may be available in law, including the contention on the ground of jurisdiction of learned Labour Court which was raised by the petitioner vide application dated 28.4.2004.

With aforesaid observation and clarification, present petition stands disposed of. Rule is discharged.