

(2017) 02 GUJ CK 0023
In the Gujarat High Court
Case No : 23050 of 2007

SHRAMJIVI GENERAL WORKERS UNION	APPELLANT
Vs	
GUJARAT WATER SUPPLY & SEWERAGE ADMINISTRATION BOARD & ANR.	RESPONDENT

Date of Decision : 01-02-2017

Acts Referred:

Citation : (2017) 02 GUJ CK 0023

Hon'ble Judges : K M Thaker

Bench : Single Bench

Advocate : D S Vasavada, Mehul H Rathod

Final Decision : Disposed

Judgement

1. Heard Mr. Vasavada, learned advocate for the petitioner, and Mr. Rathod, learned advocate for the respondent.

2. In present petition, the petitioner - union has prayed, inter alia, that:- "8(A) To please allow this petition with costs by quashing and setting aside the Award passed by the Industrial Tribunal in Reference (IT) No.287/98 which was signed on 30th June,07 and published on 18th July,07 which is annexed at Anne.B;

(B) To please further direct the respondent to grant the benefit of pay-scale i.e. pay-scale of Engine Drivers of Palanpur Division and place them in the payscale of Rs.350 to 560 and revised thereafter retrospectively from 1-4-1974 and the difference accruing thereunder may be paid with 18% interest; ALTERNATIVELY

(C) To remand the matter back to the Industrial Tribunal for de novu adjudication;

(D) To grant any other relief that may be deemed fit and proper in the interest of justice;"

3. The factual background of this petition can be summarized thus:- 3.1 A union named Shramjivi General Workers" Union who claimed that the persons employed by the Gujarat Water Supply & Sewerage Board [hereinafter referred

to as "the Board"] at its Palanpur division, are its members and that they have authorized the union to represent them with regard to their claim for parity in wages raised and sponsored industrial dispute on behalf of the employees of the Board, who at the relevant time, were employed as and working as Engine Drivers at Board's Palanpur division. It appears that on behalf of 11 workmen, who were, allegedly, working as Engine Drivers, a dispute was raised. Appropriate government referred the dispute to learned Tribunal at Ahmedabad. The dispute was registered as Reference (IT) No.287 of 1998.

3.2 In the statement of claim, the union alleged that the opponent Board's employs Engine Drivers at its Palanpur division as well as its Kutch division. The union further alleged that there is difference between the salary of the persons employed as Engine Driver at Kutch division and the Engine Drivers employed at Palanpur division. It was also claimed that the salary of the Engine Drivers engaged at Palanpur division is less than the salary of similarly placed Engine Drivers at Kutch division. With such allegations, the union demanded parity of wages for Engine Drivers at Palanpur division with wages of Engine Drivers at Kutch division.

3.3 The opponent Board opposed the reference on short ground. The Board contended that, at the relevant time, the Board had erroneously granted higher pay-scale to the Engine Drivers who were working at Kutch division. Therefore, the difference or anomaly between the salary/payscale of Engine Drivers at Palanpur division and Engine Drivers at Kutch division had occurred. It was further contended that when the said mistake and anomaly came to the notice of the Board, immediately, the said mistake was corrected and the salary/pay-scale of the employees at Kutch division was modified/corrected and brought down to appropriate level in appropriate pay-scale and thereafter, the difference or anomaly between the salary of the persons, i.e. Engine Drivers at Palanpur division and Engine Drivers at Kutch division, did not survive. With such explanation, the opponent Board contended that there was no need or justification for increasing the salary of the employees working at Palanpur division so as to raise it to the level of the salary of Engine Drivers at Kutch division and actually, converse action was required to be taken, i.e. salary of Engine Drivers at Kutch division was required to be reduced and the said correction was made by the Board and that therefore, the demand by the union for Engine Drivers employed at Palanpur division is unjustified.

3.4 So as to support its said submission, the Board relied on the rectification orders passed by the Board so as to correct the mistake and modify the pay-scale / salary of Engine Drivers at Kutch division.

3.5 Upon conclusion of the pleadings, learned Tribunal received and recorded evidence from both sides. When the parties closed their evidence, learned Labour Court heard rival submissions and thereafter, upon considering material available on record and submissions, learned Tribunal passed award dated 30.6.2007 in above mentioned Reference (IT) No.287 of 1998, which is impugned in present

petition.

3.6 By the impugned award, learned Tribunal accepted the explanation and submission by the Board and rejected the reference. Feeling aggrieved by the said award, the union has taken out this petition.

4. Before proceeding further, it is relevant to mention, at the outset, that Mr. Rathod, learned advocate for the respondent Board, relied on Common CAV Judgment dated 27.11.2014 passed by Hon"ble Division Bench in Letters Patent Appeal No.1355 of 2013 and other connected appeals. 4.1 He submitted that when the Board took corrective measures and rectified its mistake with regard to the salary of Engine Drivers at Kutch division, group of petitions were filed and the decision of the Board, more particularly the decision to recover the amount which were paid by mistake was challenged.

4.2 The said proceedings culminated into Common CAV Judgment dated 27.11.2014 in Letters Patent Appeal No.1355 of 2013 and other connected appeals.

4.3 He submitted that by the said judgment, Hon"ble Division Bench approved and confirmed the decision whereby the Board had rectified its mistake and fixed salary / pay-scale of Engine Drivers at Rs.260-350 as per the applicable payscales.

4.4 He submitted that the Board, by the said rectification, not only brought salary of all Engine Drivers within the purview of the payscale actually applicable to said post but that decision also brought at par the salary / payscale of Engine Drivers employed at Kutch division and the Engine Drivers employed at Palanpur division and Hon"ble Division Bench approved the said action and decision of the Board vide said judgment dated 27.11.2014.

5. It is not in dispute that when the union on behalf of Engine Drivers at Palanpur division raised dispute, the concerned claimants were getting salary in the pay-scale of Rs.260-350 and the concerned claimants had demanded that their salary should be fixed in the pay-scale of Rs.350-560. The said demand was raised on the ground that the Engine Drivers at Kutch division were paid salary of Rs.350-560, however, it is given out by the Board that subsequently, the mistake was corrected and salary of Engine Drivers, i.e. Engine Drivers at Kutch division and Palanpur division, was put in pay-scale of Rs.260-350 and Hon"ble Division Bench has confirmed and approved the said decision. In light of said submission by Mr. Rathod, learned advocate for the respondent, it has emerged that the award dated 30.6.2007 passed by learned Tribunal in Reference (IT) No.278 of 1998 does not warrant any interference.

6. Mr. Vasavada, learned counsel for the claimants, submitted that for want of instruction, he is not in position to confirm as to whether the concerned claimants were paid salary in the pay-scale which Hon"ble Division Bench confirmed vide said judgment dated 27.11.2014.

7. From the award passed by learned Tribunal, more particularly in light of discussion in the award, it appears that the doubt expressed by learned advocate for the petitioner union has no base and the said doubt seems to have been expressed only on account of want of instructions or confirmation from the concerned claimants. From the submission by learned advocate for the petitioner union, it appears that the concerned claimants have retired from service on superannuation and therefore, there is nonavailability of instruction from the concerned claimants.

8. Having regard to the nature and scope of the claim/dispute which was raised before learned Tribunal and also having regard to the reasoned decision/award passed by learned Tribunal and also having regard to Common CAV Judgment dated 27.11.2014 in Letters Patent Appeal No.1355 of 2013 and other connected appeals, it appears that present petition can be disposed of, at this stage, with following order. [a] In light of Common CAV Judgment dated 27.11.2014 in Letters Patent Appeal No.1355 of 2013 and other connected appeals, there is no base or justification to interfere with the impugned award.

[b] It is, however, clarified that if for any period, the concerned claimants were not paid salary in the pay-scale approved by Hon"ble Division Bench in said Common CAV Judgment dated 27.11.2014 in Letters Patent Appeal No.1355 of 2013 and other connected appeals, then, the concerned claimants may pursue appropriate remedy in accordance with law before appropriate Forum.

[c] The Forum where such dispute is raised would examine the claim, in accordance with law and decide the case independently on its own merits after having regard to Common CAV Judgment dated 27.11.2014 in Letters Patent Appeal No.1355 of 2013 and other connected appeals.

[d] It will be open to both sides to raise appropriate contentions and objections, as may be available in law, including the objection on ground of delay and laches.

[e] The learned Court where the dispute is raised will consider such contentions and objections and pass appropriate order in accordance with law. With aforesaid observations, clarifications and direction, present petition stands disposed of. Rule is discharged.