
(2003) 11 GUJ CK 0001
In the Gujarat High Court

Case No : S.C.A. No. 5056 of 2003 & Special Civil Application No. 5056 of 2003

State of Gujarat

APPELLANT

Vs

Trikamlal Lalji Surani

RESPONDENT

Date of Decision : 12-11-2003

Acts Referred:

Citation : (2004) 2 LLJ 163

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : Premal Joshi, AGP for Petitioner Nos. 1-4, for the Appellant;
Dharmesh V. Shah, for the Respondent

Final Decision : Allowed

Judgement

Ravi R. Tripathi, J.—Rule. Mr.Dharmesh V.Shah, learned advocate appearing for the respondent waives service of rule.

2. With the consent of the parties, the matter is taken up for final disposal.

3. This petition is filed by the State of Gujarat through its officers challenging the order passed by the learned Judge of the Labour Court, Junagadh in Recovery Application No.103 of 1997 dated 19.10.2001 whereby the learned Judge was pleased to partly allow recovery application. The learned Judge was pleased to order that an amount of Rs. 2602=76 ps. be paid towards difference of pay, a sum of Rs.16217/- be paid as difference on account of non-grant of higher pay-scale and a sum of Rs.2305/- towards leave encashment, totaling to Rs. 21124=76 ps. Learned Judge was pleased to award the cost of Rs.500/- also in favour of the respondent workman.

4. Mr. Joshi, learned AGP submitted that the order of the learned Judge of the Labour Court is illegal inasmuch as the same is not in accordance with the provisions of law. He submitted that, in recovery application u/s 33(c)(2) only such amount, which is already adjudicated, can be ordered to be paid. He referred to the provision of Section 33(c) of the Industrial Disputes Act, 1947

which provides for, "the recovery of amount due from an employer". The learned advocate submitted that this provision is necessarily a provision for execution of an award or order to get the amount, which is admittedly payable to a workman by an employer. He submitted that under the provisions of Section 33(c), there is no question of adjudication of any new right for that one has to undergo the procedure provided for the purpose. The learned advocate submitted that, in the present case, there was a reference, being Reference (LCA) No.43 of 1982 wherein an award was made on 5.2.1987. Thereafter, recovery proceedings, being Recovery Application No.377/84 (old), which were given new number, being Recovery Application No.133/90, were filed and the same were disposed of on 10.1.1992 and the amount ordered was paid to the respondent workman.

5. The learned Assistant Government Pleader strenuously submitted that, present recovery application was thoroughly misconceived inasmuch as there was no amount, which was admittedly payable to the workman either under an award of the Labour Court or an agreement between the parties. He submitted that, the present recovery application was contested by filing a detailed reply, which is referred to by the learned Judge in para 2 of the order. He further submitted that, when it came to appreciate the contentions raised by the department, the same were not appreciated in their true perspective. The learned Judge committed an error in passing the order of payment. He submitted that the respondent workman was given an appointment after his services were terminated on 29.10.1976 for his absence since 1.7.1976 to 28.10.1976. He was reinstated in service on 24.10.1978 on assurance given by him that he will not claim any benefit. The learned advocate submitted that, in view of the aforesaid fact, services were rightly considered from the date of reinstatement, i.e. 24.10.1978 and accordingly all benefits were paid to the workman on that basis. He further submitted that, it was also pointed out to the learned Judge of the Labour Court that in view of para 3(31) of the Government Resolution No.PGR/1194/44/M dated 16.8.1994 the respondent workman was not entitled to get the benefits of higher pay-scale, and, therefore, the same was denied to the respondent workman. He submitted that, learned Judge, without taking into consideration the aforesaid two important aspects, passed the order under challenge. #. Mr.Dharmesh Shah, learned advocate appearing for the respondent workman vehemently submitted that the order passed by the learned Judge of the Labour Court does not require any interference at the hands of this Court. He submitted that, findings recorded by the learned Judge are borne out from the record of the case, and, therefore, the same should not be altered or interfered with by this Court. He submitted that, besides other contentions, the authorities ought to have taken into consideration the contention of the respondent workman regarding discrimination as pointed out qua a similarly situated workman, namely, Habib Jamal. He submitted that the date of entry in service of the said workman was 9.7.1958. He submitted that the case of the present workman should have been treated at par with the said workman and he should have been given the benefits as were given to the said workman.

6.1 Mr.Shah could not successfully convince this Court on the aspect that the said workman Mr.Habib Jamal also had an order of termination in the year 1976 and that he was also reinstated like the present workman in the year 1978. In absence of any such material, there cannot be any comparison with the said workman and there cannot be any claim of getting the same benefits as were given to the said workman. He submitted that an amount, which is ordered to be paid, is mainly on account of grant of higher pay-scale and taking into consideration the service of the respondent workman of such a long term, the workman is rightly considered to be entitled for higher pay-scale and the benefits granted should be approved by this Court. Mr.Shah could not satisfactorily explain as to how and why the contention of the authorities i.e. the respondent workman was made temporary fitter only with effect from 4.8.1990 is to be discarded. The fact remains that the respondent workman was made temporary fitter with effect from 4.8.1990, and, hence he did not complete nine years of service entitling him the benefits of higher pay scale, and, therefore, the benefits granted by the learned Judge of the Labour court cannot be sustained.

7. From the close perusal of the order and the rival contentions of the parties, it is clear that the learned Judge has erred in passing the order that too in recovery application u/s 33(c)(2) which is necessarily meant for executing an award or to get an amount which is admittedly payable by an employer to a workman.

8. In view of the aforesaid discussion, the present petition is allowed. The order passed in Recovery Application No.103 of 1997 dated 19.10.2001 is quashed and set aside. Rule is made absolute with no order as to costs.