

(2004) 04 GUJ CK 0062

In the Gujarat High Court

Case No : Special Civil Application No. 7530 of 2001 and Civil Application No. 1876 of 2004

Textile Labour Association

APPELLANT

Vs

Ahmedabad Jupiter Textile Mills

RESPONDENT

Date of Decision : 21-04-2004

Acts Referred:

Citation : (2004) 04 GUJ CK 0062

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : D.S. Vasavada, for the Appellant; Shukla for Nanavati and Nanavati Advs., for the Respondent

Judgement

Jayant Patel, J.—With the consent of the learned counsel appearing for both the sides, the Special Civil Application, which is against the

interim order is segregated from Special Civil Application No. 5088 of 2001, which as per Mr. Shukla, is against the final decision of the Industrial Court.

2. The main Special Civil Application is preferred by the petitioner for challenging the legality and validity of the interim order passed by the Labour

Court in BIR Application No. 305 of 2000 and of the Industrial Court in Revision Application No. 4 of 2001. It was prayed by the petitioner

herein before the Labour Court in the Application No. 305 of 2000 by interim application that the petitioner be allowed to be continued in service

upto the age of 62 years. The Labour Court has ultimately not granted the said application as per order dated 24.01.2001 and the petitioner

carried the matter in Revision before the Industrial Court, and as per the order dated 19.4.2001, the Industrial Court has vacated the stay and has

directed the Labour Court to decide BIR Application No. 305 of 2000 within a period of 3 months. The petitioner, under this circumstances, has

approached this Court. It may be stated that thereafter, since there was no stay, on 24.7.2001, the petitioner has been relieved from service.

3. Pending the main Special Civil Application, the petitioner has moved Civil Application to direct the respondent to pay all legal dues of Abdul

Rahim Abdul Karim, who has attained the age of 60 years as on 24.12.2000, without prejudice the contentions in the main Special Civil

Application.

4. I have heard Mr. Vasavada for the petitioner and Mr. Shukla for the respondent. It is the contention of the petitioner that the workman would

be entitled to be continued in service upto the age of 62 years whereas as per the stand of the respondent, the respondent workman would be

entitled to continue upto the age of 60 years. Therefore, so far as the continuation in service upto the age of 60 years is concerned, there is no

dispute, and, therefore, merely because some dispute is raised and the matter is pending either before the Labour Court or before the higher

Forum, the retiral dues of the workman, as if he retired at the age of 60 years, cannot be withheld. Normally, in the matter of payment or

disbursement of retiral dues, with a view to see that the workman concerned can survive, the admitted dues should be paid without prejudice to the

rights and contentions in the pending proceedings. In the present case, when even as per the case of the respondent the workman would be entitled

to continue upto the age of 60 years, no serious prejudice will be caused to the respondent if the retiral dues are paid to the concerned workman,

as if he retired at the age of 60 years, keeping the dispute of continuation upto 62 years pending.

5. So far as the main Special Civil Application is concerned, the same is against the interim order passed by the Labour Court, and the Revision in

the Industrial Court. Mr. Shukla, learned counsel appearing for the respondent submitted that the main BIR Application No. 305 of 2000 is

pending. When the present petition is only against the interim order and when by efflux of time even the age of 62 years of the workman is also

over, it will be for the petitioner to pursue the matter before the Labour Court in BIR Application No. 305 of 2000. If as an out come of the stay

application, in case the labour court finds that the workman concerned would be entitled to continue in service upto 62 years, then the

consequential orders can be passed at the final disposal. In the petition preferred by the petitioner, at this stage, such relief cannot be considered

since it was only against the interim order and at the stage of injunction. Therefore, it appears that the Special Civil Application would not survive

any more, and as such, it would be infructuous.

6. Under the above circumstances, I am of the view that the following directions shall meet with the ends of justice:

(i). The respondent shall pay the retiral dues to the concerned workman Abdul Rahim Abdul Karim on the basis as if he retired on attaining the age

of 60 years and disbursement of the amount of retiral dues shall be paid within a period of six weeks from today.

(ii). It is clarified that the aforesaid disbursement and the payment shall be without prejudice to the rights and contentions of both the sides in the

proceedings of BIR Application No. 305 of 2000.

(iii). The main Spl. C.A. No. 7530 of 2001 is disposed of as having become infructuous reserving right of both the sides to raise the contentions in

accordance with law including for consequential orders in BIR Application No. 305 of 2000.

7. The Special Civil Application as well as the Civil Application are disposed of in terms of the above directions. No order as to costs.