

(2017) 01 GUJ CK 0174
In the Gujarat High Court
Case No : 21798 of 2007

VADODARA MAHANAGAR SEVA SADAN

APPELLANT

Vs

ANILKUMAR SURESHCHANDRA VAIDYA

RESPONDENT

Date of Decision : 13-01-2017

Acts Referred:

Citation : (2017) 01 GUJ CK 0174

Hon'ble Judges : K M Thaker

Bench : Single Bench

Advocate : Pranav G Desai, R D Raval

Final Decision : Disposed

Judgement

1. In present petition the petitioner has prayed, inter alia, that:- "15(A) YOUR LORDSHIPS may be pleased to issue a writ of mandamus or in the nature of mandamus or any other appropriate writ, order or direction, directing to treat the Award and order dated 30.11.2006 passed by the Industrial Tribunal No. 2, Vadodara in Reference (IT) No. 39 of 1996- Annexure-A as null, void and of no effect, in the facts and circumstance of the case and in the interest of justice.

(B) YOUR LORDSHIPS may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction, quashing and setting aside the award and order dated 30.11.2006 passed by the Industrial Tribunal No. 2, Vadodara in Reference (IT) No. 39 of 1996- Annexure-A.

(C) Pending admission, hearing and final disposal of this petition, YOUR LORDSHIPS may be pleased to stay the execution, implementation and operation of the award and order dated 30.11.2006 passed by the Industrial Tribunal No.2, Vadodara in Reference (IT) No. 39 of 1996 - Annexure-A.

(D) Pending hearing and final disposal of this petition, YOUR LORDSHIPS may be pleased to grant ad-interim relief if terms of para (C) of above."

2. By impugned award dated 30.11.2006 learned Tribunal directed the municipal

corporation to fix salary of the concerned workman i.e. Mr. Anilkumar Sureshchandra Vaidhya in pay scale attached to the post of Field Supervisor - Field Assistant i.e. to grade 950-1400 w.e.f. 4.11.1996.

3. During final hearing of present petition Mr. Raval, learned advocate for the respondent informed that vide order dated 12.12.2007 the Court had directed the corporation to comply the award. He further submitted that in pursuance of said interim order dated 12.12.2007 the award is already implemented and the salary of the concerned claimant is appropriately fixed in pay scale of Rs.950-1400. He further submitted that even otherwise the issue about entitlement of Field Supervisor - Field Assistant for the pay grade of Rs.950-1400 is concluded by the decision dated 2.12.2014 passed by Hon"ble Division Bench in Special Civil Application No. 4560 of 1998 as well as by decision dated 8.12.2015 in Special Civil Application No. 2334 of 2004, Special Civil Application No.6005 of 2004 and Special Civil Application No.7818 of 2004.

4. At this stage it would be appropriate to refer to the order dated 12.12.2007 which reads thus:- 1. Heard learned advocate Mr. PG Desai on behalf of petitioner, learned advocate Mr. RD Raval appearing for respondent.

2. Learned advocate Mr. Desai has raised various contentions before this Court challenging the award inquestion.

3. Learned advocate Mr. Raval has also raised contention that this petition may be dismissed. He submitted that respondent workman has produced documents, also enter into the witness box and given deposition before the Industrial Tribunal. The scale which was given by Tribunal i.e. Rs. 950- 1400/- which has been objected by petitioner. At the time of when respondent was appointed he was not receiving 40% marks in SCC. Therefore, lesser grade was given to respondent but that can not be continued when entire pay scale revised by Corporation, which has been relied by Tribunal. No oral evidence led by Corporation before Industrial Tribunal. Therefore, workman evidence remained unchallenged.

4. He also submitted that Tribunal has given this benefit from 1996, not from 1988 from the date of joining and entire reason of the Tribunal based on circular, which has been passed by Corporation. Therefore, there is no substance in the present petition.

5. I have considered the submissions made by both the learned advocates. The question involved in the present petition would require detailed examination. Hence, Rule expedited.

6. Ad interim relief in terms of para 15(C) on condition that petitioner shall have to implement the award inquestion in favour of respondent w.e.f. 1/12/2006 and the respondent workman will give undertaking to this Court that in case if ultimately petitioner corporation is succeeded in this proceedings, then he will refund the difference of amount between exiting salary and awarded salary to

Corporation. This undertaking is to be filed by workman within a period of fifteen days before this Court and copy thereof is to be supplied to petitioner advocate Mr. PG Desai.

7. As well as it is directed to Corporation, to implement the award w.e.f. 1/12/2006 while implementing entire award inquestion notionally in favour of respondent.

8. Notice to interim relief returnable on 31/1/2008."

5. From the record it appears that after the said order dated 12.12.2007 this Court passed order dated 31.1.2008 which reads thus:- 1. Heard learned advocate Mr. Pranav G. Desai on behalf of petitioner, learned advocate Ms. Fernandez appearing for respondent.

2. In pursuance to the direction issued by this Court on 12/12/2007, the petitioner has passed the order of implementation on 29/1/2008. Copy of this order is taken on record.

3. No further order is require to be passed. Now matter is for final hearing. Registry is directed to list the matter for final hearing in a due course."

6. In light of the said submission by learned advocate for the respondent and in view of the interim order passed by this Court and submission by learned advocate for the respondent that impugned award is already implemented it has emerged that with passage of time and in light of abovementioned subsequent development, the petition is rendered infructuous.

7. As mentioned above in view of subsequent development and in light of submissions by learned advocate for the respondent, the cause to prosecute the petition does not survive and the dispute raised in present petition is rendered infructuous with passage of time and subsequent development. According to learned advocate for the respondent the dispute, even otherwise stands concluded in light of the abovementioned decisions by Division Bench in Special Civil Application No. 4560 of 1998 and Special Civil Application No. 2334 of 2004, Special Civil Application No.6005 of 2004 and Special Civil Application No.7818 of 2004.

8. It is however clarified, in light of the judgment by division bench that the effect of the direction to grant abovementieond pay scale to the employee - claimant shall be implemented w.e.f. date of the award i.e. 30.11.2006 and not from the 4.11.1996 as originally directed by the learned Tribunal and intervening period will be considered dies-non/notional. To that extent impugned award dated 30.11.2006 is modified. With the aforesaid clarifications the petition is disposed of. Rule is made absolute to the aforesaid extent. Orders accordingly.