

(2016) 01 GUJ CK 0202

In the Gujarat High Court

Case No : Special Civil Application No. 11309 of 2002

Valsad District Central Co-op. Bank Ltd.

APPELLANT

Vs

Bipinchandra Bhavanbhai Patel and Others

RESPONDENT

Date of Decision : 27-01-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, Section 33-A

Citation : (2016) 01 GUJ CK 0202

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

Bench : Single Bench

Advocate : A.K. Clerk, Advocate, for the Appellant; Amresh N. Patel, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

K.M. Thaker, J.—1. Heard Mr. Clerk, learned advocate for the petitioner, and Mr. Patel, learned advocate for the respondent.

2. The petitioner is aggrieved by an award dated 9.10.2002 passed by the learned Industrial Tribunal, Surat in Complaint (ITC) No. 72 of 2000 in Reference (ITC) No. 31 of 1999 whereby the learned Tribunal allowed the complaint filed by present respondent and directed present petitioner to reinstate the complainant (i.e. present respondent) on his original post.

It is pertinent that in the said award dated 9.10.2002, learned Tribunal has not passed any direction with regard to the complainant's claim for wages/consequential benefits.

3. Learned counsel for the petitioner and respondent have made submissions with regard to their respective case against and in support of the award impugned in present petition.

4. However, one aspect, which has emerged from the impugned award and from the record of the petition and so also from the submissions by learned counsel

for the contesting parties, is the fact that in view of specific event, particularly the fact that (a) during pendency of the proceedings, the respondent was allowed to resume his duties/reinstated; and (b) the fact that during pendency of this petition, more particularly w.e.f. 31.3.2012, the respondent attained and crossed the age prescribed for superannuation, the petition is virtually rendered infructuous and does not call for detailed adjudication and determination of the contentions raised for and against the impugned award.

5. However, it would be appropriate to mention some of the relevant facts, which are relevant for deciding and disposing the petition, even on the ground that it is rendered infructuous.

6. In this context, it is relevant to mention that:--

"[a] It is not in dispute that the respondent was employed by the petitioner bank.

[b] It is also not disputed that the petitioner had issued an order dated 8.11.2000 whereby the respondent employee was asked to report at its Ahwa branch (from Valsad branch where he was posted at the relevant time).

The petitioner claimed that the said posting of the respondent employee at Ahwa branch by order dated 8.11.2000 was by way of deputation and not by way of transfer.

[c] When the order dated 8.11.2000 was passed, the proceedings by way of Reference (ITC) No. 31 of 1999 was pending.

Therefore, the respondent invoked provision under Section 33-A of the Industrial Disputes Act [hereinafter referred to as "the Act"] and filed above-mentioned Complaint No. 72 of 2000 and alleged that the order dated 8.11.2000 was an order transferring him from Valsad branch to Ahwa branch and that the said order was passed without filing application contemplated under Section 33 of the Act and that therefore, the said order was in violation of Section 33 of the Act.

[d] The said complaint was contested by the respondent on various grounds, including the contention that (i) the order dated 8.11.2000 was by way of deputation and it is not in nature of transfer and that therefore, it cannot be said to be connected with the dispute which was pending before the learned Tribunal; (ii) any service condition applicable to the respondent workman immediately before the commencement of the reference was not altered by the petitioner; and (iii) the appointment letter by virtue of which the respondent was appointed contained specific clause making petitioner's service transferable and that therefore, the transfer from one place to another or one branch to another was condition of service and that therefore also, the provision under Section 33 of the Act was not applicable.

[e] Alongwith the said complaint, the respondent also preferred an application seeking stay against the order dated 8.11.2000.

[f] The learned Tribunal considered the said application and rival submissions and

by order dated 24.5.2001 rejected the application for interim relief holding, inter alia, that the transfer is condition of service in case of the complainant and that there was no material to establish that the complainant was protected workman.

[g] The respondent workman felt aggrieved by the said order and filed petition against the said order i.e. Special Civil Application No. 5341 of 2001 which came to be disposed of by order dated 7.11.2001.

In the said order, the Court declared and observed that the Court was not inclined to interfere with the interim order dated 24.5.2001 passed by the learned Tribunal. With the said observation, the Court rejected the petition.

[h] Even after the said order, the respondent workman did not report for duty in compliance of the order dated 8.11.2000.

[i] In view of the fact that even after learned Tribunal passed the order dated 24.5.2001 in respect of complainant's interim relief application, the complainant did not resume duty and considering the fact that even after the order dated 7.11.2001 passed by the Court in Special Civil Application No. 5341 of 2001, the respondent did not report for duty at Ahwa branch in compliance of the order dated 8.11.2000, the petitioner bank issued charge-sheet on 30.6.2004 treating the complainant's action of remaining absent from duty, as misconduct.

[j] It is jointly declared by learned counsel for the petitioner and respondent that after the said charge-sheet, the original complainant filed an application being Civil Application No. 5624 of 2004 which came to be partly allowed by order dated 9.8.2004 whereby the Court restrained the petitioner from proceedings with the domestic inquiry initiated pursuant to the above referred charge-sheet.

[k] Feeling aggrieved by the said order dated 9.8.2004, present petitioner filed appeal i.e. Letters Patent Appeal No. 2045 of 2005.

[l] The said Letters Patent Appeal came to be decided vide order dated 23.6.2005 wherein the Division Bench recorded the statement and assurance by the respondent workman that he shall report for duty on or before 1.7.2005.

In view of the said statement by the respondent workman, the Division Bench directed that the order dated 9.8.2004 shall remain suspended till final disposal of the Special Civil Application No. 11039 of 2002 i.e. present petition.

[m] It is also jointly declared by learned counsel for the petitioner and respondent that after the above referred order passed by the Division Bench, the complainant - respondent workman reported for duty at Ahwa branch w.e.f. 1.7.2005 and he continued to work at Ahwa branch until the date on which he attained and crossed the age for superannuation on 31.1.2012."

7. In this background, learned advocate for the petitioner relying on the decision in case of State of Bihar & Ors. v. Kripa Nand Singh & Anr. [, (2014) 14 SCC 375] and the decision in case of State of Haryana & Anr. v. S.K. Khosla & Ors. [(2007) 15 SCC 777] would submit that from 8.11.2000 until 30.6.2005, the respondent

workman did not report for work and did not comply the order dated 8.11.2000 and that too despite the order dated 24.5.2001 passed by the learned Tribunal in respect of the complainant's interim relief application and the order dated 7.11.2001 in Special Civil Application No. 5341 of 2001 and that therefore, in light of principle of No Work No Pay, the complainant would not be entitled for any wages for the said period.

8. In view of the fact that learned Tribunal has not passed any direction with regard to the issue related to backwages, it is not necessary to enter into the said dispute or contention.

Suffice it to say that it is an undisputed fact - situation related to present proceedings that from 8.11.2000 until 30.6.2005, the complainant did not report for work.

9. In the meanwhile, the learned Tribunal had proceeded with the hearing of the complaint and decided the same vide order dated 9.10.2002.

Against the said award, present petition is filed.

9.1 It is also appropriate to mention that so far as present petition is concerned, after hearing the petitioner, the Court admitted the petition and by way of interim relief, directed the parties to maintain status-quo as on 20.11.2002.

Thus, during pendency of the petition, the said interim relief has remained in operation.

10. From the narration of the facts arising from the record, it has emerged that the complainant has crossed the age for superannuation and in regular course of service, he has been superannuated w.e.f. 31.1.2012 as per the rules and regulations applicable to the petitioner bank.

11. By the impugned award, the learned Tribunal directed the petitioner bank to reinstate the complainant on his original post.

12. However, in view of the fact that now the respondent has crossed the age of superannuation and he has retired from service and even retiral benefits have also been paid, now any order with regard to reinstatement of the respondent workman is not required to be passed.

Even otherwise, in view of the fact that in light of and in the backdrop of the orders dated 24.5.2001 and 7.11.2001 and 23.6.2005 and in light of his own statement the respondent had reported for duty on 1.7.2005 at Ahwa branch and continued to work there until he retired on superannuation w.e.f. 31.1.2012, any order with regard to direction to reinstate the complainant is now not required to be passed.

Besides this, as mentioned above, any direction with regard to backwages is not passed by the learned Tribunal and that therefore, the said aspect is not required to be examined in present case.

13. The above-mentioned facts bring out that upon superannuation of the respondent, the petition is rendered infructuous.

Any direction with regard to the order which the learned Tribunal passed is now not required to be made.

Consequently, the petition is disposed of as infructuous pursuant to the respondent's superannuation w.e.f. 31.1.2012.

Present petition accordingly stands disposed of. Rule is discharged.