
(2016) 1 CLR 1065 : (2016) 150 FLR 67 : (2016) 3 LLJ 536

GUJARAT HIGH COURT

Case No: Special Civil Application No. 13522 of 2015

Sanjivani Hospital

APPELLANT

Vs

Surat Labour Union
And Another.

RESPONDENT

Date of Decision: Feb. 8, 2016

Acts Referred:

Constitution of India, 1950 " Article 226#Industrial Disputes Act, 1947 " Section 10(1)

Citation: (2016) 1 CLR 1065 : (2016) 150 FLR 67 : (2016) 3 LLJ 536

Hon'ble Judges: Paresh Upadhyay, J.

Bench: Single Bench

Advocate: Yogini V Parikh, Advocate, for the Appellant; U.T Mishra, Advocate, Notice Served, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Paresh Upadhyay, J. (Oral) - Challenge in this petition is made by the employer to the award passed by the Labour Court, Surat in Reference

(LCS) No. 164 of 2011 dated 31.03.2015.

2. Rule.

3. Mrs. Parikh, learned advocate for the petitioner has submitted that the workman had attained the age of 58 years and was retired on

05.07.2005 and his dues were also paid at the relevant time which he had accepted also. It is submitted that he raised a dispute in the year 2011

contending that the age of retirement is 60 years and he should have been continued till July, 2007. It is submitted that, apart from the fact that the

workman was rightly retired at the age of 58 years, there was fetal delay on the part of the workman, which was pointed out to the Labour Court.

Attention of the Court is invited to the fact that the Labour Court has rejected the said contention on the ground that the Limitation Act is not

applicable in these cases. She has further submitted that the Labour Court has committed error, in granting relief to the workman. It is submitted

that the impugned award be quashed and set aside.

4. On the other hand, Mr. Mishra, learned advocate for the respondent has taken this Court through the pleadings, including the affidavit-in-reply

dated 04.12.2015 to support the award. Reference is made to some names to submit that some persons were continued even beyond the age of

58 years. It is submitted that the Labour Court has recorded cogent reasons and no interference be made by this Court. It is submitted that this

petition be dismissed.

5. Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds as under.

5.1. The terms of reference was whether the workman should be reinstated with consequential benefits. The grievance of the workman before the

Labour Court was that he should not have been retired at the age of 58 years, but he should have been retired at the age of 60 years, which was

claimed to his superannuation age.

5.2. The glaring aspect is that the workman had attained the age of 58 years and was accordingly retired by the petitioner on 05.07.2005. His

dues were also paid at the relevant time, which he had accepted also.

5.3. He raised a dispute in the year 2011 contending that the age of retirement is 60 years and he should have been continued till July, 2007. The

Labour Court has accepted the say of the workman and directed payment of wages for those two years.

5.4. In the view of this Court, if the case of the workman was bona-fide, he would not have accepted his retirement dues in the year 2005. Further

if his case is accepted as it is, then also he should have agitated at least before July, 2007, the month which according to the workman he should

have retired. It is not in dispute that he did not do anything till the year 2011. It is this delay which should operate against the workman in these

facts.

5.5 This Court has considered the reasons recorded by the Labour Court. The Labour Court has recorded that the delay should not be

considered against the workman. The Labour Court has committed error at this stage. In this regard, reference needs to be made to the decision of

Hon"ble the Supreme Court of India in the case of Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub Division Kota v. Mohan

Lal reported in (2013) 14 SCC 543. Para-19 of the said decision reads as under.

19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in

raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of

discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in

Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and

manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising

industrial dispute before grant of relief in an industrial dispute, must be invariably followed.

5.6 Reference can also be made to the subsequent decision of Hon"ble the Supreme Court of India in the case of Prabhakar v. Joint Director

Sericulture Department reported in JT 2015 (9) SC 83. Para-26 of thereof reads as under.

26. The aforesaid case law depicts the following:

(a) xxxxx

(b) xxxxx

(c) xxxxx

(d) Whether dispute is alive or it has become stale/non-existent at the time when the workman approaches the appropriate Government is

an aspect which would depend upon the facts and circumstances of each case and there can not be any hard and fast rule regarding the time

for making the order of reference.

5.7 In view of the above proposition of law and the facts noted above, this Court finds that the reasoning adopted by the Labour Court is

unsustainable since the case of the workman himself was to the effect that he ought to have been continued in service till 05.07.2007, and he raised

this dispute in the year 2011. In view of this delay on the part of the workman, the dispute ceased to be a live dispute when it was raised. No relief

could have been granted to the workman. The impugned award therefore needs to be quashed and set aside.

6. For the reasons recorded above, this petition is allowed. The impugned award is quashed and set aside. Rule is made absolute. No order as to

costs.