HIGH COURT OF GUJARAT

MANAGER, ARVIND POLYCOT LTD
Versus
KHUMANSINHL PARAVINSHING VAGHELA

Date of Decision: 06 October 2023

Citation: 2023 LawSuit(Guj) 1911

Hon'ble Judges: Aniruddha P Mayee

Case Type: Special Civil Application

Case No: 29335 of 2007, 5416 of 2008

Subject: Civil

Final Decision: Application dismissed

Advocates: Nirav Joshi, Nanavati Associates, P C Chaudhari

Cases Referred in (+): 2

Aniruddha P Mayee, J.

[1] The present Special Civil Applications are filed praying for the following reliefs:-

> " 7(A) A writ of mandamus and/or certiorari or a writ in the nature of mandamus and/or certiorari, or any other appropriate writ, order or direction be issued for quashing and setting aside the order dated 25.04.2007 passed by the Labour Court, Ahmedabad in Recovery Application Nos.49/2001 and 48/2001, in the interest of justice;
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> (B) Pending admission, hearing and final disposal of this petition, the order dated 25.04.2007 passed by the Labour Court, Ahmedabad in Recovery Application Nos.49/2001 and 48/2001 may kindly be stayed in the interest of justice and equity; and
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> (C) Grant such other and further relief(s) as are deemed fit in the interest of justice and equity."

[2] The facts leading to the filing of the present Special Civil Applications are as follows:-

2.1 That the respondent workmen were working as Badli workers in Dyeing Department of the petitioner company. That as per the settlement arrived at between the petitioner company and its employees' union i.e. the Textile Labour Association in Reference (IC) No.16 of 1996, the petitioner company floated a VRS Scheme in the year 1996 and that as per the said Scheme, the respondent workmen gave their resignations and obtained all the benefits of the said Scheme available to them. That it is the case of the petitioner company that the respondent workmen were paid an amount of Rs.16,000/- lump sum plus provident fund amount of Rs.4,325/- total aggregating to Rs.20,325/- and an amount of Rs.16,000/- lump sum plus provident fund amount of Rs.5,865/- total aggregating to Rs.21,865/- in terms of the settlement. That the respondent workmen accepted the said amount and voluntarily retired as a Badli workers from the services of the petitioner company.

2.2 That, thereafter, the respondent workmen filed recovery application Nos.49 of 2001 and 48 of 2001 before the learned Labour Court, Ahmedabad after a period of 7 years and demanded that they should be given retirement benefits as available to the permanent workman as per the settlement arrived at between the petitioner company and the employees' union. As per the said application, the respondent workmen had prayed for payment of an amount of Rs.99,000/- and Rs.99,380/- being due and payable by the petitioner company towards the retirement benefits. That the petitioner herein opposed the said recovery applications and contended that the respondent workmen have voluntarily resigned from the services after accepting the retirement benefits as available to the Badli workers. That as per the settlement, the relationship between the petitioner company and the respondent workmen ended with the said payment of the benefits. That it was also contended that the respondent workmen have no right to raise a demand after a period of 7 years.

2.3 That the learned Labour Court vide impugned order dated 25.4.2007 was pleased to allow the recovery applications and directed that the petitioner company shall pay each of the respondent workmen an amount of Rs.1,11,494.90 ps. by way of total benefits.

Aggrieved by the said order, the petitioner company has preferred the present Special Civil Applications.

[3] Mr. Nirav Joshi, the learned counsel appearing for the petitioner company, submits that the learned Labour Court has erred in entertaining the recovery applications preferred by the respondent workmen without referring and interpreting the provisions of Section 33(C)(2) of the Industrial Disputes Act, 1947 [ID Act for short], which says

that there has to be preexisting right in favour of the workman. He submits that in the present case, there is no pre-existing right in favour of the respondent workmen as they have already accepted the retirement benefits as available to the Badli workers at the time of voluntary retirement. He further submits that no objection was raised with respect to the payment of monies made to them at that point of time. It is further submitted that the learned Labour Court had no jurisdiction to create a new right in favour of the respondent workmen and that too, after a period of 7 years from availing voluntary retirement. He has further submitted that the learned Labour Court also exceeded its jurisdiction in deciding the status of the respondent workmen after availing the voluntary retirement. It is also submitted that the learned Labour Court could not have decided the status of the respondent workmen as a permanent employee who were working on the permanent vacant post in the petitioner company in the recovery applications filed under Section 33(C)(2) of the ID Act. It is further submitted that the learned Labour Court has also not considered Clause 5(C) of the settlement terms. The learned counsel submits that the said Clause stipulates that a Badli worker who had worked for less than 4 years would be given retrenchment compensation for a minimum period of 4 years i.e. Rs.16,000/-. In the present case, the respondent workmen were working as Badli workers at the time of taking voluntary retirement which is not disputed and hence, as they had worked for less than 4 years; they were paid an amount of Rs.16,000/- as per the aforesaid Clause of the settlement terms. As they were not permanent workmen, they were not entitled to receive any retiral benefits. The learned counsel further submitted that the learned Labour Court has even interpreted the Clause 9 of the settlement terms erroneously. It is submitted that Clause 9 stipulates that a Badli worker who has worked for 6 months or more on the permanent vacant post, would be considered as permanent workman and if the said post is removed as per the settlement then such a workman will be treated as a permanent workman and will be given the benefits accordingly. He submits that in the present case, the respondent workmen have not produced anything on record in support of their claims that they have worked for more than 6 months on the permanent vacant post and such post has been abolished as per the settlement. In absence of any such evidence, the learned counsel submits that the learned Labour Court ought not to have declared that the respondent workmen have worked for more than 6 months on a permanent vacant posts and thus, they are entitled to receive the benefits as available to permanent workman. The learned counsel submits that the status of the Badli worker against the permanent vacant post has to be adjudicated under Section 10 of the ID Act and the learned Labour Court could not have done so in a recovery applications under Section 33(C)(2) of the ID Act. The learned counsel has submitted that once the respondent workmen had accepted the benefits as offered to them by the voluntary retirement scheme, they had no locus to raise a fresh demand. Further, such a demand was raised after a long period of 7 years and therefore also,

the learned Labour Court ought not to have entertained the recovery applications of the respondent workmen. He further submits that in the recovery applications, the respondent workmen had demanded an amount of Rs.99,000/- each as being due and payable by the petitioner company, however, the learned Labour Court has enhanced the amount prayed for and awarded an amount of Rs.1,11,494.90 ps. to each of the workmen, which is more than the amount prayed for, without assigning any reasons for the same.

In support of his contention in respect of the maintainability of the recovery applications, the learned counsel for the petitioner has relied upon the judgment of the Hon ble Supreme Court in case of Nagar Council, Kapurthala v. Davinder Kumar & Ors., 2012 10 SCC 280 and the judgment of the Full Bench of this Court in case of Nizamuddin Suleman v. New Shorrock Spg. & Wvg. Mills Co.Ltd., Nadiad & Ors., 1979 2 LLJ 36.

[4] Per contra, the learned counsel Mr. P.C.Chaudhari appearing for the respondent workmen, submits that the respondent workmen have claimed only those benefits which are due and payable by the petitioner company in terms of the retirement benefits according to the settlement and award of the learned Labour Court. He submits that the respondent workmen have been given a retirement benefits which were available to the Badli workers, however, the respondent workmen have not been granted the retiral benefits which are available to a permanent workmen. He submits that the relationship between the employer and the employee does not get extinguished till all legal dues are rightfully settled by the employer. He submits that if any benefit is accruing to the respondent workmen as per the settlement arrived at between the petitioner company and the workers union, the recovery applications under Section 33(C)(2) of the ID Act are maintainable. He submits that the respondent workmen had worked against the permanent vacant posts for more than 6 months and as such, they were entitled for retirement benefits as payable to the permanent workman as per the settlement. He further submits that the respondent workmen had initially demanded an amount of Rs.99,000/- each towards the retirement benefits, however, subsequently an amendment application came to be moved and the respondent workmen had amended the prayer for claiming the amount as granted by the learned Labour Court. He submits that the learned Labour Court has not exceeded its jurisdiction and has only granted the enhanced claim amount as prayed for by the respondent workmen. He submits that the learned Labour Court has decided the recovery applications in accordance with law and on the basis of the evidence on record. He submits that the petitioner company had been heard completely on each of the issues and the learned Labour Court has categorically delivered the findings on each issues as raised by the petitioner company . He further submits that the

respondent workmen had moved an application before the learned Labour Court for production of documents by the petitioner company. However, the petitioner company has not produced any documents as demanded before the learned Labour Court. He further submits that the facts which are averred by the respondent workmen before the learned Labour Court were not disputed by the petitioner company. Further, the petitioner company has not examined any witness in its behalf before the learned Labour Court. The petitioner company has merely denied the status of the respondent workmen but has not produced a single evidence to dispute the same. He submits that even on the question of jurisdiction, no specific plea was taken before the learned Labour Court. He submits that the learned Labour Court has rightly granted the retiral benefits as prayed for after considering the pleadings by the parties and the evidence brought on record. He submits that no interference is called for in the present case and the learned Labour Court has given a cogent reasons. In absence of documentary evidence as well as any oral evidence produced by the petitioner company before the learned Labour Court, the petitioner company cannot make any grievance that the learned Labour Court has committed an error.

In support of his submission, the learned counsel for the respondent workmen has relied upon the judgment of the Hon ble Supreme Court in case of Nizamuddin Suleman v. New Shorrock Spg. & Wvg. Mills Co.Ltd., Nadiad & Ors., 1997 3 SCC 150.

[5] Heard learned counsels for the parties and perused the documents on record.

[6] A perusal of the documents on record as well as the pleadings reveal that the respondent workmen are claiming difference in the compensation awarded to them under the VRS Scheme pursuant to the settlement arrived at between the petitioner company and the employees' union. The respondent workmen are claiming that they have been paid compensation as Badli workers and not as Badli workers who have worked for more than 6 months against the permanent vacant posts. It is seen that after receiving the compensation under the VRS Scheme, the respondent workmen had taken up the issue of receiving less compensation under the Scheme by making an applications to the petitioner company as well as to the employees' union, however, they did not receive any reply to their representations. It is not in dispute that the respondent workmen were working in the Dyeing Department whereas there were 15 permanent posts and 8 Badli workers. In the present case, the respondent workmen are claiming enhanced benefits as entitled to them under the settlement arrived at between the petitioner company and the employees' union. The contention of the petitioner company that unless they show their entitlement the present petitions are not maintainable, cannot be sustained for the simple reason that the respondent workmen are seeking the benefits in terms of the settlement and the same is not

disputed. Further, the respondent workmen are Badli workers with the petitioner company which is also not disputed. The only dispute which was to be adjudicated by the learned Labour Court in the recovery applications was whether the respondents were entitled for compensation as Badli workers or as Badli workers working for more than 6 months against the permanent vacant posts. In view thereof, the learned Labour Court has rightly held that since the respondent workmen seeking additional compensation under the VRS Scheme as per the settlement, the recovery applications were maintainable. This Court finds no error in such a finding given by the learned Labour Court.

[7] In the present case, the respondent workmen have led oral as well as documentary evidence in support of their case. The respondent workmen have been duly cross examined by the petitioner company. The respondent workmen have brought on record the pay slips issued from January 1994 to December 1994. The petitioner company has not brought any evidence contrary to the same neither has denied those pay slips. A perusal of the same would show that the respondent workmen have worked as Badli workers for more than 6 months against the permanent vacant posts. The respondent workman in Special Civil Application No.5416 of 2008 has worked for 224 days and the respondent workman in Special Civil Application No.29335 of 2007 has worked for 249.5 days. It goes to show that they have worked for more than 6 months as Badli workers. In the background of this evidence, if the Clauses of the settlement as arrived at between the petitioner company and the employees' union is looked at, then, the Clause 4(2)(a) and Clause 5(a)(b)(c) provide for various categories of workmen who are to be given the benefits. In addition to the said clauses, Clause 9 is equally important to be considered while paying the VRS benefits. Clause 9 specifically provides that if any Badli worker has worked against the permanent vacant post for more than 6 months, then, he is to be treated as a permanent and accordingly, he is entitled to the benefits which are payable to all the permanent workmen under the said settlement. In the present case, both the respondent workmen have successfully proved by way of documentary as well as oral evidence that they were Badli workers who were working for more than 6 months against the permanent vacant posts and therefore, they were entitled to the subject benefits of Clause 9 of the settlement as arrived at between the petitioner company and the employees' union. Therefore, the learned Labour Court has rightly concluded that upon appreciation of evidence, the respondent workmen had worked for more than 6 months against the permanent vacant posts in Dyeing Department and as per the Clause 9 of the settlement, they were to be treated as permanent workers and given benefits of permanent workers and not normal Badli workers.

[8] At this point, it is pertinent to mention here that the petitioner company has not led any evidence in support of its case to show that the respondent workmen had worked for less than 6 months and that also not against any permanent post. No witness was examined on the petitioner company s behalf and in the cross examination of the workmen, the advocate for the petitioner company could not elicit any factum in their favour and against the workmen. In the aforesaid background when the respondent workmen are demanding benefits in terms of the settlement as arrived at between the petitioner company and the employees' union, the judgments as relied upon by the learned counsel for the petitioner company that the recovery applications are not maintainable as they have to establish their right before the learned Labour Court by raising a dispute, is not sustainable and the judgments relied upon by the petitioner company will be of no aid in the present case.

[9] In the aforesaid, this Court is of the opinion that the impugned judgment and order passed by the learned Labour Court is based on evidence on record and cogent reasons and no interference is called for. The present Special Civil Applications are devoid of merits and are, accordingly, dismissed. No order as to costs.