

Received on 06/04/2022
 Registered on 06/04/2022
 Decided on 28/04/2022
 Duration Y. M. D.

**IN THE HON'BLE COURT OF 5TH ADDL. DISTRICT JUDGE
 KHEDA AT NADIAD**

Regular Civil Appeal No.46/2022

Exh:- _____

Appellant :-

Patel Bharatbhai Ambalal
 Age about: 54 Yrs., Religion: Hindu,
 Residence: Veraimatano Khancho,
 Mu.Po.Ta.: Sojitra, Dist.: Anand.

Versus

Respondent :-

Cema Electric Lighting Products (India) Pvt. Ltd.
 at : Malavada road, Post : Limbasi.

 Ld.Advocate Mr.D.H.Shah & Ms. Chhaya B Bhatt for the
Appellant.
 Ld.Representative Mr. M.G.Memon for the Respondents.

**Appeal under Section-17
 of Payment of Wages Act, 1936**

-:: J U D G M E N T ::-

1 Being aggrieved and dissatisfied with the judgment of Ld. Authority under The Payment of Wages Act, Labour Court, Nadiad, dismissing the Payment of Wages Application No.51/2021, preferred under section 15(2) of The Payment of Wages Act by the appellant, the present appeal is preferred.

The case of the appellant before Ld. Labour Court in brief is that : appellant/applicant is working at the respondent's premises mentioned above. Respondent have applied for closure of the unit at Limbasi. However, still permission for closure of the said unit is not given. Though permission for closure is not given, respondent have stopped their workmen from performing their work and have stopped payment of their salary from February 2018. Applicant is entitled for the salary, and hence the present application, for having wages/salary from August 2019 to February 2021.

2. The Case of the Respondent vide their reply before Ld. Labour Court is that :.

application is liable to be rejected for want of requisite stamp duty, appellant have not done any work for the period of which wages are prayed. Respondent on 29.05.2017 had preferred closure application u/s.25(o) of Industrial Dispute Act before Labour Commissioner, Gandhinagar. The said closure application was

rejected, against the said order of rejection, respondent have preferred Special C.A. No.17431/2017 before Hon'ble High Court of Gujarat. In said Special C.A. order is passed on 09.08.2018. Hence, again review application was preferred, the said review application was rejected. Hence, respondent preferred Special C.A.no.4236/2019. The said Special C.A. is pending before Hon'ble High Court of Gujarat. Hence, appellant do not have pre-existing right to recover the said amount.

Further, averments made by the appellant in para-1 to 4 are not true. Without prejudice to the rights of the respondent, respondent states that true facts are that, respondent Company is registered Company under Companies Act, 1956. Respondent took over G.E.lighting Industrial Pvt Ltd., on 18.01.2007 alongwith his permanent employee on Muster roll. The Company was facing recession since the date of its take over. In view of stiff competition ,and increase in labour wages, it was found that the company could not be run further. Hence, on 29.06.2017

notice to this effect was placed at respondent's office, was sent to each workmen, and application seeking permission for closure of establishment was preferred before Government. However, as closure permission was not granted, respondent against the said order of the government preferred Special C.A.No.17431/2017 before the Hon'ble High Court of Gujarat. Thereafter, as per the order of Hon'ble High Court, respondent preferred review application before the Government. The said review application was rejected by the Government. Hence, respondent preferred Special C.A. No.4236/2019 before the Hon'ble High Court of Gujarat. The said Special C. A. is pending. In view of financial crisis, respondent could not pay Gas bill, and hence Gas Connection got dis-connected on 09.12.2017, and from 20.12.2017 all activities of production in the respondent company came to an end. As respondent could not pay electricity bill, their electricity connection got dis-connected on 19.01.2018. Respondent have not taken any

work from the appellant or any workmen from 20.12.2017, and as per the direction of Hon'ble High Court, respondent have paid wages upto January 2018. The wages prayed by the appellant, is not of the period during which appellant had worked, and hence appellant do not have pre-existing right to receive the said wages.

Applicants/Appellants had preferred Civil Suit no.52/2016 in the Court of Matar, against the Properties of the Respondent. The said suit after hearing was rejected. Against the said order of rejection, MCA No.68/2017 was preferred before Hon'ble District Court, Nadiad, wherein injunction was prayed. However, the injunction application was rejected. Thereafter, Civil suit No.52/2016 and MCA No.68/2017 were withdrawn by the applicants.

Appellants had also preferred Complaint No.01/2018 before Industrial Tribunal, Nadiad as per section 33(A) of Industrial Disputes Act, wherein relief restraining respondent from moving their assets, was prayed. The said

reliefs were rejected by the Industrial Tribunal, Nadiad. Against the said order applicants have preferred SCA No.3376/2018 before Hon'ble High Court of Gujarat. In said Special CA also appellants/applicants had sought wages, other benefits and had sought injunction over the properties of the respondent. In said Special CA, order to maintain Status-quo was passed. Thereafter, with the consent of both the parties it was directed that respondent shall have new bank account and all amounts received by the sale of these properties shall be deposited in the said account, and from said amount payment of wages or other dues shall be made after the permission of Industrial Tribunal, and with said order the Said Special C A application was disposed of.

Being aggrieved with the said order, G.E.Employees Union preferred LPA No. 1079/2018 in Hon'ble High Court of Gujarat. In said LPA, settlement was arrived between Union and the Employer, on 25.03.2019. The said settlement

was produced in said LPA, Hon'ble High Court of Gujarat, accepted the said settlement and order to implement the settlement was passed on 29.03.2019, wherein it was ordered that settlement should be considered as part of order. Being aggrieved with the said order, on behalf of present appellant and other 86 employees, review application was preferred before Hon'ble High Court of Gujarat. The said review application was registered as, Misc. Civil Application (for recall) No. 01/2019. The said review application was rejected by the Division Bench of Hon'ble High Court of Gujarat. All these facts are within the knowledge of the appellant, however present application is preferred concealing all these facts. Thus, appellant have not come with clean hands. The dispute pertaining to the, wages claimed by the appellant is pending before the Hon'ble High Court of Gujarat in Special Civil Application No. 4236/2019, thus matter being sub-judice before Hon'ble High Court of Gujarat, this court

cannot adjudicate the same. Hence, also present application deserves to be rejected. The wages claimed by the appellant, are not illegally deducted and hence same cannot be sought under The Payment of Wages Act. Hence, also present application deserves to be rejected.

3. The evidence produced by the appellant in Payment of Wages Application No.51/2021 is as follows.

Oral Evidence.

Exh.7 : Deposition of applicant

Documentary Evidence

Mark-2/1 : Salary Slip.

Mark-8/1 : Notices placed by Respondent.
& Mark-8/2

Mark-8/3 : Order passed in Civil Misc.
Application No.01/2019

Mark-8/4 : Demand forwarded to Respondent.

Mark-8/5 : Acknowledgment of forwarded Demand.

Mark-8/6 : Report forwarded by Assistant Labour
Commissioner to Deputy Labour
Commissioner.

Mark-9/1 : Order passed in Special Civil
Application No.17431/2017

Appellant have produced closing purshis
vide Exh.10.

4. The evidence produced by the respondent in Payment of Wages Application No.51/2021 is as follows.

Documentary Evidence:

- Exh.13 : Notice issued to Respondent for disconnection of Gas Connection.
- Exh.14 : Report of Electricity Company for disconnecting the electric supply.
- Exh.15 : Report regarding dis-connection of Electric Supply.
- Exh.16 : Letter pertaining to deposit of Licence under Factories Act.
- Exh.17 : Settlement arrived between G.E. Employees Union & Company.
- Exh.18 : Order passed in LPA No.1079/2018.
- Exh.19 : Order passed by Hon'ble High Court of Gujarat in Misc. Civil Application (for recall) no.01/2019.
- Exh.20 : Status report of Sp. C. A. No.4236/2019.

Respondent have not produced oral evidence on their behalf, and have produced closing purshis vide Exh.21.

5. Thereafter, the matter was heard, and after hearing both the parties the Ld. Authority under The Payment of Wages Act, Labour Court, Nadiad dismissed the application. Being aggrieved and dis-satisfied with the said judgment, dismissing the application, the present appeal is preferred on following grounds.

6. Grounds.

(i) Ld. Authority after coming to conclusion that closure have taken place without necessary permission, and hence appellant are entitled for the wages, however thereafter have failed to clarify the reason for rejection, and thereby have erred.

(ii) The finding of Ld. Authority that in view of settlement placed in LPA No.1079/2018 before Hon'ble High Court of Gujarat, order of payment of wages cannot be made is erroneous.

(iii) Ld. Authority have failed to appreciate that settlement does not pertains to payment of wages, and thereby have erred in rejecting the application.

(iv) Ld. Authority have failed to appreciate that in view of Section 23 of The Payment of Wages Act, any settlement which frustrates the rights of the workmen is null & void.

(v) Ld. Authority have failed to appreciate that Hon'ble High Court of Gujarat in Special Civil Application No.17431/2017 vide order dated :

09.08.2018 have considered appellant group, as different from the group entering into the settlement, and the said settlement being without proceedings r/w 18(1) of Industrial Dispute Act, is binding only to the parties entering into compromise ie union & members of the union only.

(vi) Ld. Authority have failed to appreciate the binding nature of orders passed by Hon'ble Single Judge, & Hon'ble Division Bench.

(vii) Ld. Authority have erred in appreciating that the issues, reliefs & prayers of Special Civil Application are not on record.

(viii) Ld. Authority in absence of Annexure of Settlement placed in LPA No. 1079/2018 have erred in arriving at finding that appellant's name is present in said Annexure.

(ix) Ld. Trial Court have erred in appreciating that by mere presence of name of the appellant in the annexure of settlement, appellant becomes party to settlement.

(x) Ld.Authority have erred in appreciating that in absence of pleadings, evidence as to appellant being not member of Union cannot be considered.

(xi) Ld. Authority have failed to appreciate the order passed in Civil Misc. Application (for recall) No.01/2019.

7. Ld. Advocate for the appellant submits that, for closure of undertaking, permission is required as per section 25(o) of the Industrial Dispute Act. The permission for closure was rejected. In spite of the rejection of the permission, respondent closed the establishment, and preferred Special Civil Application No.17431/2017 before the Hon'ble High Court of Gujarat. The said Special Civil Application was disposed of with liberty to the petitioner to approach the appropriate government under Section 25-0(5) of the Industrial Dispute Act, and to seek review of the impugned order. Thereafter, respondent preferred review before the Appropriate Authority. The said review was rejected by the appropriate authority. The said order passed by

appropriate authority in review application is challenged before Hon'ble High Court of Gujarat by preferring Special civil application No. 4236/2019. The said Special Civil application is pending.

During the pendency of proceedings before the Hon'ble High Court, respondent have stopped payment of wages. Hence, the present application.

Ld.Labour Court in the judgment have held that closure of establishment in absence of permission is illegal, and have also held that appellant are entitled for the wages. However have not granted relief to the appellant.

Ld.Labour Court have relied on the compromise, Exh.21. However, as per section 2(p), 18(1) & 18(3) of the Industrial Dispute Act, settlement arrived during settlement proceedings is binding to all, whereas settlement arrived other than proceedings is binding to the parties only. Section 2(p) of Industrial dispute Act does not covers the settlement arrived before Hon'ble Labour Court or Hon'ble

High Court. Hence, compromise Exh.21 is binding to the parties to the settlement only, and Hon'ble High Court have considered present appellant as different group.

Further, the settlement Exh.21 is not pertaining to the wages. There cannot be waiver of wages, and any such settlement is null & void.

There is nothing to presume that appellant was member of the Union after 2012, there is no evidence to that effect. The list of members of the Union was not produced before the Ld. Labour court to show that appellant, was part of the group, arriving at the compromise. Hence, the said compromise cannot act against the appellant. Therefore, present appeal be allowed.

8. Ld. representative for the Respondent submits that, present application is preferred u/S.17 of the Payment of Wages Act. wages are defined in Section 2(6) of Payment of Wages Act. The present dispute pertains to the wages for the period after closure of establishment. Whether

closure is legal or illegal is in dispute. Hence, the demand raised by appellant, is not wages, as it is clear that work is not done for the period of which wages are claimed. Hence, the application u/S.17 of Payment of wages Act, is not maintainable.

The present dispute is Industrial Dispute, for which proceedings in accordance with law are required to be done. Appellant, after presentation of the present appeal have preferred proceedings for Reference of their said Industrial dispute.

Appellant, by way of present application, challenges the order passed by Hon'ble High Court of Gujarat, hence also present application and appeal is not maintainable.

Respondent as had incurred loss of about 117 crores, had no other option but to close the establishment, and hence had applied 90 days prior for the closure of the establishment. Present appellant was given notice of hearing in said proceedings. Appropriate Authority rejected the permission, and hence respondent

preferred Special Civil Application No.17431/2017 before Hon'ble High Court of Gujarat. The special Civil application was withdrawn with liberty to apply for review before appropriate authority.

Thereafter, respondent preferred review application before appropriate authority. The said review application application was also rejected. Against the said order of rejection, respondent have preferred Special Civil Application No.4236/2019 before the Hon'ble High Court of Gujarat. The said matter is still pending before the Hon'ble High Court of Gujarat, and thus as matter is sub-judice before Hon'ble High Court of Gujarat, this court cannot decide the issue of amount payable to the appellant, at this stage.

Appellant, in his application before Ld. Labour court have not mentioned the details of closure, the proceedings before the Hon'ble High Court, even have not mentioned the proceedings being rejected by the Ld. Court at Matar. Appellant was party in LPA No.1079/2018,

the name of the appellant is present in the list of employees provided with the settlement. The review application preferred, before Hon'ble High Court of Gujarat, for treating present appellant as separate group was rejected. Appellant was duty bound to produce review petition to show the actual dispute raised before the Hon'ble High Court of Gujarat. Appellant by not stating the material facts and not producing the documents pertaining to the litigations, have suppressed material facts. Hence, present application deserves to be rejected.

The application before Ld. Labour court does not states that appellant is not member of the Union. Order of Hon'ble High Court is binding, and hence provisions of Sections 18(3) of the Industrial Dispute Act do have say in the present proceedings. Wages of January 2018 are paid, and hence demand is raised from Feb.2018. Appellant is required to approach Hon'ble High Court , or Hon'ble Apex Court if appellant has some grievance against the order passed by

Hon'ble High Court. Hence, also this Court lacks the jurisdiction to entertain the present appeal.

The settlement was arrived with 558 employees, however respondent states 552 employees, as 6 employees have moved at other place. Merely because in Special Civil Application No.17431/2017 Hon'ble High Court ordered to provide them copies, the present appellant/s cannot be treated as different group. Hence, the present appeal is required to be rejected.

9 Heard. Read the application, reply, evidence produced and the Judgment of Ld. Authority. On the basis of which following points arose for my consideration

Points for consideration.

- (1) Whether the appellant proves that, dispute pertains to the wages and application u/s.17 of Payment of Wages Act is maintainable in view of present dispute ?
- (2) Whether the appellant proves that the Judgment & order passed by Ld. Authority is erroneous and deserves interference ?

(3) What order & decree?

10 My findings of the above points are as under,
the reasons for which are as under :

Findings.

(1) In affirmative.

(2) In negative.

(3) As per final order.

11 Reasons.

Point no.1

Wages

In view of Section 2(vi) of The Payment of Wages act, "wages" means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment.

In present case, no notice terminating the employment of the appellant is shown, the closure application preferred by respondent is rejected. Appellant have shown his readiness & willingness

to perform his work of employment. Hence, the dispute pertains to the Wages.

Except the dispute as to wages, no other dispute transpires to have been raised in the application preferred u/s.15(2) of the Payment of Wages Act.

Hence, as the dispute pertains to the 'wages' and present appeal arises from the order passed in an application under Section 15 of the Payment of Wages Act, present appeal u/s.17 of the Payment of Wages Act is permissible. Hence, point no.1 is answered in affirmative.

Point no.2

Compromise.

Appellant have not pleaded anything about the compromise being not binding to him in his application before the Ld. Labour Court. However, have raised the said dispute in his deposition. Appellant have come with the case, that his name was illegally added in the Annexure present with the compromise before Hon'ble High Court. However, except mere allegations, there is no evidence to this effect on record.

In LPA no.1079/2018 following order was passed on : 29/03/2019

Learned advocates for the parties states that parties have arrived settlement under Section 2(P) r/w Rule 62 under the provisions of the Industrial Disputes Act, 1947 outside the Court.

In view of the settlement between the parties, the appeals as well as civil applications are disposed of with a direction to parties respectively to abide by terms and conditions of the settlement and the settlement is treated as part of the order.

It transpires that, thereafter Misc Civil Application (for restoration) No. 02/2019 was preferred before Hon'ble High Court of Gujarat, in said Misc Civil Application Hon'ble High Court have passed following order, on 19/08/2019 :

No case is made out to recall the order dated 29.3.2019 passed in Letters Patent Appeal No.1079 of 2018 in Special Civil Application No.3376 of 2018, keeping it open for the applicant to take appropriate measure in accordance with law.

Application is rejected.

However copy of petition of LPA No.1079/2018 & copy of settlement and list annexed thereof was not produced before the Ld. Labour court by the appellant. The list of names of the parties to the settlement produced by respondent, in appeal proceedings is not certified. Hence, the details of the parties in the said proceedings before Hon'ble High Court of Gujarat is not on record, with clarity.

The settlement transpires to have arrived in Letters Patent Appeal No.1079/2018. Thereafter, Misc. Civil Application (for recall) No.1 of 2019 transpires to have been preferred for recall of the order. In said Misc. Civil Application order directing the parties to abide by the settlement, arrived in Letters Patent Appeal No.1079/2018 transpires to have been passed.

Further, appellant fails to show that challenge to validity of the compromise, on the ground raised herein, can be decided in the present appeal u/S.17 of The Payment of Wages Act. Hence, in present appeal appellant fails to show that compromise is not binding to him.

Entitlement for wages in view of pending proceedings

It is not in dispute that appellant had preferred application for closure of undertaking before appropriate authority, and same was rejected by appropriate authority. Against the said order rejecting the permission for closure of undertaking, respondent preferred Special Civil Application No.17431/2017 before Hon'ble High Court of Gujarat. The said Special C.A No.17431/2017 came to be disposed, with liberty to the respondent to approach appropriate authority for review of the order(rejecting permission for closure of undertaking).

Thereafter, review application was preferred before the appropriate government, the said review application was also rejected. Against the rejection of said review application, respondent preferred Special Civil Application No.4236/2019 before Hon'ble High Court of Gujarat. The said special civil application is pending.

Hence, as matter is sub-judice, this court at this stage cannot decide the eventuality following

from the order of rejection of the review application, by the appropriate authority.

In view of above discussion, no infirmity is found in the judgment of the Ld. Labour Court, and hence point no.2 is answered in negative, and point no.3 is answered as per final order and following order is passed.

ORDER

- Regular Civil Appeal No.46/2022 is hereby dismissed.
- The Judgment dated 07/01/2022 passed in Payment of Wages Application No.51/2021 by Ld.Labour Court,Nadiad is hereby Confirmed.
- No order as to costs.
- Decree be drawn accordingly
- R & P be returned to the Ld. Labour Court immediately.

Pronounced in the open Court on this 28th
day of April, 2023

Date:28/04/2023
Place: Nadiad

(SUNIL PADMAKAR RAHATKAR)
5th Additional District Judge
Kheda at Nadiad
Code No.GJ 00585