

GUJARAT HIGH COURT

Hon'ble Judges: Jayant Patel and C.L.Soni JJ.

Nandlal B.Kharwad Versus Dhrangadhra Chemical Works Limited

LETTERS PATENT APPEAL No. 2655 of 2010 ;
SPECIAL CIVIL APPLICATION No. 10082 of 2004 ;
LETTERS PATENT APPEAL No. 2657 of 2010 ;
SPECIAL CIVIL APPLICATION No. 2667 of 2005 ;
LETTERS PATENT APPEAL No. 2730 of 2010 ;
SPECIAL CIVIL APPLICATION No. 10070 of 2004 ; *J.Date :- SEPTEMBER 16, 2014

- [INDUSTRIAL DISPUTES ACT, 1947](#) Section - [25G](#) , [25H](#) , [10\(1\)](#)
- [CONSTITUTION OF INDIA](#) Article - [227](#) , [226](#)

Industrial Disputes Act, 1947 - S. 10(1), 25F, 25G - Constitution of India - Art. 226, 227 - dismissal from service - reference - labour Court after examining the matter on merits found that appellants are not falling within the category of workmen and therefore, dismissed the reference - Ld. Single Judge upheld award passed by Labour Court - appeal - held, neither petitioners contended in petitions, nor before Learned Single Judge that labour Court had no jurisdiction to pass the award - contention of appellants was that they could be termed as workmen and there was breach of statutory provisions u/S. 25G and 25H of I.D. Act - therefore, reference ought not to have been dismissed - petitions were essentially under Article 227 of the Constitution - Learned Single Judge exercised the powers under Article 227 of Constitution and further the Labour Court was not even joined as party respondent in the main Special Civil Applications, present appeals under Clause 15 of the letters patent cannot be maintained - decision in case of Gujarat State Road Transport Corporation v. Firoze M Mogal by Full Bench relied on - present appeals cannot be entertained under Clause 15 of the letters patent - appeal disposed of.

Imp.Para: [[4](#)] [[6](#)]

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JUDGMENT :-
JAYANT PATEL, J.

1 All appeals are directed against the order passed by the Learned Single Judge dated 04.08.2010 in the respective Special Civil Applications, whereby, the Learned Single Judge has not interfered with the award passed by the labour Court for dismissal of the reference and the petitions were dismissed.

2 We have heard Mr.Mishra, learned counsel for the appellants.

3 It is an undisputed position that the appellants are the persons who raised the dispute under the Industrial Disputes Act (hereinafter referred to as 'the Act') and the said dispute was referred to the labour Court for adjudication. Therefore, the appellants are the persons who invoked the jurisdiction of the labour Court under the Act. The labour Court after examining the matter on merits found that the appellants are not falling within the category of workmen and therefore, dismissed the reference by passing the award. Awards were under challenge in the respective petitions. The Learned Single Judge recorded that he is in complete agreement with the reasoning adopted and the finding arrived at by the labour Court and the Learned Single Judge did not interfere with the award and dismissed the respective petitions.

4 In our view, since the appellants-petitioners were the persons who invoked the jurisdiction of the labour Court under the Act, there was no question of writ of certiorari. Neither the petitioners contended in the petitions, nor before the Learned Single Judge that the labour Court had no jurisdiction to pass the award. The contention of the appellants was that they could be termed as workmen and there was breach of statutory provisions under Section 25G and 25H of I.D. Act and therefore, the reference ought not to have been dismissed.

5 Under the circumstances, the main petition was essentially under Article 227 of the Constitution.

The Learned Single Judge also examined the matters accordingly and has not interfered with the award. No further direction has been issued by the Learned Single Judge, which could be said to have been originated for the first time from the source of power under Article 226 of the Constitution. In any case, the aforesaid is coupled with the circumstance that the labour Court, which had passed the award, was not implemented as party respondent in the main Special Civil Applications, nor even in the present appeals before this Court.

6 Under the circumstances, we find that the petitions were essentially under Article 227 of the Constitution and the Learned Single Judge exercised the powers under Article 227 of the Constitution and further the labour Court was

not even joined as party respondent in the main Special Civil Applications, the present appeals under Clause 15 of the letters patent cannot be maintained. The reference may be made to the decision in case of Gujarat State Road Transport Corporation versus Firoze M Mogal & Anr., reported in 2014 (1) GLH 1, wherein, the larger Bench at para No.254 has concluded thus.

"254. In view of our aforesaid analysis, we proceed to record our conclusion in seriatim.

i) A power to issue the writ is original and the jurisdiction exercised is original jurisdiction.

ii) Proceedings under Article 226 of the Constitution of India are in exercise of original jurisdiction of the High Court whereas the proceedings initiated under Article 227 of the Constitution are supervisory in nature.

iii) When a writ is issued under Article 226 of the Constitution, it is issued in exercise of its original jurisdiction whether against the Tribunal or inferior Court or administrative authority.

iv) The power exercised under Article 226 of the Constitution is in exercise of original jurisdiction and not supervisory jurisdiction.

v) Exercise of supervisory power and power of superintendence is not to be equated with the original or supervisory jurisdiction.

vi) The learned Single Judge must have exercised original writ jurisdiction as distinguished from appellate jurisdiction, revisional jurisdiction or power of superintendence in order to maintain an appeal under Clause 15 of the Letters Patent.

vii) A writ of certiorari lies in appropriate cases against the order of Tribunal or Court subordinate to the High Court where such a Court, or Tribunal acts not only as an authority of first instance but even if such a Court or Tribunal acts as an appellate or revisional authority provided a case for a writ of certiorari is made out to the satisfaction of the Court concerned. Thus, if an appellate or revisional order of the Court or Tribunal, subordinate to a High Court, suffers from a patent error of law or jurisdiction, the same could be challenged before the High Court with the aid of Article 226 of the Constitution and it could not be said that such an appellate or revisional order of the Court or Tribunal could be challenged with the aid of Article 227 alone.

viii) The High Court, when exercising jurisdiction to issue a writ of certiorari does not act either as a Court of Appeal or that of Revision and

it has no power to correct either findings of fact or even errors of law except where the error of law is patent on the face of the record. The sole function of the Court is to correct the persons or Tribunals exercising judicial or quasi-judicial functions when they assume jurisdiction which they do not possess, or when they refuse to exercise jurisdiction which is vested in them by law, or when in the exercise of their jurisdiction they violate principles of natural justice.

ix) The term "original jurisdiction" as contained in Clause 15 of the Letters Patent should be understood in context with the power of the High Court to issue a high prerogative writ like a writ of certiorari under Article 226 of the Constitution of India. It is that original power to issue a writ under Article 226 of the Constitution of India which makes the proceedings original and the exercise of such power will always be original jurisdiction.

x) If the Special Civil Application is described as one not only under Article 226 of the Constitution, but also under Article 227 of the Constitution of India and the Court or the Tribunal whose order is sought to be quashed, is not made a party, the application is not maintainable as one for the relief of certiorari in the absence of the concerned Tribunal or Court as party, but the same may be treated as one under Article 227 of the Constitution of India. If the Court or Tribunal is not impleaded as a party respondent in the main petition, then by merely impleading such court or tribunal for the first time in the Letters Patent Appeal will not change the nature and character of the proceedings before the learned Single Judge. By merely impleading such a Court or Tribunal for the first time in the LPA, the appeal could not be said to be maintainable, if the proceedings before the learned Single Judge remained in the nature of supervisory proceedings under Article 227 of the Constitution.

xi) If the learned Single Judge, in exercise of a purported power under Article 227 of the Constitution sets aside the order of Tribunal or Court below and at the same time, the essential conditions for issue of writ of certiorari are absent, no appeal will be maintainable against such order in view of the specific bar created under Clause 15 of the Letters Patent itself and such an order can be challenged only by way of a Special Leave Petition before the Supreme Court. To put it very explicitly, take a case where a petition is only under Article 227 of the Constitution of India, invoking superintending powers of the High Court and not under Article 226 of the Constitution of India. After examining the matter, if the court finds substance in the petition and sets aside the order of an authority, court or a tribunal, then against such an order, an LPA would not lie on the argument that since the court has set aside the order it has decided the matter on merits having found substance in the same.

To put it in other words, once a petition is under Article 227 of the Constitution of India, and while entertaining such a petition under Article 227 of the Constitution of India, if the court allows a petition by setting aside the order impugned, then against such an order no LPA would lie.

xii) If a learned Single Judge, in exercise of a purported power under Article 227 of the Constitution modifies the order of Tribunal/Authority or Court below and thereby partly allows a petition to a certain extent, then in such circumstances, it could not be said that the Court exercised its certiorari jurisdiction and no appeal will be maintainable against such order in view of the specific bar created under Clause 15 of the Letters Patent itself.

However, if a learned Single Judge, in purported exercise of power under Article 226 of the Constitution of India, issues a writ of certiorari, although the same is not maintainable, an appeal under Clause 15 of the Letters Patent would nevertheless be maintainable against such order.

To put it in other words, take a case where a party on his own invokes supervisory jurisdiction under Article 227 of the Constitution of India, and in such a petition, the Court issues a writ of certiorari, then against such an order an LPA would be maintainable.

To put it explicitly clear, take a case where in a petition neither there is a prayer for issue of a writ of certiorari nor the Tribunal/Authority or Court whose order is impugned is impleaded as a party respondent, and despite such being the position, if the Court proceeds to issue a writ of certiorari, then against such an order an LPA would be maintainable.

xiii) A combined application under both Articles 226 and 227 of the Constitution of India can be entertainable only when the court fees payable for invoking both the provisions have been paid in aggregate. If court fees payable for invoking only one of the Articles 226 and 227 have been affixed, the Court before dismissing the application on that ground may give option to the petitioner to choose only one of such provisions, if he does not pay the balance amount of court fees and the application should be treated accordingly. It is, however, for the Court to decide whether the facts of the case justify invocation of original jurisdiction or it is a fit case for exercising supervisory jurisdiction.

xiv) The facts would justify invocation of the original jurisdiction under Article 226 of the Constitution only if all the requisite conditions for issue of a writ of certiorari are made out by the petitioner and the Court concerned is convinced that the petitioner has been able to point out a serious or a palpable error in the order impugned going to the root of the

jurisdiction. In the absence of such a glaring infirmity or an error patent on the face of the record, the party would not be justified in invoking original jurisdiction of the High Court under Article 226 of the Constitution of India for issue of a writ of certiorari.

xv) When a remedy for filing the Revision under Section 115 of the Civil Procedure Code has been expressly barred, then in such a case, a petition under Article 227 of the Constitution of India would lie and not a writ petition under Article 226 of the Constitution of India. When the Parliament has thought fit to restrict the powers under Section 115 of the Code with a definite object, then, under such circumstances an order which is not revisable under Section 115 of the Code of Civil Procedure cannot be challenged by way of filing a Writ Petition under Article 226 of the Constitution invoking extraordinary jurisdiction of the High Court and that too an interlocutory order passed by the Civil Court in a Regular Suit proceedings."

7 In view of the above, we find that the present appeals cannot be entertained under Clause 15 of the letters patent, hence, they are disposed of accordingly. No order as to cost.