

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 479 of 2015****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE K.M.THAKER**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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PASCHIM GUJARAT VIJ COMPANY LIMITED (CIRCLE OFFICE)**Versus****PRAKASHKUMAR KALYANBHAI RATNOTTAR**

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Appearance:**MR DIPAK R DAVE(1232) for the PETITIONER(s) No. 1****GOVERNMENT PLEADER(1) for the RESPONDENT(s) No. 2****MR PARITOSH CALLA(2972) for the RESPONDENT(s) No. 2****MR YOGEN N PANDYA(5766) for the RESPONDENT(s) No. 1****RULE SERVED(64) for the RESPONDENT(s) No. 1,2**

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CORAM: HONOURABLE MR.JUSTICE K.M.THAKER**Date : 28/09/2018****ORAL JUDGMENT**

1. Heard Mr. Dave, learned advocate for the petitioner and Mr. Pandya, learned advocate for

respondent.

2. In present petition the petitioner has challenged award dated 24.9.2014 passed by learned Industrial Tribunal at Bhavnagar in Complaint (IT) No.6 of 2012 whereby the learned Tribunal partly allowed the complaint with direction to present petitioner to recall its action of reducing the claimant's salary/ pay scale and to refix the petitioner's salary to original stage in appropriate scale as it obtained prior to alleged impugned change.

3. So far as factual backdrop which led to initiation of the complaint No.6/2012 is concerned, the petitioner has averred and stated that:

"2.1 By way of present petition, the petitioner seeks to challenge absolutely illegal and unjustified order dated 24.09.2014 passed by Industrial Tribunal, Bhavnagar in Complaint (IT) No.06 of 2012. A copy of the impugned order dated 24.09.2014 passed by the learned Tribunal, Bhavnagar in Complaint (IT) No.06 of 2012 is annexed herewith and marked as ANNEXURE-A.

2.2 The respondent No.1 herein was appointed as Surveyor Gr.II on 3.10.1988 with erstwhile Gujarat Electricity Board. A copy of appointment letter dated 03.10.1988 is annexed herewith and marked as ANNEXURE-B. As per the terms of the appointment letter, more particularly condition No.8, respondent No.1 was required to work at any place and on any post/ cadre. It is

submitted that the post of Surveyor, Gr.II came to be converted into the same pay scale post of Jr. Asstt. And therefore with effect from 1.11.2006 respondent No.1 was transferred from the post of Surveyor to the post of Junior Assistant in the same pay scale. It is submitted that there was no change in service conditions of the respondent No.1. The respondent No.1 in fact accepted the order and started working as Junior Assistant.

2.3 It is submitted that as per Standing Orders of the then Board which came to be amended from time to time, employees of the Board are entitled to higher pay-scale. It is submitted that respondent No.1 was granted first higher pay-scale after completion of nine years of service as per G.S. 334. The respondent No.1 was drawing higher pay-scale with effect from 6.10.1997. Since the respondent No.1 was transferred and posted as Junior Assistant, he was posted as Junior Assistant (Higher Grade) as if as a Junior Assistant after completion of nine years the respondent No.1 has drawn first higher pay-scale. It is submitted that the said order has been accepted without any protest by the present respondent No.1.

2.4 It is submitted that in the meanwhile respondent No.1 was required to be promoted on the post of Senior Assistant on account of vacancy available. It is submitted that after four years, in anticipation, that now respondent No.1 will be promoted and transferred, respondent No.1 raised industrial dispute being Reference (IT) No.97 of 2010 inter alia demanding that respondent No.1 shall be absorbed as Senior Assistant and he shall be placed in the local head quarter or in the alternatively, he shall be continued as Surveyor, GR.II. A copy of Reference order dated 14.10.2010 is annexed herewith and marked as ANNEXURE-C.

2.5 It is submitted that respondent No.1 came to be absorbed as Senior Assistant by order dated 11.10.2011. A copy of order dated 11.10.2011 is annexed herewith and marked as ANNEXURE D. On 24.10.2011 respondent No.1 requested that he do not want to accept promotion, as his case is pending before the Hon'ble Industrial Tribunal Court, hence he should not be relieved. A copy of the said letter of the petitioner dated 24.10.2011 is annexed herewith and marked as ANNEXURE-E.

2.6 It is submitted that respondent No.1 by his letter dated 24.10.2011 informed PGVCL that he is refusing the promotion. On 25.10.2011 the petitioner issued office order cancelling promotion order of respondent No.1. A copy of office order dated 25.10.2011 of petitioner is annexed herewith and marked as ANNEXURE-G. It is submitted that since the respondent No.1 refused promotion, as per GSO 334 and as per the conditions attached to the higher grade pay-scale, his higher grade pay-scale was required to be withdrawn. It is submitted that as per the conditions of service of respondent No.1,

higher grade pay-scale granted to him was withdrawn by order dated 22.11.2011. A copy of order dated 22.11.2011 withdrawing higher grade pay-scale and refixing pay-scale of respondent No.1 is annexed herewith and marked as ANNEXURE-H.

2.7 It is pertinent to note that the respondent No.1 being aggrieved by his promotion order, earlier filed complaint being Complaint (IT) No.08 of 2011. In the said complaint the respondent No.1 prayed for stay against his promotion order. The learned Tribunal, Bhavnagar by order dated 21.10.2011 has been pleased to reject Exh-5 Application for grant of stay. A copy of order dated 21.10.2011 passed by learned Industrial Tribunal, Bhavnagar in Complaint (IT) No.08 of 2011 is annexed herewith and marked as ANNEXURE-I. After respondent No.1 was not granted interim relief, respondent No.1 withdrawn the said complaint and preferred the present complaint being Complaint (IT) No.06 of 2012. A copy of withdrawal Purshish by respondent No.1 dated 11.02.2012 is annexed herewith and marked as ANNEXURE-J. Learned Industrial Tribunal by its order dated 11.02.2012 permitted withdrawal of the complaint. A copy of award in Complaint (IT) No.08 of 2011 dated 11.02.2012 is annexed herewith and marked as ANNEXURE-K."

4. From the details mentioned by the petitioner and the facts recorded by learned Tribunal in the award and from rival submissions by learned advocate for contesting parties it has emerged that the respondent herein joined service with present petitioner company in 1988 as Surveyor Gr.II.

5. It appears that the respondent has framed and adopted and implemented a policy for granting higher pay scale in cases where an employee gets

stagnated, at particular stage in pay-scale or on particular post, for long time, without further promotion or the case where the employee does not have scope for promotion. The said policy is commonly known, amongst the employee and in the company, as GSO-334. The said GSO provides for granting benefit of Higher Payscale on completion of service of 9 years, 19 years and 30 years, in cases where there is no promotion avenues or where the employee is stagnated in his present pay-scale.

6. So far as the respondent is concerned, he completed 9 years of service in 1997 on the post of Surveyor Gr.II. Until then he was not promoted and had remote chance of being promoted. Therefore he became eligible for benefit of higher pay-scale under and in accordance with the provisions of GSO-334. However, before he became eligible for the said benefit in 2007, the petitioner company abolished the post of Surveyor Gr.II at particular centre. One of the centres

where the post of Surveyor came to be abolished is the centre whether the present respondent was employed.

7. Consequently the respondent's post came to be re-designated as Junior Assistant. This happened in 2006.

8. The respondent felt aggrieved by the said decision and action of the company. His grievance was that he should have been designated as Sr. Assistant because the post equivalent to the post of Surveyor Gr.II was the post of Sr. Assistant and not Jr. Assistant.

9. It appears that the respondent raised such grievance with the company and made representation however the company did not accept the petitioner's grievance because according to company the post of Surveyor Gr.II was equivalent and on par with the post of Jr. Assistant. The said difference between respondent and petitioner

company gave rise to industrial dispute. The workman raised dispute which was sponsored by Union. The said dispute came to be referred for adjudication to the learned Tribunal. The learned Tribunal registered the dispute as Reference No.97/2011.

10. At this stage it is necessary to note the scope and subject of the said dispute. In the said reference the claimant demanded that company's action of changing his designation and designating him as Jr. Assistant is illegal and contrary to the applicable pay-scale inasmuch as he should have been re-designated as Sr. Assistant and his salary should have been fixed in the pay-scale attached to the said post.

11. It appears that in December 2011 the company passed order dated 13.12.2011 whereby the company changed the respondent's pay-scale which, resulted into change/ reduction of the petitioner's salary and pay-scale.

12. Aggrieved by the said action of the petitioner company the respondent filed above mentioned complaint no.6/2012.

13. It is pertinent to note that the respondent filed the complaint the allegation (a) that the action of the petitioner company downgrading the pay-scale during pendency of dispute (Ref. No.97/2011) after converting his post to Jr. Assistant from Surveyor GR-II is illegal and the said action is in breach of Section 33 of the I.D.Act. With the said allegations the respondent invoked Section 33A of the I.D. Act and filed the complaint.

14. Learned Tribunal adjudicated the complaint and passed impugned award.

15. It is not in dispute that the parent dispute i.e. Reference No.97/2011 is still pending.

16. It is also relevant and necessary to note that principal issue and dispute namely as to whether the respondent workman could have been designated as Jr. Assistant or he should have been designated as Sr. Assistant and in either case/ event what should be the respondent's salary/ pay-scale is yet to be decided by the learned Tribunal in the said reference No.97/2011. Pending the said reference the learned Tribunal adjudicated and decided the complaint.

17. Feeling aggrieved by the award in the complaint the company has taken out present petition.

18. Several issues are raised by both sides.

19. The petitioner company has assailed the award on various grounds whereas the respondent submits that there is no error in the award inasmuch as it is established before the learned Tribunal

that the company committed the change namely reduction/ downgrading the pay-scale without issuing notice and without following procedure prescribed under Section 33 of the Act.

20. The company on the other hand, contends that the action is taken under and in accordance with very same GSO 334 and settlement with the Union provide, inter alia, that if after having availed benefit of higher payscale concerned employee does not accept actual promotion when offered, then the benefit of higher pay-scale (granted earlier) would stand withdrawn. It is claimed that the company took the action under said provision under the settlement and in accordance with provision under GSO 334 and that therefore it cannot be said that the company committed breach of Section 33.

21. The said and other issues e.g. whether the action was protected under the/ in light of provision in the settlement were required to be

determined by the learned Tribunal while adjudicating and deciding the complaint No.6/2012.

22. From the rival submissions it has emerged that at this stage the petition can be – and deserves to be – disposed of on limited ground because it has emerged that the learned Tribunal decided the complaint and passed impugned award without taking into account abovementioned issue and relevant facts and without adverting to the provisions under settlement, more particularly without taking into account the pay-scale which was applicable to the petitioner's post i.e. the pay-scale attached to Surveyor's post at the time when he was employed as Surveyor Gr.II more particularly immediately before the benefit of higher payscale came to be granted and/ or without taking into account the payscale which came to be granted by means of higher payscale and also without taking into account the payscale which was applicable to the post of Sr. Assistant

and Junior Assistant at the time when higher pay-scale came to be granted as well as at the time when the respondent came to be re-designated as Jr. Assistant.

23. The Tribunal ought to have taken into account:

(a) pay scale attached to the post of Surveyor Gr-II, in 1997 when the Petitioner became eligible for higher pay scale under GSO 334;

(b) pay-scale(s) attached to the post of Sr. Assistant and Jr. Assistant in 1997 when the petitioner became eligible for higher pay-scale under GSO 334.

(c) the pay-scale which was actually granted to the Petitioner in 1997 as "higher pay-scale benefit" under GSO 1997.

(d) the pay-scale which came to be granted after impugned downgrading.

(e) Whether the pay-scale granted to the respondent on downgrading was actually in force in 1997 and whether the pay-scale granted on

downgrading was applicable – in 1997 – to the post of Sr. Assistant or to the post of Jr. Assistant. The said and such other issues should have been specifically considered after calling for necessary evidence. Unfortunately said issues are not considered and not decided.

24. Besides this, it has also emerged from rival submissions and on examination of the award that learned Tribunal also did not consider the issue as to what was the promotional post (under applicable Rules/ payscale) from cadre of Surveyor Gr.II, at the time when the respondent became eligible for and was granted benefit of higher payscale in 1997.

25. Since the complaint is decided without taking into account above mentioned aspects it is apparent that the final decision by learned Tribunal is erroneous and it is not based on consideration of relevant facts.

26. The learned Tribunal has also appears to have not dealt with the company's submission that since GSO 334 permits withdrawal of payscale in the event the workman subsequently refuses promotion, and that the said provision should be construed as service condition and that would amount to existing service condition applicable to the respondent immediately before the Company changed/ reduced respondent's pay-scale/ salary and that in light of said provision the action and the provisions amount to implementation of existing service condition and cannot be construed change or alteration in the service condition.

27. In this view of the matter, the impugned decision by learned Tribunal cannot be sustained.

28. The complaint deserves re-consideration.

29. From the record it has also emerged that relevant material, more particularly the details

with regard to applicable and relevant payscale i.e. payscale attached to the post of Surveyor, payscale attached to the post of Sr. Assistant, payscale attached to post of Jr. Assistant and the payscale in which the respondent was drawing salary in 1997 (i.e. before the benefit of higher payscale came to be granted) were not placed on record before the learned Tribunal and consequently the said aspects have not been considered by the learned Tribunal.

30. In that view of the matter it would be necessary for the company and the workman to place the said details/ evidence on record. Under the circumstances without entering into the merits of the rival contentions, following order is passed in light of the foregoing discussion and for reasons mentioned above:

a. The award dated 24.9.2014 in Complaint No. 6/2012 is, for reasons mentioned above, set aside.

b. The proceedings of complaint No.6/12 is

remanded to learned Tribunal for fresh consideration and fresh decision.

c. The learned Tribunal will allow opportunity to both sides to place relevant evidence on record.

d. It is also clarified that if the learned Tribunal finds that evidence/ material placed on record by the company or the workman is inadequate then the learned Tribunal may call for relevant details, copies of pay-scales, promotional policy etc., so as to effectively decide entire dispute.

e. The learned Tribunal shall grant opportunity of hearing including opportunity to lead / fresh evidence to both sides.

f. All contentions and objections of both sides are kept open.

g. It is clarified that this Court has not expressed any opinion with regard to rival contentions of claimants and Court has not entered into the merits of the case of the workman or the defence of the company. Therefore,

learned Tribunal will decide all issues and the complaint on merits and on the basis of material available on record of complaint No.6/12.

With the aforesaid clarification and direction petition is partly allowed. Rule is made absolute to the aforesaid extent.

(K.M.THAKER, J)

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