IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 746 of 2024
In R/SPECIAL CIVIL APPLICATION NO. 12844 of 2018
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2023
In R/LETTERS PATENT APPEAL NO. 746 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**No**
2	To be referred to the Reporter or not ?	**Yes**
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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HINDUSTAN CHEMICALS COMPANY
Versus
CYANIDES AND CHEMICALS KARMACHARI SANGH & ANR.

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Appearance:
MR NISARG DESAI and MS PRAVALIKHA BATTHINI for
GANDHI LAW ASSOCIATES(12275) for the Appellant(s) No. 1
MR DIPAK R DAVE(1232) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 17/09/2024

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. **Admit.** Mr. Dipak Dave, learned advocate waives service of notice of admission on behalf of respondent No.1.

2. The present appeal is directed against the judgment and order passed by the learned Single Judge dated 19.10.2023 rejecting the captioned writ petition challenging the award passed by the Industrial Tribunal, Surat dated 13.04.2018 in Reference (IT) No.04 of 2012.

3. At the outset, Mr. Nisarg Desai, learned advocate appearing for the appellant has submitted that the Tribunal as well as the learned Single Judge have erred in not appreciating the fact that none of the 17 respondents, who approached the Industrial Tribunal by way of Reference (IT) No.04 of 2012 were signatory to settlement dated 21.03.1996. Mr. Desai, learned advocate has invited attention to Clause 7 of the settlement dated 21.03.1996 and has submitted that the terms of the settlement were only applicable to those employees, who were in employment before 31.12.1994 and the benefits arising out of the settlement will not be applicable to those employees such as the respondents since they joined the Company after 31.12.1994. He has submitted that the learned Single Judge as well as the Industrial Tribunal have erred in granting the benefits arising out of the settlement dated 21.03.1996. It is submitted that the respondents are though paid wages as per the wage structure of the settlement, they

are not entitled to allowances as mentioned in the settlement as they are required to fulfill other conditions of the settlement. He has also referred to the appointment letters/joining reports of the respondents, which are placed on record in the Civil Applications. He has submitted that admittedly, all the respondents, who are 17 in number, were appointed in the year 1996 and they had joined in the year 1996 after the cut-off date, as mentioned in the settlement. He has further submitted that the learned Single Judge fell in error in granting the benefits to the respondent employees despite recognizing the settled legal precedent that the settlement dated 21.03.1996 was a settlement under Section 2(p) read with Section 18(1)of the Industrial Disputes Act, 1947 and was binding to the employees who have signed the same. Learned advocate Mr.Desai in support of his submissions has placed reliance on the judgment of the Supreme Court in the case of National Engineering Industries Ltd. v. State of Rajasthan and Ors., (2000) 1 S.C.C. 371. Thus, it is urged that the Tribunal as well as the learned Single Judge ought not have conferred the benefits as prayed for by the respondents by invoking the principle of 'equal pay for equal work'. Thus, it is urged that the impugned judgment and award of the Industrial Tribunal as confirmed by the learned Single Judge may be set aside.

4. In response to the aforesaid submissions, Mr.Dipak Dave, learned advocate for respondent No.1-employees has submitted that impugned judgment and award may not be quashed and set aside and the same is precisely passed by the learned Single Judge by placing reliance on catena of judgments of the Supreme Court. It is submitted that in fact by the settlement arrived at between the employees who are employed by the appellant, the Company has adopted the basic pay structure as mentioned in paragraph No.11. It is contended that in fact the respondent – employees were discriminated with regard to the payment of allowances and wages though they were doing the same work in the same department to those employees who are signatory to the settlement. Learned advocate Mr. Dave has invited the attention of this Court to the findings recorded by the Industrial Tribunal in the award and has submitted that the Tribunal has precisely held that the respondents cannot be discriminated by conferring the benefits akin to their colleagues, who are working in the same department. It is thus, urged that the judgment and award passed by the learned Single Judge confirming the award passed by the Industrial Tribunal may not be interfered with.

5. We have heard learned advocates for the respective parties. The facts which are established from the pleadings are that the Dakshin Gujarat General Mazdoor Union (DGGMU) arrived at the settlement with the appellant – Company on

21.03.1996 under the provisions of Section 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947. Clause 7 of such settlement is as under:

> "7. Applicability: That the terms of the settlement shall be applicable tot he permanent workman employed in the company on 31st December, 1994 and are still in employment of the Company. Further it is clarified that no benefit in any manner will be payable to those workman who have joined the company or who will be joining the company after 31st December, 1994."

6. The entire case of the appellant – Company as well as the respondent – employees is in Clause 7. A bare reading of Clause 7 manifests that the terms of the settlement would be applicable to the permanent workmen, who are employed in the Company on 31.12.1994 and are still in employment and no benefit in any manner will be applicable to those workmen, who have joined the Company or who will be joining the company after 31.12.1994. It is not in dispute that the respondent - employees have been appointed shortly thereafter in May, 1996. By the very said settlement in Clause 11 the Company has decided to adopt the basic wage structure. The same is as under:

> "11. Basic Wage Structure
>
> The company has a gradation system as under and as per that work category and designation. The same will continue
>
> Grade I : 55020-950
>
> Grade II : 400-15-700
>
> Grade III : 250-12.5-500

Grade IV	:	200-10-400
Grade V	:	150-7.5-300

7. Along with the basic structures, in paragraph No.14, Dearness Allowance as well as Other Allowances have been fixed which are to be paid to the employees. It is not in dispute that all the respondents, who are 17 in numbers, are working in different departments having similar wage structure however, they are not granted all the allowances attached to the wage structure, which have been extended to their colleagues who are working along with them. Taking into consideration the aforesaid aspects that they are doing the same work, the Industrial Tribunal has allowed the reference proceedings arising from the demand raised by the respondent – employees who are also the members of the same Union. The Industrial Tribunal after examining the issue of the cut-off date and the respective settlement, allowed the proceedings and directed the appellant – Company to give the benefits which are arising from the settlement dated 21.03.1996.

8. The appellant – Company has specifically raised the contention that since it is a settlement under Section 2(p) of the Industrial Disputes Act, 1947, the same cannot be extended to those workmen who are not signatory to the settlement. The learned Single Judge, after recording the submissions and after considering the respective submissions has held thus:

"9. Having heard the learned advocates for the respective parties and having considered the terms of the settlement as well as the findings given by the Tribunal to extend the benefits of the settlement dated 21.03.1996 to the 17 employees who have joined the services admittedly after 31.12.1994 on the principle of "equal pay for equal work", it would be fruitful to refer to the decision of the Hon'ble Apex Court in case of Jagjit Singh & Ors(supra) wherein it is held as under:

> " 58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation."

10. The above decision of Apex Court has been applied in case of Sabha Shanker Dube (supra) as under:

> "10. The issue that was considered by this Court in Jagjit Singh (supra) is whether temporary employees (daily wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and likewise) are entitled to the minimum of the regular pay scales on account of their performing the same duties which are discharged by those engaged on regular basis against the sanctioned posts. After considering several judgments including the judgments of this Court in Tilak Raj (supra) and Surjit Singh (supra), this Court held that temporary employees are entitled to draw wages at the minimum of the pay scales which are applicable to the regular employees holding the same post.
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> 11. In view of the judgment in Jagjit Singh (supra), we are unable to uphold the view of the High Court that the Appellants herein are not entitled to be paid the minimum of the pay sales. We are not called upon to adjudicate on the rights of the Appellants relating to the regularization of their services. We are concerned only with the principle laid down by this Court initially in Putti Lal (supra) relating to persons

> who are similarly situated to the Appellants and later affirmed in Jagjit Singh (supra) that temporary employees are entitled to minimum of the pay scales as long as they continue in service.”

11. In view of the above dictum of law, it cannot be said that the Tribunal has committed any error by invoking the principle of “equal pay for equal work” when it is not in dispute that 17 employees were discharging the same duties in the employer company as being discharged by other employees appointed prior to 31.12.1994.

12. In such circumstances, reliance placed by the learned advocate for the employer company on the decisions relating to cutoff date would not be applicable in the facts of the case. The Apex Court in case of Mohammad Alimam and others (supra) was considering the entitlement of pensionary benefits as per Resolution No.1500 dated 5.11.1980 introducing the General provident Fund-cum-pension-cum-grauity benefit scheme to the retired employee. The Apex Court in context of such scheme has analysed the import of cut-off date whereas in the facts of the case, 17 employees of the workers’ Union as well as other employees were discharging similar duties and therefore, as per the principle of “equal pay for equal work” the benefit of the settlement has rightly been extended.

13. xxxxx

14. As held by the Apex Court in case of National Engineering Industries Ltd. (supra), such settlement is required to be considered in two categories i.e. one arrived at outside the conciliation proceedings and second, arrived at in the course of conciliation proceedings. Admittedly, the settlement dated 21.03.1996 was arrived at outside the conciliation proceedings and therefore, as per section 18(1) of the ID Act, the same would be binding only to the parties to the agreement and cannot be extended to others. However, in view of principle of “equal pay for equal work” the provisions of section 18(1) and the settlement arrived at under section 2(p) of the ID Act has rightly been extended to the employees who have been discharging the same duties as the terms of settlement was only for three years having limited period.

15. Similarly decision in case of Dharappa(supra) would not be helpful to the employer company because workmen could not have been denied the benefits of principle of “equal pay for equal work” on the ground of delay if any, more particularly, when there is no time limit prescribed for making reference to the Labour Court under section 10(1)(c) and (d) of the ID Act inasmuch as 17 workers were discharging their duties continuously from the date of their appointment till reference was made and therefore, it cannot be said that the dispute has become

stale or ceased to exist as held by the Apex Court in the said decision.”

9. It is not in dispute that all 17 employees who are the respondents, are doing the same work as their colleagues and hence, even if they are not signatories to the settlement, they cannot be denied the allowances/wages on the principle of ‘equal pay for equal work’. It is not the case of the appellant-Company that the work done by the respondent-employees is not similar to the work which is being done by their colleagues in the same departments. There is no difference pointed out before the Tribunal or before this Court regarding nature of work and duties performed by the respondents and their colleagues who are signatory to the settlement. Once, the appellant-Company has adopted the pay structure and the allowances attached to such pay structure, the same will be applicable to all the set of employees on the principle of ‘equal pay for equal work’, unless it is shown that the work and duties are different. If the submission of the appellant-Company is accepted then there would be two set of employees working in the same department performing similar work/duties, having two different wages/allowances, which would create a class within class. Learned advocate appearing for the appellant-Company was unable to point out any distinguishing feature from the conditions of the settlement, which the respondents are not fulfilling. Hence, the

respondents cannot be discriminated so far, the payment of wages/allowances is concerned only on the ground that the settlement will not apply to them since they were not signatory to such settlement, and were appointed after the settlement. The respondents could not have been signatory to the settlement, since they were appointed subsequently, and they cannot be denied the benefit of allowances/wages of settlement which flow from the basic wage structure. The appellant-Company cannot deny the allowances attached to the wage structure, in wake of the fact that the respondents are being paid the wages as per the basic wage structure stipulated in the settlement. The entitlement of allowances follows as a necessary corollary to the attached basic wage structure.

10. We do not find the judgement and order passed by the learned Single Judge tainted with any vice of illegality or infirmity. Hence, the present appeal does not merit acceptance. The same is dismissed.

11. Consequentially, the Civil Application(s) also stand(s) disposed of.

(A. S. SUPEHIA, J)

(MAUNA M. BHATT,J)

NAIR SMITA V./11