

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 10950 of 2019

With

R/SPECIAL CIVIL APPLICATION NO. 12957 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

SAILESH SHANTILAL LUNAVIA
Versus
CARBORANDUM UNIVERSAL LIMITED

Appearance:

MR TR MISHRA(483) for the Petitioner(s) No. 1

MR PS GOGIA(2751) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 18/07/2022

COMMON ORAL JUDGMENT

- Rule* returnable *forthwith*. Mr. P.S. Gogia, learned advocate waives service of notice of Rule for and on behalf of the respondent in both these petitions.
- With the consent of the learned advocates for the

respective parties, both these petitions are taken up for final hearing today.

3. The challenge in these petitions is to the award dated 09.01.2019 passed by the Labour Court, Jamnagar. When the Court issued notice on 05.07.2019, passed the following order:

“Heard Mr.T.R.Mishra, learned advocate for the petitioner.

*Learned advocate for the petitioner submitted that the Labour Court, while allowing the application filed by the petitioner under Section 33(C)(2) of the Industrial Disputes Act, 1947, did not consider the request of the petitioner to grant interest. He relied upon the decision of the Division Bench of this Court in the case of **Manager, Naaz Cinema Vs. Vasantben Rameshbhai Ghumadiya w/d of Rameshbhai Rajibhai Ghumadiya [2011(2) G.L.H.523]**.*

ISSUE NOTICE returnable on 20.08.2019.”

4. Mr. Mishra, learned counsel for the petitioners would submit that there is no discussion on the issue as to why the interest was not awarded to the petitioners.
5. Considering the decision of this Court in the case of **Manager, Naaz Cinema v. Vasantben Rameshbhai Ghumadiya w/d of Rameshbhai Rajibhai Ghumadiya reported in 2011(2) GLH, 523**. Relevant portion of the decision reads as under:

"7. Before the learned Single Judge the appellant-original petitioner put forward three principal contentions. They are as under:-

(1) The Labour Court being an executing court has no jurisdiction to grant interest.

(2) The Labour Court has not condoned the delay as no prayer is made by the workman though the application filed under Section 33(C)(1) of the ID Act was filed after a period of one year.

(3) Leave encashment claimed by the workman in recovery application was covered by the third schedule and not second schedule and therefore the labour court has no jurisdiction to grant such amount.

8. Having gone through the exhaustive judgment delivered by the learned Single Judge on all three counts, we are of the opinion that the learned Single Judge has not committed any error, much less an error of law which would warrant interference in this appeal under Clause 15 of the Letters Patent.

9. So far as the first contention as regards interest is concerned, learned counsel for the appellant – original petitioner has relied upon the judgment of the Apex Court in the matter of **State of Punjab v. Harvinder Singh (2008) 3 SCC 394**. He has relied upon this judgment to make good his contention that the executing court does not have power to award interest if not mentioned in the decree. We take notice of the fact that in this judgment the Apex Court was dealing with Sections 47 and 34 and Order 21 Rule 1 of the Civil Procedure Code. This

judgment would not be of any help to the appellant and would not be applicable to the provisions of Industrial Disputes Act, 1947. The learned Single Judge, therefore, rightly negated this contention by holding that the provisions of Order 21 of the Civil Procedure Code are not applicable to the proceedings of the Labour Court. The learned Single Judge in paragraph 30 of the judgment has held as under:-

“30. Accordingly, that application was rejected on 11th September 2006 by the Payment of Wages Authority. Thereafter, a recovery application No.80 of 2006 was filed by respondent workman on 16th October 2006. The Labour Court has granted 75% back-wages for the period from 1st May 1983 to 16th September 1994. The date of award is 15th June 1998. The due and undisputed amount is not paid by employer without any valid justification for a period of 9 years and 4 months. Therefore, this much amount is utilized by employer or earned the interest, then, on the principles of restitution, Labour Court has rightly exercised equitable jurisdiction in

granting interest in favour of respondent workman. The Labour Court has jurisdiction under Section 33C to decide, if any question arise as to the amount of money due or being an incidental power or ancillary power which give an equitable jurisdiction to Labour Court in case of unnecessary delayed in due payment without justification, then, Labour Court can grant interest upon such amount. The Labour Court is having wide power if satisfied that due and undisputed amount of the workman withheld by employer without justification, then, Labour Court has certainly power to grant interest upon due amount.”

10. We are in complete agreement with the view which has been taken by the learned Single Judge and which is in consonance with the objects of social welfare legislation like ID Act. We are of the opinion that while answering this issue as regards awarding of interest the learned Single Judge has kept in mind that that Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in mind the goals set out in

the preamble of the Constitution and the provisions contained in Part-IV thereof in general and Articles 38, 39(a), 43, 43A in particular which mandate that the State should secure a social order for the promotion of the welfare of the people, ensure equality between men and women, equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues.

11. As regards the second contention that the application was filed after a period of one year and that too without any prayer for condonation of delay and without condoning the delay the labour court ought not to have adjudicated the application under Section 33(C) (1) of the I.D. Act, the learned Single Judge has taken the view that in preferring an application under Section 33(C)(2) of the Act no limitation has been prescribed by the statute. In the absence of any statutory provisions providing for limitation for making an application of the under Section 33(C)(2) of the ID Act, the application of the workman cannot be said to be time-barred. On this ground also we are in complete agreement with the finding recorded by the learned Single Judge.

12. As regards third contention that the leave encashment claimed and awarded in recovery application is governed by the third Schedule and not by the Second Schedule and therefore the Labour Court has no jurisdiction to grant such amount is also devoid of any merits. The learned Single Judge has taken into consideration the two notifications issued by the Labour and Employment Department dated 21st April 1982. Firstly, while answering this contention, the learned Single Judge took notice of the fact that this contention was never raised by the original petitioner before the Labour Court and the learned Single Judge has also found that the said contention is not even taken in the memo of the petition also. However, the learned Single Judge took pains to consider this contention and ultimately has held that two notifications which have been referred in the judgment of the learned Single Judge at page 27 and 28 is a clear answer to the contention of the appellant that from 1982 onwards the power has been delegated to the Labour Court upon appropriate Government while exercising the power under Section 39 of the Industrial Disputes Act, 1947. The learned Single Judge has further held that considering

the definite definition of wages where except bonus and contribution paid or payable to the pension fund or provident fund or for the benefit of the workman for the time being in force and amount of gratuity is not included in the definition payment, but except that all kinds of allowances and service benefits including travelling concession and commissions are covered by the definition of wages given in Section 2(rr) of the I.D. Act, 1947 meaning thereby all kinds of remuneration being covered in definition of wages which includes a benefit of leave encashment and therefore the workman was justified in claiming it as part of back-wages.

13. We are in complete agreement with the findings recorded by the learned Single Judge on all counts. As a matter of fact, we deem it fit and proper to state in our judgment the message of the Supreme Court while dealing with the matter under the Industrial Disputes Act, 1947 and other similar legislative instruments, which are social welfare legislations. In a recent pronouncement of the Supreme Court in the matter of **Harjinder Sing v. Punjab State Warehousing Corporation (2010) 3 SCC 192** the

Honourable Supreme Court in paragraphs 17, 18, 19, 26, 27, 28 and 29 has held as under:-

“17. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the/Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J., opined that "the concept of social and economic justice is a living concept of revolutionary import; it gives sustenance

to the rule of law and meaning and significance to the ideal of welfare State" - State of Mysore v. Worker of Gold Mines, AIR 1958 SC 923."

"18. In Y.A. Mamarde v. Authority under the Minimum Wages Act (1972) 2 SCC 108 : (AIR 1972 SC 1721), this Court, while interpreting the provisions of Minimum Wages Act, 1948, observed : "The anxiety on the part of the society for improving the general economic condition of some of its less favoured members appears to be in supersession of the old principle of absolute freedom of contract and the doctrine of laissez faire and in recognition of the new principles of social welfare and common good. Prior to our Constitution this principle was advocated by the movement for liberal employment in civilised countries and the Act which is a preconstitution measure was the offspring of that movement. Under our present Constitution the State is now expressly directed to endeavour to secure to all workers (whether agricultural, industrial or otherwise) not only bare physical subsistence but a living wage and

conditions of work ensuring a decent standard of life and full enjoyment of leisure. This Directive Principle of State Policy being conducive to the general interest of the nation as a whole, merely lays down the foundation for appropriate social structure in which the labour will find its place of dignity, legitimately due to it in lieu of its contribution to the progress of national economic prosperity."

"19. The preamble and various Articles contained in Part IV of the Constitution promote social justice so that life of every individual becomes meaningful and he is able to live with human dignity. The concept of social justice engrafted in the Constitution consists of diverse principles essentially for the orderly growth and development of personality of every citizen. Social justice is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic devise to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with

dignity of person. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation of every section of the society. In a developing society like ours which is full of unbridgeable and ever widening gaps of inequality in status and of opportunity, law is a catalyst to reach the ladder of justice. The philosophy of welfare State and social justice is amply reflected in large number of judgments of this Court, various High Courts, National and State Industrial Tribunals involving interpretation of the provisions of the Industrial Disputes Act, Indian Factories Act, Payment of Wages Act, Minimum Wages Act, Payment of Bonus Act, Workmen's Compensation Act, the Employees' State Insurance Act, the Employees' Provident Funds and Miscellaneous Provisions Act and the Shops and Commercial Establishments Act enacted by different States."

"26. Judges of the last Court in the largest democracy of the world have a duty and the basic duty is to articulate the

Constitutional goal which has found such an eloquent utterance in the Preamble. If we look at our Preamble, which has been recognised, a part of the Constitution in **His Holiness Kesavananda Bharati Sripadagalvaru and others vs. State of Kerela and another [AIR 1973 SC 1461]**, we can discern that as divided in three parts. The first part is a declaration whereby people of India adopted and gave to themselves the Constitution. The second part is a resolution whereby people of India solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic. However, the most vital part is the promise and the promise is to secure to all its citizens : "JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; And to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;" [See Justice R.C. Lahoti, Preamble - The Spirit and backbone of the Constitution of India, Anundoram Barooah Law Lectures, Seventh Series, Eastern Book Company,

2004, at p. 3].”

“27. Judges and specially the Judges of the highest Court have a vital role to ensure that the promise is fulfilled. If the Judges fail to discharge their duty in making an effort to make the Preambular promise a reality, they fail to uphold and abide by the Constitution which is their oath of office. In my humble opinion, this has to be put as high as that and should be equated with the conscience of this Court.”

“28. As early as in 1956, in a Constitution Bench judgment dealing with an Article 32 petition, Justice Vivian Bose, while interpreting the Article 14 of the Constitution, posed the following question : "After all, for whose benefit was the Constitution enacted?" [Bidi Supply Co. vs. Union of India and others, AIR 1956 SC 479 at Para 23, pg. 487]”

“29. Having posed the question, the Learned Judge answered the same in his inimitable words and which I may quote : "I am clear that the Constitution is not for

the exclusive benefit of Governments and States; it is not only for lawyers and politicians and officials and those highly placed. It also exists for the common man, for the poor and the humble, for those who have businesses at stake, for the "butcher, the baker and the candlestick maker". It lays down for this land a "rule of law" as understood in the free democracies of the world. It constitutes India into a Sovereign Democratic Republic and guarantees in every page rights and freedom to the individual side by side and consistent with the overriding 'power of the State to act for the common good of all.'" [Ibid, Emphasis supplied]"

14. For the reasons recorded above and more particularly keeping in mind that this Court has a duty to interpret statutes with social welfare benefits in such a way as to further the statutory goal, the appeal deserves to be dismissed. The same is hereby dismissed with costs of Rs.10,000/- imposed upon the appellant - original petitioner to be paid to the widow of the deceased workman i.e. respondent herein either by cash or by cheque and produce the receipt of the same with the Registry of this

Court within a period of 15 days from today.”

6. The petitions are partly *allowed*. The matters are remanded back to the Labour Court, Jamnagar. The Labour Court, Jamnagar in Recovery Application Nos.50 and 52 of 2011 shall reexamine the issue on the question of awarding of interest in light of the decision as aforesaid and shall also consider the decision of Madras High Court in the case of ***The Management of Nathan’s Press, Madras v. K. Krishnan reported in 1988 Lab. I.C., 701***. An appropriate order shall be passed by the Labour Court in the Recovery Applications within a period of *Six Weeks* from the date of receipt of copy of this Judgment.
7. Rule is made absolute to the aforesaid extent. Direct Service is permitted. No costs.

VATSAL S. KOTECHA

(BIREN VAISHNAV, J)