HIGH COURT OF GUJARAT (*D.B.*)

CHANDRAVADAN M PANDYA CARE OF ASHWINBHAI M PATEL
Versus
DY EXECUTIVE ENGINEER

Date of Decision: 02 July 2013

Citation: 2013 LawSuit(Guj) 758

Hon'ble Judges: V M Sahai, A G Uraizee

Case Type: Letters Patent Appeal; Special Civil Application

Case No: 209 of 2007; 443 of 2001

Subject: Constitution

Acts Referred:
Constitution Of India Art 227, Art 226

Final Decision: Appeal dismissed

Advocates: P H Pathak, V R Jani, R C Jani

Cases Referred in (+): **1**

Vijay Manohar Sahai, J.

[1] We have heard Mr. P.H. Pathak, learned counsel appearing for the appellant and Mr. V.R. Jani, learned counsel holding brief of Mr. R.C. Jani appearing for the respondent.

[2] This Letters Patent Appeal has been filed by the appellant challenging the judgment and order dated 15.9.2005 passed by the learned Single Judge in Special Civil Application No.443 of 2001 whereby the writ petition preferred by the respondent herein was allowed and instead of reinstatement and full back wages as directed by the Labour Court, the learned Single Judge directed the respondent herein to pay an amount of Rs.20,000/- as compensation.

[3] Learned counsel Mr. V.R. Jani, appearing for the respondent has submitted that the Letters Patent Appeal itself is not maintainable as the order passed by learned Single Judge is under Article 227 of the Constitution of India, and before the Learned Single Judge, Labour Court was not a party to the petition. Therefore, the writ petition would be essentially under Article 227 of the Constitution of India.

[4] Learned counsel for the appellant has urged that he may be permitted to implead the Labour Court as party respondent to this Letters Patent Appeal. This prayer also cannot be accepted in view of the Division Bench judgment dated 26th June, 2013 passed in Letters Patent Appeal No. 641 of 2013, in which the Division Bench has held as under :-

> "This appeal under clause 15 of the Letters Patent is at the instance of an employer and is directed against an order dated 8th January 2013 passed by a learned Single Judge of this Court in Special Civil Application No. 334 of 2009 whereby His Lordship held that in facts of the case, there was no necessity to interfere with the award dated 19th May 2008 passed by the Labour Court, Surat in Reference [LCS] No. 366 of 2005. It appears that although the writ-application was described as one under both Article 226 and 227, the Labour Court whose order was sought to be quashed was not made a party, and at the same time, the petitioner prayed for quashing of the aforesaid award by which the Labour Court reinstated the workman with continuity of service but without back wages. As indicated earlier, the learned Single Judge has refused to interfere with the award after considering the evidence on record. Such being the position, we are of the view that the learned Single Judge really exercised jurisdiction under Article 227 of the Constitution of India as there was no scope of exercising the power of issue of writ of certiorari when the Labour Court itself was not made a party before the Court."
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> At this stage, Mr. Pathak, the learned counsel on behalf of the appellant, prays for joining the Labour Court as a party in this appeal, though a substantive application to that effect has been filed.
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> In our opinion, the learned Single Judge having already exercised jurisdiction under Article 227 of the Constitution of India by not interfering, no appeal is maintainable against such order, and in such an appeal, we now cannot permit the appellant to join the Labour Court as a party so as to convert the writ-application which has already been disposed of to one under Article 226 of the Constitution of India for fresh adjudication where issue of writ of certiorari would be possible. On consideration of the entire materials on record, we, thus, find that this appeal is not maintainable and is dismissed accordingly. Interim relief granted earlier stands vacated forthwith.
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> We, however, make it clear that we ave not gone into the merits of the case and the dismissal of the appeal will not stand in the way of the appellant in seeking appropriate remedy before the appropriate forum in accordance with law."

4. This Court in case of Revaben wd/o Ambalal Motibhai and Ors. Vs. Vinubhai Purshottambhai Patel and others, 2013 1 GLH 440, was called upon to decide whether Letters Patent Appeal under Clause 15 of the Letters Patent would be maintainable in view of the fact that the learned Single Judge really exercised jurisdiction under Article 227 of the Constitution of India. The Division Bench after analysis of various judgments of this Court and Hon'ble Supreme Court observed as Under :-

"Thus, if an order passed by the Tribunal or Court subordinate to High Court is the subject-matter of challenge in High Court on merit, the exercise of such jurisdiction cannot be said to be original in nature but it is really in exercise of power of superintendence except only in cases where the conditions for issue of a writ of certiorari are satisfied. But the issue of writ of certiorari can only be possible, as pointed out by Halsburys Laws of England quoted above, if the concerned Tribunal or the Court subordinate to High Court while passing the order impugned exercises original jurisdiction and not the appellate or revisional jurisdiction. On the other hand, it is well settled that the power of revision or superintendence is really a part of exercise of appellate jurisdiction and the order of the subordinate Authority on exercise of power merges with the revised order".

And finally concluded as under :-

"We, consequently, hold that these letters patent appeals are not maintainable as the Tribunal below in these cases passed orders not in exercise of original jurisdiction and as such, this Court could be moved only under Article 227 and the learned Single Judge also did not pass any purported order of certiorari quashing the proceedings for want of, or inappropriate exercise of, jurisdiction. Moreover, even there was no scope of issuing a writ of certiorari in the proceedings arising out of Letters Patent Appeal Nos. 894 and 895 of 2012 in the absence of the tribunal as party in the proceedings. Thus, the nature of the orders passed in those two proceedings was in exercise of Article 227 of the Constitution".

[5] The aforesaid Division Bench judgment clearly lays down that once jurisdiction under Article 227 has been exercised by the learned Single Judge, then Letters Patent Appeal would not be maintainable and at the stage of appeal, the appellant can not be permitted to convert the writ petition, which has already been disposed of under Article 227 of the Constitution of India.

[6] For the aforesaid reasons, we are in full agreement with the view taken by the Division Bench. Hence this Letters Patent Appeal is not maintainable and accordingly

dismissed, with a liberty to the appellant to seek his remedy before appropriate forum. Rule discharged. There shall be no order as to costs.

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