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**LAWS(GJH) 2010 9 14**

**HIGH COURT OF GUJARAT**

Coram :- M. R. SHAH, J.

Decided on 2010 September 01

SPECIAL CIVIL APPLICATION No. 6802 of 2010

**AKHIL GUJARAT KOTAN MAZDOOR SANGH**

VERSUS

**P. B. M. POLYTEX LIMITED**

**Advocates:**

MUKESH H. RATHOD, PRATIK P. THAKKAR, NIKHIL D. JOSHI

**[ - ] Referred Acts:**

[CONSTITUTION OF INDIA](#) , [Art. 226](#) , [Art. 227](#)

**Citations:**

LAWS(GJH) 2010 9 14,

**Expert View:**

- A. **By way of this petition under Articles 226 and 227 of the Constitution of India the petitioner-Akhil Gujarat Cotton Mazdoor Sangh has prayed for an appropriate writ, order or direction quashing and setting aside the impugned order dated 14/07/2009 passed by the industrial Court in Review Application (I\_\_ . It is submitted that however despite the aforesaid clear finding given by the industrial Court, the industrial Court passed an order to grant the aforesaid benefit with effect from 01/04/2004 without any basis, which deserves to be quashed and set aside and it is to be held that the petitioner is entitled to the aforesaid benefit with effect from 18/08/2003 i\_\_ .**
- B. **It is not in dispute that the petitioner is declared as recognised Union with effect from 18/08/2003 and as such the industrial Court in the order dated 22/04/2009 has given specific finding that the petitioner Union is declared as recognised Union with effect from 18/08/2003 and is entitled to the benefit under the judgement and award passed in Reference (I\_\_ .**
- C. **1 Company with effect from 18/08/2003 and, therefore, the petitioner approached the industrial Court by way of Miscellaneous Application (I\_\_ 1/2009, therefore, the short question, which is**

**required to be considered is whether the tribunal was justified in modifying the judgement and award passed by the industrial Court in Reference (I\_\_\_ It is submitted that as such the industrial Court while passing the order has already held that as such the petitioner is entitled to the benefit with effect from 18/08/2003 as the petitioner is declared as recognised Union with effect from 18/08/2003\_\_\_ It is submitted that however despite the aforesaid clear finding given by the industrial Court, the industrial Court passed an order to grant the aforesaid benefit with effect from 01/04/2004 without any basis, which deserves to be quashed and set aside and it is to be held that the petitioner is entitled to the aforesaid benefit with effect from 18/08/2003 i\_\_\_**

- D. It is not in dispute that the petitioner is declared as recognised Union with effect from 18/08/2003 and as such the industrial Court in the order dated 22/04/2009 has given specific finding that the petitioner Union is declared as recognised Union with effect from 18/08/2003 and is entitled to the benefit under the judgement and award passed in Reference (I.T.) No. -- In view of the above and for the reasons stated hereinabove, the present petition succeeds.**

#### JUDGMENT / ORDER

1. RULE. Shri Pratik Thakkar, learned advocate waives service of notice of rule on behalf of respondent no. 1 and Shri Nikhil Joshi, learned advocate waives service of notice of rule on behalf of respondent no. 2.
2. In the facts and circumstances of the case and with the consent of the learned advocates appearing on behalf of the respective parties the present petition is taken up for final hearing today.
3. By way of this petition under Articles 226 and 227 of the Constitution of India the petitioner-Akhil Gujarat Cotton Mazdoor Sangh has prayed for an appropriate writ, order or direction quashing and setting aside the impugned order dated 14/07/2009 passed by the industrial Court in Review Application (I.C.N) No. 1/2009 as well as the original order passed by the industrial Court, Nadiad dated 22/04/2009 in Miscellaneous Application (I.C.N) 1/2004 and insofar as the direction issued by the industrial Court qua non-payment of one day salary up to 31/03/2004.
4. The facts leading to the present petition in a nutshell are as under;
5. It appears that there was settlement in Reference (I.C.) No. 35/1990 between the Majoor Mahajan Sangh (Petlad)-respondent no. 2 and Akhil Gujarat Cotton Mazdoor Sangh-respondent no. 1 and an order came to be passed on 01/01/1991 and as per Clause 9 the Company shall give one day's wages/salary of operatives, clerks, technicians and officers in the general fund of Majoor Mahajan Sangh every year before the end of March. It appears that thereafter the petitioner-Akhil Gujarat Cotton Mazdoor Sangh was declared as recognised Union of respondent no. 1 Company with effect from 18/08/2003 and, therefore, the petitioner approached the industrial Court by way of Miscellaneous Application (I.C.N.) 1/2004 to amend the award declared in Reference (I.C.) NO. 35/1990 to the extent directing respondent no. 1-Company to give one day's wages/salary of operatives, clerks, technicians and officers to the petitioner Union with effect from 18/08/2003 and to continue to pay the same every year before the end of every march (instead of respondent no. 2 herein). The industrial Court vide order dated 22/04/2009 allowed the application and passed an order to modify and/or make necessary correction in the judgement

and award declared in Reference (I.C.) No. 35/1990 to pay one day's wages/salary of operatives, clerks, technicians and officers to the petitioner-Union with effect from 01/04/2004 only. Being aggrieved and dissatisfied with the order passed by the industrial Court, Nadiad dated 22/04/2009 in Miscellaneous Application (I.C.N.) No. 1/2004 in modifying the award declared in Reference (I.C.) No. 35/1990 directing respondent no. 1 to pay one day's wages/salary of operatives, clerks, technicians and officers in the general fund to the petitioner-Union with effect from 01/04/2004 only and not from 18/08/2003 i.e. the day of which the petitioner came to be declared as recognised Union, the petitioner preferred Review Application (I.C.N) NO. 1/2009 before the industrial Court. Similarly, respondent no. 2 also preferred Review Application No. 2/2009 before the industrial Court challenging the order passed by the industrial Court dated 22/04/2009 passed in Miscellaneous Application (I.C.N.) NO. 1/2004 in modifying the judgement and award in Reference (I.C. ) No. 35/1990 by which it was directed to pay one day's wages/salary of operatives, clerks, technicians and officers to the petitioner-Union with effect from 01/04/2004. Both the aforesaid Review applications came to be rejected by the industrial Court on the ground that the Review Applications are not maintainable. Being aggrieved and dissatisfied with the order passed by the industrial Court in Review Application (I.C.N) No. 1/2009 as well as the original order passed by the industrial Court dated 22/04/2009 in Miscellaneous Application (I.C.N) No. 1/2004 insofar as not directing to pay one day's wages/salary of operatives, clerks, technicians and officers to the petitioner-Union with effect from 18/08/2003, the petitioner has preferred the present Special Civil Application under Article 227 of the Constitution of India. 5.1. It is required to be noted that so far as respondent no. 2 is concerned, respondent no. 2 has not preferred any petition either challenging the original order passed by the industrial Court, Nadiad dated 22/04/2009 in Miscellaneous Application (I.C.N) No. 1/2004 and/or the order passed by the industrial Court in Review Application (I.C.N) No. 1/2009, therefore, the short question, which is required to be considered is whether the tribunal was justified in modifying the judgement and award passed by the industrial Court in Reference (I.C.) No. 35/1990 directing to pay one day's wages/salary of operatives, clerks, technicians and officers to the petitioner-Union with effect from 01/04/2004 i.e. not paying the contribution to the petitioner-Union with effect from 18/08/2003 i.e. from the date on which the petitioner came to be declared as recognised Union.

6. Shri Mukesh Rathod, learned advocate appearing on behalf of the petitioner-Akhil Gujarat Cotton Mazdoor Sangh has vehemently submitted that the original order passed by the industrial Court, Nadiad dated 22/04/2009 in Miscellaneous Application (I.C.N.) No. 1/2004 in so far as not paying one day's wages/salary of operatives, clerks, technicians and officers to the petitioner-Union with effect from 18/08/2003 and directing to pay the aforesaid benefit only from 01/04/2004 is contrary to its own finding given by the industrial Court. It is submitted that as such the industrial Court while passing the order has already held that as such the petitioner is entitled to the benefit with effect from 18/08/2003 as the petitioner is declared as recognised Union with effect from 18/08/2003. It is submitted that however despite the aforesaid clear finding given by the industrial Court, the industrial Court passed an order to grant the aforesaid benefit with effect from 01/04/2004 without any basis, which deserves to be quashed and set aside and it is to be held that the petitioner is entitled to the aforesaid benefit with effect from 18/08/2003 i.e. the day on which the petitioner Union came to be declared as recognised Union.

7. Shri Nikhil Joshi, learned advocate appearing on behalf of the respondent no. 2 has submitted that no illegality has been committed by the industrial Court in granting the aforesaid benefit with effect from 01/04/2004. It is submitted by him that as such he supports the order passed by the industrial Court dated 22/04/2009 in Miscellaneous Application (I.C.) No. 1/2004.

8. Shri Pratik Thakkar, learned advocate appearing on behalf of respondent no. 1 has requested to pass an appropriate order.

9. Heard the learned advocates appearing on behalf of the respective parties. It is not in dispute that the petitioner is declared

as recognised Union with effect from 18/08/2003 and as such the industrial Court in the order dated 22/04/2009 has given specific finding that the petitioner Union is declared as recognised Union with effect from 18/08/2003 and is entitled to the benefit under the judgement and award passed in Reference (I.T.) No. 35/1990 with effect from 18/08/2003. However, while passing the operative portion of the order, the industrial Court passed an order to grant the benefit only with effect from 01/04/2004. Nothing has been pointed out on what basis the industrial Court passed an order to grant the aforesaid benefit with effect from 01/04/2004. When the petitioner was declared as recognised Union with effect from 18/08/2003 and when there was a specific finding given by the industrial Court that the petitioner is entitled to the benefit under the award declared in Reference (I.C.) No. 35/1990 (paragraph 9 of the award), there is no reason to deny the aforesaid benefit to the petitioner with effect from 18/08/2003. Under the circumstances, the impugned order passed by the industrial Court dated 22/04/2009 in Miscellaneous Application (I.C.N) No. 1/2004 in modifying the order passed in Reference (I.C.) No. 35/1990 granting the benefit available under Clause 9 of the said award with effect from 01/04/2004 deserves to be quashed and set aside as the petitioner is entitled to the aforesaid benefit with effect from 18/08/2003 i.e. the day on which it came to be declared as petitioner Union

**10.** In view of the above and for the reasons stated hereinabove, the present petition succeeds. The order passed by the industrial Court, Nadiad dated 22/04/2009 in Miscellaneous Application (I.C.N) No. 1/2004 in Reference (I.C.) No. 35/1990 is modified to the extent that the petitioner is entitled to the benefit under Clause 9 of Reference (I.C.) No. 35/1990 with effect from 18/08/2003. Rule is made absolute to the aforesaid extent. No cost.

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