IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4385 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT MARITIME BOARD

Versus

HASAMKHAN A PATHAN

Appearance:

1. Special Civil Application No. 4385 of 1988
MS SEJAL K MANDAVIA for Petitioner No. 1
RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 21/02/2002

ORAL JUDGEMENT

Heard learned advocate Ms. S.K. Mandavia for the petitioner. Notice of rule issued by this Court has been served upon the respondent workman but the

respondent has not remained present before this Court either in person or through any advocate.

In this petition, the petitioner is challenging the award made by the Industrial Tribunal, Ahmedabad in Reference (IT) No. 98 of 1983 dated 5th October, 1987 wherein the Tribunal has granted the scale of Truck Driver, of Rs.290-480 from the date of the reference and to pay arrears from the date of reference. Initially, in this petition, notice was issued on 10th August, 1988 and, thereafter, rule has been issued by this Court on 22nd August, 1988 and interim relief has been granted till further orders. The industrial dispute was raised by the respondent workman through union demanding that since he is working as a truck driver, he is entitled to have the scale of Rs.290-480 which is available to the truck driver with effect from 16th July, 1973. But instead of that, the petitioner has been paying the scale of Rs.260-400 which is a scale of the post of driver. This dispute has been referred for adjudication to the tribunal. Before the tribunal, the union has filed statement of claim and written statement thereto was filed by the petitioner. Thereafter, the respondent workman was examined before the tribunal at Exh. 5 and on behalf of the petitioner, one witness Mr. V.N. Thakar was examined at Exh. 8. The Tribunal, after considering the evidence on record, has come to the conclusion that the respondent has been appointed by the Maritime Board as a Truck Driver, therefore, the respondent is entitled to the scale of truck driver which is different from the scale of driver.

During the course of hearing, learned advocate Ms. S.K. Mandavia appearing for the petitioner has submitted that the Maritime Board came into existence in the year 1982 and prior thereto, this respondent was employed by the Director of Ports. According to her, even on that occasion also, the respondent was working as a driver and he was receiving the scale of pay available to the driver's category. At that time, the scale of driver was Rs.130-240 which was subsequently revised to Rs.260-400. She has also submitted that it was not in dispute before the tribunal that in Maritime Board, there was no two grades of driver and truck driver. There was only one grade and one category of driver in the Maritime Board and, therefore, the tribunal has committed error in granting the grade of truck driver when that grade was not available at all in the establishment of the petitioner. She has also submitted that the tribunal has relied upon the appointment order wherein the designation of the petitioner has been mentioned as truck driver but

while relying upon the order of appointment, the tribunal has ignored one more aspect that in the said appointment order itself, scale of the post of driver has been mentioned. According to her, this aspect has been ignored by the tribunal. Therefore, when there was no grade available as well as no category available in the petitioner establishment, then, the question of giving benefit of such scale which was prevailing in the establishment of the Government cannot be made applicable to the establishment of the petitioner, otherwise, it would create more complications and dissatisfaction amongst other drivers who are working on truck in the Gujarat Maritime Board in the category of driver who are required to work on various vehicles and they possess heavy vehicle licence and, therefore, the tribunal has committed gross error in directing the petitioner to pay the grade of truck driver to the respondent.

I have considered the submissions made by the learned advocate for the petitioner. I have also examined the award made by the tribunal. The tribunal has, after considering the evidence on record and relying upon the order at Exh. 14, wherein the truck driver's designation has been mentioned, considered that the respondent has been appointed as truck driver but the tribunal has not considered that in the same order which is produced at page 20 dated 3rd April, 1973 and at page 21, dated 8th May, 1973, in both the orders, scale of driver has been mentioned but only through mistake committed by the Board to the effect that the designation of truck driver has been mentioned but that does not mean that the respondent is entitled to have the scale of truck driver when that scale and category are not available in the establishment of the petitioner. The tribunal has observed in paragraph 7 that if it is the say of the maritime board that every driver is having one scale and there was no post of truck driver in the establishment, then, the Board should not have given the order to the respondent in the post of truck driver. This conclusion is not proper. If it is mentioned by mistake because two categories are not in existence in the establishment of the petitioner and, therefore, respondent is not entitled to the scale which was not in existence in the establishment and this scale was available in the Government Department and, therefore, that scale cannot be adopted for being granted to the respondent merely because in one or two orders, designation of Truck Driver has been mentioned by the Maritime Board. Therefore, considering this aspect, according to my opinion, the Tribunal has committed gross error in granting the benefit of the scale of truck

driver to the respondent. The dispute was raised by the respondent workman after ten years' delay and yet the tribunal has condoned such delay and granted the benefits to the respondent workman from the date of the reference. If the respondent was entitled to have the scale of driver, then, he should have immediately raised such dispute for demanding the scale of truck driver. Such dispute was raised after the period of ten years. Meanwhile, there was no demand raised by the respondent workman and, therefore, considering all these aspects, according to my opinion, the tribunal has committed error in granting scale of truck driver to the respondent workman which was not available in the schedule or the set up of the petitioner establishment and that category itself is not available in the petitioner establishment. This is the clear basic error committed by the tribunal and, therefore, according to my opinion, interference of this Court is necessary and, therefore, impugned award is required to be quashed and set aside.

In the result, this petition is allowed. Award passed by the Tribunal in Reference (IT) No. 98 of 1983 dated 5th October, 1987 is hereby quashed and set aside. Reference (IT) No. 98 of 1983 is hereby ordered to be rejected. Rule is made absolute accordingly with no order as to costs.

21.2.2002. (H.K. Rathod,J.)

Vyas