SUPREME COURT OF INDIA

Ashok K Jha

Vs.

Garden Silk Mills

C.A.No.5854 of 2009

(Tarun Chatterjee and R. M. Lodha JJ.)

28.08.2009

JUDGEMENT

R.M. LODHA, J.

1. Leave granted.

2. Two questions that arise for consideration in this appeal by special leave are:

(1) Whether transfer of the 31 employees (appellants) from Crimping Department to Twisting Department by the respondent - employer tantamounts to change in respect of matter specified in item nos. 1 and 2 of Schedule II necessitating notice under Section 42(1) of the Bombay Industrial Relations Act, 1946?

(2) Whether Letters Patent Appeal under Clause 15 of the Letters Patent was maintainable from the judgment and order dated October 1, 2007 passed by the learned single Judge in Special Civil Application No. 21828/2006?

3. We may briefly notice the relevant facts first. Garden Silk Mills Ltd. - respondent (hereinafter referred to as, employer) have their mills at Vareli,Taluka Palsane, District Surat. The mills have many departments including Crimping Department and Twisting Department which are located in the same campus. The appellants (hereinafter referred to as, employees), prior to May 3, 1996, were working as Crimping Operators in the Crimping Department. Initially on May 3, 1996, these employees were informed that they have been transferred to Twisting Department and they must henceforth do their duties in that department. The employees did not join their duties in the Twisting Department and, accordingly, the employer issued written order on May 4, 1996 to these employees

individually intimating them that their services have been transferred from Crimping Department to Twisting Department. In the transfer order, it was clarified that there is no change in their service conditions; they will continue to receive same pay scale and all other benefits which they have been getting while working in the Crimping Department.

4. The employees sent request letter under Section 42 (4) of the Bombay Industrial Relations Act, 1946 (for short, BIR Act) to the employer requesting them to withdraw the transfer order dated May 4, 1996. The employees also requested the employer to place them at original post in the Crimping Department.

5. On May 9, 1996, the employer sent a reply to the request letter and reiterated that by transfer from Crimping Department to Twisting Department, there has been no change in their service conditions. The employer expressed its inability to withdraw the transfer order. The employer also warned the employees if they did not resume their duty in the Twisting Departing as Twister, an endorsement, refused to work would be made in the muster roll.

6. The employees then approached the Labour Court by making an application under Sections 77 and 78 of the BIR Act. According to the employees, they have been working as operators in Crimping Department and they are not conversant to run the twisting machines and by transferring them from Crimping Department to Twisting Department, there is total change in the type of their work. They averred that by transferring them from Crimping Department to Twisting Department, the employer has permanently decreased the strength of the Crimping Department and consequential increase in the Twisting Department. The employees alleged that their transfer by the employer tantamounts to change in respect of matter specified in items nos. 1 and 2 of Schedule II of the BIR Act and, therefore, notice of change under Section 42(1) was required to be given and the prescribed procedure must have been necessarily followed.

7. Yet another application challenging the orders of transfer was made by the Surat Silk Mills Labour Union, representative union, before the Labour Court, Surat.

8. The employer contested both applications on diverse grounds. Inter alia, it was stated that there is no change in respect of service conditions, pay scale, benefits, designation and type of work as well as continuity of service by transfer of these employees from Crimping Department to the Twisting Department. The employer denied that their action of transferring the employees was covered by item nos. 1 and 2 of Schedule II but, according to them, their action is covered under item 2 of Schedule III of the BIR Act.

9. It is not necessary to refer to the first round of litigation as the matter was ultimately remanded to the Labour Court for fresh consideration. Before the Labour Court, the parties led documentary evidence but did not lead any oral evidence.

10. The 1st Labour Court, Surat disposed of both applications by a common order dated September 6, 2001. In its order, 1st Labour Court recorded a finding that the employees had failed to prove that the employer had made change in relation to item nos. 1 and 2 of Schedule II. This is what the 1st Labour Court held:

..... it has been held that the applicant has not been able to prove that transfer of workmen has been resulting into strength in crimping department and increase in the strength of twisting department.

In such circumstances, application has not been able to prove that opponent has made change in relation to items of Schedule 2 namely item no. 1 and 2. It has been held that opponent has not made any type of illegal change whatsoever and, therefore, it is held that the applicant is not entitled to any of the reliefs as prayed for in OT Application No. 22/96 and OT Application No. 26/96.

Further, it is also required to be noted that as regards relief no. 2 and 3 in OT Application No. 26/96 sought by the applicant, prayer made is that by ordering for workload to run more than 25 machines and altering wages of the applicants, there has been illegal change effected by the opponent but no such fact has been established by the applicant which has been discussed in this matter in para 11 earlier.

In all the aforesaid circumstances and for the reasons in this matter as discussed as a whole, the applicant has failed in establishing that the opponent has made illegal change and, therefore, it is held that the opponent has not made any type of illegal change.....

11. Aggrieved by the order of the 1st Labour Court dated September 6, 2001, the employees and the union preferred a joint appeal under Section 84 of BIR Act before the Industrial Court, Surat.

12. The Industrial Court did not agree with the findings of the 1st Labour Court in its order dated March 9, 2006. It held:

... In the present case, no evidence is produced on record to show whether any strength of workmen with crimping department or twisting department is decided or not; or no agreement if any in this respect has been produced. The appellants could have been able to produce corroborative evidence in respect of the number of permanent workmen by getting produced the muster roll maintained by the opponent in respect of Crimping Department and Twisting Department for the situation prevailing before 4.5.1996 and thereafter. However, the appellants have not produced any oral as well as documentary evidence in respect of number of permanent workmen working in the Crimping Department or Twisting Department and, therefore, the submission of the present appellants that there will be decrease in number of workmen in Crimping Department and increase in the number of workmen in Twisting Department, cannot be proved. The aforesaid finding which is given by the Labour Court is contrary and false to the documentary evidence on record. As I have stated hereinabove, the workmen concerned with both the aforesaid applications have been transferred vide written order from Crimping Department to Twisting Department. There is no dispute between the parties in that respect. If 31 workmen of Crimping Department are to be transferred to Twisting Department, then in one department there will be decease in number of workmen and increase in number of workmen in other department. In that respect, there is no need to make counting as to how many total workmen were there in Crimping or Twisting Department. By way of aforesaid transfer, there is permanent decrease in number of Crimping operators in the Crimping Department. It is said permanent because it is not the say of the company that on transfer of these workmen from Crimping Department, the workmen of other departments will be appointed on these posts by way of transfer. If there was a counter exchange of workmen of Crimping Department and Twisting Department, then the basic defence taken by the management that we have done assignment of work and transfer of works within the establishment i.e. to entrust work in the factory to workmen; to transfer them; would have been proper and this would have fallen in item no. 2 of Schedule-III for which no notice under Section 42(1) is necessary. Thus, the finding given by the Labour Court that the act of management falls under Item No. 2 of Schedule-III is false and erroneous. If the management has said that our act is not included in Item Nos. 1 and 2 of Schedule-

II then it is the duty of the Management to show before the Court as to the number of total workmen of the Twisting and Crimping Department. Instead of this, it has been held that the burden is on the appellants, is not proper. .....

In the case before the Labour Court, the Management has transferred 31 workmen from Crimping Department to twisting Department. In that respect there is no dispute between the parties. Even there is no defence of the respondent that we have transferred 31 workmen from Crimping Department to Twisting Department and from Twisting Department to Crimping Department. If it was the case of only counter exchange, then the case of appellants would not have fallen under Item Nos. 1 and 2 of Schedule - II and the contention raised by the respondent i.e. company, that the matter with respect to entrusting the work to workmen and transferring them, falls under Item No. 2 of Schedule-III, could have been accepted. Thus, the Labour Court has believed the authority cited by Shri Chaudhari as correct one. But the Labour Court has held that the appellant union has not been able to prove that there is decrease in number of workmen Crimping Department. When there is no dispute between the parties at the time of transfer of 31 workmen of one department to another Department, there is no need for the Union to prove the decrease in number of workmen. Thus, the finding recorded by the Labour Court is in fact erroneous....

13. The Industrial Court, Surat set aside the order of the 1st Labour Court and directed the employer to withdraw the orders of transfer dated May 4, 1996 and to entrust to the employees, work of the original post.

14. The employer challenged the order of the Industrial Court by filing a petition (Special Civil Application) under Articles 226 and 227 of the Constitution before the High Court of Gujarat. The learned Single Judge dismissed the petition on October 1, 2007 holding thus:

...The Industrial Court has rightly considered the difference between Schedule II and III item Nos. 1 and 2 of Schedule-II and Item No. 2 of Schedule-III and find out the real intention of the employer and come to the conclusion that it is not merely a transfer of 31 employees but, an intention of the employer to reduce the strength from crimping department and increase the strength in twisting department which fall within Item Nos. 1and 2 of Schedule-II of the act which requires notice of change, which is not given and, therefore, it amounts to illegal change.

15. Aggrieved by the order of the learned Single Judge, the employer preferred Letters Patent Appeal under Clause 15 of the Letters Patent before the Division Bench. The Division Bench, after hearing the parties found the appeal meritorious and by its order dated May 14, 2008, allowed the appeal and set aside the judgment and order of the learned Single Judge.

The Division Bench also set aside the judgment and order passed by the Industrial Court, Surat and restored the judgment and order dated September 6, 2001 passed by the Labour Court, Surat.

Re: Question (1)

16. Clause (18) of Section 3 defines Industrial matter to mean any matter relating to employment, work, wages, hours of work, privileges, rights or duties of employers or employees or the more, terms and conditions of employment.

17. Section 42(1) which is relevant for consideration of this question reads thus:-

Section 42 - Notice of change

(1) Any employer intending to effect any change in respect of an industrial matter specified in Schedule II shall give notice of such intention in the prescribed form to the representative of employees. He shall send a copy of such notice to the Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed. He shall also affix copy of such notice at a conspicuous place on the premises where the employees affected by the change are employed for work and at such other place as may be directed by the Chief Conciliator in any particulars case.

(2) .....

(3) .....

(4) ....

18. Section 46(4) provides that no employer shall make any change in any industrial matter mentioned in Schedule II before giving notice of change as required by the provisions of sub-section (1) of Section 42 and any change made in contravention of the provisions of sub-Section (1), (2) of (3) shall be illegal.

19. Item 1 of Schedule II reads: Reduction intended to be of permanent or semi-permanent character in the number of persons employed or to be employed in any occupation or process or department or departments or in a shift not due to force majeure.

20. Item 2 of Schedule II refers to: Permanent or semi-permanent increase in the number of persons employed or to be employed in any occupation or process or department or departments.

21. Item 2 of Schedule III reads: Assignment of work and transfer of workers within the establishment.

22. A close look at the Item Nos. 1 and 2 of Schedule II and Item 2 of Schedule III would show that insofar as assignment of work and transfer of workers within the establishment is concerned, the subject is precisely and specifically covered by Item 2 of Schedule III. The expression, `assignment of work and transfer of workers within the establishment' is plain and admits of no ambiguity. If the orders of transfer are of the description mentioned in item 2 of Schedule III, item 2 of Schedule III must come into full play. Item nos. 1 and 2 of Schedule II operate altogether in a different field. Basically, Items 1 and 2 of Schedule II deal with reduction in the number of persons employed or to be employed in any occupation or process or department or departments or in a shift or permanent or semi permanent increase in the number of persons employed or to be employed in any occupation or process or department or departments. A mere transfer of workers within the establishment would not attract Item Nos. 1 and 2 of Schedule II but would be covered by Item 2 of Schedule III as there is a specific item in this regard. A specific item would exclude the items of general character and, in that view of the matter, in the matters of transfer of workers within the establishment and assignment of work by the employer, the specific Item 2 of Schedule III is attracted.

23. The orders of transfer dated May 4, 1996 apparently make it clear that there is no change in the

service conditions of the workers viz. the workers continue to enjoy same pay scales, rights and benefits flowing from service and the type of work also remains the same. The only thing that has been done by the impugned orders of transfer is that these workers have been asked to discharge their duties in the Twisting Department instead of Crimping Department.

24. It is pertinent to notice that the employees did not produce any evidence to establish that there was difference in the work in the Crimping Department and the Twisting Department or that work of operator at the crimping and twisting machines is different. No evidence has been led by the employees about the fixed number of employees in the Crimping Department. In the absence of any evidence by the workers about any fixed number of workers in the Crimping Department and Twisting Department, there is no foundation laid for consideration of the question of reduction in the Crimping Department and increase in number in the Twisting Department by impugned orders of transfer. Obviously, the burden lay on the workers to establish that the number of workers in each of these departments i.e. Crimping Department and Twisting Department has been determined and that due to the action of the employer, there has been decrease or increase in the number of workers in these two departments.

25. We are not persuaded by the submission of the learned Counsel for the appellants that there is a basic difference in the nature of machines in the Crimping and Twisting Departments and that workers are not trained to work at Twisting Machines. If that were so, the workers ought to have led evidence in that regard which they never did.

26. The Division Bench of the High Court in this regard considered the matter thus:

...We do appreciate that transfer of the employees from one department to another, in absence of corresponding transfer, would necessarily result into reduction in manpower in one department and corresponding increase in the manpower in the other department. But, we are unable to agree that Item 1 of the Schedule II to the Act is intended to cover the cases like the one before us. Had that been the legislative intent the assignment of work and the transfer of workers within the establishment would not have been included in Schedule III to the act. If the reasoning of the Industrial court were accepted, the above referred Item 2 in Schedule III to the Act would become nugatory. The cardinal principle of interpretation of statutes requires that the interpretation which would render a part of the legislation nugatory or otiose should be avoided. What is required is harmonization or conciliation amongst the two seemingly contradictory or repugnant provisions in an enactment. As the matter assignment of work and transfer of workers within the establishment has been specifically included in Schedule III to the Act, it cannot be artificially brought under Item 1 of Schedule II by reference to the presumable consequences of such transfer or assignment of work.

27. We agree with the view of the High Court and for the reasons already indicated above, we answer question (1) in the negative. Re.: Question (2)

28. In the Case of Umaji Kesho Meshram vs. Radhikabai,1, this Court had an occasion to consider the question whether any appeal lies under Clause 15 of the Letters Patent of the Bombay High Court before the Division Bench of two Judges of the High Court from the judgment and order of the learned single Judge of the High Court in petition filed under Article 226 and 227 of the Constitution. The Court held:

100. According to the Full Bench even were clause 15 to apply, an appeal would be barred by the express words of clause 15 because the nature of the jurisdiction under Articles 226 and 227 is the same inasmuch as it consists of granting the same relief, namely, scrutiny of records and control of subordinate courts and tribunals and, therefore, the exercise of jurisdiction under these articles would be covered by the expression revisional jurisdiction and power of superintendence. We are afraid, the Full Bench has misunderstood the scope and effect of the powers 1 1986 (Supp) SCC 401 conferred by these articles. These two articles stand on an entirely different footing. As made abundantly clear in the earlier part of this judgment, their source and origin are different and the models upon which they are patterned are also different. Under Article 226 the High Courts have power to issue directions, orders and writs to any person or authority including any Government. Under Article 227 every High Court has power of superintendence over all courts and tribunals throughout the territory in relation to which it exercises jurisdiction. The power to issue writs is not the same as the power of superintendence. By no stretch of imagination can a writ in the nature of habeas corpus or mandamus or quo warranto or prohibition or certiorari be equated with the power of superintendence. These are writs which are directed against persons, authorities and the State. The power of superintendence conferred upon every High Court by Article 227 is a supervisory jurisdiction intended to ensure that subordinate courts and tribunals act within the limits of their authority and according to law (see State of Gujarat v. Vakhatsinghji Vajesinghji Vaghela (AIR 1968 SC 1481) and Ahmedabad Mfg. Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand [(1973) 1 SCR 185]. The orders, directions and writs under Article 226 are not intended for this purpose and the power of superintendence conferred upon the High Courts by Article 227 is in addition to that conferred upon the High Courts by Article 226. Though at the first blush it may seem that a writ of certiorari or a writ of prohibition partakes of the nature of superintendence inasmuch as at times the end result is the same, the nature of the power to issue these writs is different from the supervisory or superintending power under Article 227. The powers conferred by Articles 226 and 227 are separate and distinct and operate in different fields. The fact that the same result can at times be achieved by two different processes does not mean that these two processes are the same.

101. Under Article 226 an order, direction or writ is to issue to a person, authority or the State. In a proceeding under that article the person, authority or State against whom the direction, order or writ is sought is a necessary party. Under Article 227, however, what comes up before the High Court is the order or judgment of a subordinate court or tribunal for the purpose of ascertaining whether in giving such judgment or order that subordinate court or tribunal has acted within its authority and according to law. Prior to the commencement of the Constitution, the Chartered High Courts as also the Judicial Committee had held that the power to issue prerogative writs possessed by the Chartered High Courts was an exercise of original jurisdiction (see Mahomedalli Allabux v. Ismailji Abdulali (AIR 1926 Bom 332), Raghunath Keshav Khadilkar v. Poona Municipality, Ryots of Garabandho v. Zemindar of Parlakimedi (AIR 1942 PC 164) and Moulvi Hamid Hasan Nomani v. Banwarilal Roy (AIR 1947 PC 90). In the last mentioned case which dealt with the nature of a writ of quo warranto, the Judicial Committee held: In Their Lordships' opinion any original civil jurisdiction possessed by the High Court and not in express terms conferred by the Letters Patent or later enactments falls within the description of ordinary original civil jurisdiction.

By Article 226 the power of issuing prerogative writs possessed by the Chartered High Courts prior to the commencement of the Constitution has been made wider and more extensive and conferred upon every High Court. The nature of the exercise of the power under Article 226, however, remains the same as in the case of the power of issuing prerogative writs possessed by the Chartered High Courts. A series of decisions of this Court has firmly established that a proceeding under

Article 226 is an original proceeding and when it concerns civil rights, it is an original civil proceeding (see, for instance, State of U.P. v. Vijay Anand Maharaj (AIR 1963 SC 946), CIT v. Ishwarlal Bhagwandas (AIR 1965 SC 1818), Ramesh v. Seth Gendalal Motilal Patni (AIR 1966 SC 1445), Arbind Kumar Singh v. Nand Kishore Prasad (AIR 1968 SC 1227) and Ahmedabad Mfg. Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand (AIR 1972 SC 1598).

102. Consequently, where a petition filed under Article 226 of the Constitution is according to the Rules of a particular High Court heard by a Single Judge, an intra-court appeal will lie from that judgment if such a right of appeal is provided in the Charter of that High Court, whether such Charter be Letters Patent or a statute. Clause 15 of the Letters

Patent of the Bombay High Court gives in such a case a right of intra-court appeal and, therefore, the decision of a Single Judge of that High Court given in a petition under Article 226 would be appealable to a Division Bench of that High Court.

107. Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of Hari Vishnu Kamath v. Syed Ahmad Ishaque (AIR 1955 SC 233) before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the Tribunals or authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or orders of courts specified in that rule, they shall be heard and finally disposed of by a Single Judge. The question is whether an appeal would lie from the decision of the Single Judge in such a case. In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Such was the view taken by the Allahabad High Court in Aidal Singh v. Karan Singh (AIR 1957 ALL 414) and by the Punjab High Court in Raj Kishan Jain v. Tulsi Dass (AIR 1959 Punj 291) and Barham Dutt v. Peoples' Cooperative Transport Society Ltd., New Delhi (AIR 1961 Punj 24) and we are in agreement with it.

29. In the case of Ratnagiri District Central Co-operative Bank Ltd. v. Dinkar Kashinath Wative2, this Court held that for determining the question of maintainability of an appeal against the Judgement of the single Judge in a writ 2 1993 (Suppl.) 1 SCC 9 petition where both Articles 226 and 227 of the Constitution have been mentioned, the Division Bench has to find out whether in substance the judgment has been passed by the learned single Judge in exercise of the jurisdiction under Article 226 of the Constitution. The Court held thus:

2. The only question involved in this matter is as to whether the High Court was right in holding that a Letters Patent Appeal will not lie against the judgment delivered by a learned Single Judge in a petition which was filed under both the Articles 226 and 227 of the Constitution. Having gone through the judgment of the learned Single Judge and the Division Bench and having heard learned counsel for the parties, in our opinion, the question about the scope of Letters Patent Appeal under clause 15 has been clearly laid down by this Court in a judgment reported in Umaji Keshao Meshram v. Radhikabai wherein it was observed as follows at pages 837-38: (SCC p. 473, para 107)

Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of Hari Vishnu Kamath v. Syed Ahmad Ishaque (AIR 1955 SC 233) before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the tribunals or authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or orders of courts specified in that rule, they shall be heard and finally disposed of by a Single Judge. The question is whether an appeal would lie from the decision of the Single Judge in such a case. In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution and the party chooses to file his application under both these articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Such was the view taken by the Allahabad High Court in Aidal Singh v. Karan Singh (AIR 1957 All 414)and by the Punjab High Court in Raj Kishan Jain v. Tulsi Dass (AIR 1959 Punj 291) and Barham Dutt v. Peoples' Co-operative Transport Society Ltd., New Delh (AIR 1961 Punj 24) and we are in agreement with it.

3. It is clear that so far as the present case was concerned the relief granted by the learned Single Judge clearly indicate that he was exercising jurisdiction under Article 226 and not under Article 227 of the Constitution and in this view of the matter and in the light of what has been laid down by this Hon'ble Court in the judgment referred to above a Letters Patent Appeal under clause 15 would be maintainable before the Division Bench of the High Court. The appeal is, therefore, allowed and the judgment passed by the learned Division Bench is set aside. The matter is sent back to the High Court and it is expected that the Division Bench will hear the appeal on merits and dispose it of in accordance with law expeditiously preferably within four months from today.

30. In Sushilabai Laxminarayan Mudliyar and others vs. Nihalchand Waghajibhai Shah and Others3, the Court held:

4.The Full Bench of the Bombay High Court wrongly understood the above Umaji Kesho Meshram case. In Umaji case it was clearly held that where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution of India and the party chooses to file his application under both these articles in fairness of justice to party and in order not to deprive him of valuable right of appeal the Court ought to treat the application as being made under 3 1993 Suppl. (1) SCC 11 Article 226, and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Rule 18 of the Bombay High Court Appellate Side Rules read with clause 15 of the Letters Patent provides for appeal to the Division Bench of the High Court from a judgment of the learned Single Judge passed on a writ petition under Article 226 of the Constitution. In the present case the Division Bench was clearly wrong in holding that the appeal was not maintainable against the order of the learned Single Judge. In these circumstances we set aside the impugned order of the Division Bench and direct that the Letters Patent Appeal filed against the judgment of the learned Single Judge would now be heard and decided on merits.

31. The issue concerning maintainability of Letters Patent Appeal from an order of single Judge in the writ petition filed under Articles 226 and 227 of the Constitution of India, again came up for consideration before this Court in the case of Kishori Lal vs. Sales Officer, District Land

Development Bank and Ors.4. This Court held:

13. The learned Single Judge of the High Court, in our opinion, committed an error in interfering with the findings of fact arrived at by the Board of Revenue. The Division Bench of the High Court also wrongly dismissed the LPA without noticing that an appeal would be maintainable if the writ petition was filed under Articles 226 and 227 of the Constitution of India as was held by this Court in Sushilabai Laxminarayan Mudliyar v. Nihalchand Waghajibhai Shaha (1993 Suppl. (1) SCC 11). 4 2006 (7) SCC 496

32. The discussion on the subject would be incomplete without reference to two recent decisions of this Court viz., (i) State of Madhya Pradesh and Ors. vs. Visan Kumar Shiv Charan Lal5, and (ii) Ramesh Chandra Sankla vs. Vikram Cement6. In the case of Visan Kumar Shiv Charan Lal, this Court referred to earlier decisions in the case of Umaji 1, Sushilabai Laxminarayan3 and Ratnagiri District Co-operative Bank Ltd.2, and held:

8. .....Even when in the cause title of an application both Article 226 and Article 227 of the Constitution have been mentioned, the learned single Judge is at liberty to decide, according to facts of each particular case, whether the said application ought to be dealt with only under Article 226 of the Constitution. For determining the question of maintainability of an appeal against such a judgment of the Single Judge the Division bench has to find out whether in substance the judgment has been passed by the learned Single Judge in exercise of the jurisdiction under Article 226 of the Constitution. In the event in passing his judgment on an application which had mentioned in its cause title both Articles 226 and 227, the Single Judge has in fact invoked only his supervisory powers under Article 227, the appeal under clause 15 would not lie. The clause 15 of the Letters Patent expressly bars appeals against orders of Single Judges passed under revisional or supervisory powers. Even when the learned Single Judge's order has been passed under both the articles, for deciding the maintainability against such an order what would be relevant is the principal or main relief granted by the judgment passed by 5 AIR 2009 SC 1999 6 AIR 2009 SC 713 learned Single Judge and not the ancillary directions given by him. The expression `ancillary' means, in the context, incidental or consequential to the main part of the order.

33. In Visan Kumar Shiv Charan Lal, this Court further held that the determining factor is the real nature of principal order passed by the Single Judge which is appealed against and neither mentioning in the cause title of the application of both the Articles nor granting of ancillary order thereupon by the Single Judge would be relevant and in each case the Division Bench must consider the substance of the Judgment under appeal to ascertain whether the Single Judge has mainly or principally exercised his jurisdiction under Article 226 or Article 227 of the Constitution.

34. In Ramesh Chandra Sankla, this Court held:

32. In our judgment, the learned Counsel for the appellant is right in submitting that nomenclature of the proceeding or reference to a particular Article of the Constitution is not final or conclusive. He is also right in submitting that an observation by a Single Judge as to how he had dealt with the matter is also not decisive. If it were so, a petition strictly falling under Article 226 simpliciter can be disposed of by a Single Judge observing that he is exercising power of superintendence under Article 227of the Constitution. Can such statement by a Single Judge take away from the party aggrieved a right of appeal against the judgment if otherwise the petition is under Article 226 of the Constitution and subject to an intra court/Letters Patent Appeal? The reply unquestionably is in the

negative.

35. If the judgment under appeal falls squarely within four corners of Article 227, it goes without saying that intra court appeal from such judgment would not be maintainable . On the other hand, if the petitioner has invoked the jurisdiction of the High Court for issuance of certain writ under Article 226, although Article 227 is also mentioned, and principally the judgment appealed against falls under Article 226, the appeal would be maintainable. What is important to be ascertained is the true nature of order passed by the Single Judge and not what provision he mentions while exercising such powers. We agree with the view of this Court in Ramesh Chandra Sankla that a statement by learned Single Judge that he has exercised power under Article 227, cannot take away right of appeal against such judgment if power is otherwise found to have been exercised under Article 226. The vital factor for determination of maintainability of intra court appeal is the nature of jurisdiction invoked by the party and the true nature of principal order passed by the Single Judge.

36. Insofar as the present case is concerned, in the cause title of the writ petition (Special Civil Application), Articles 226 and 227 of the Constitution have been mentioned. A careful reading of the writ petition shows that writ petition is not confined to supervisory jurisdiction of the High Court. The employer has invoked jurisdiction of the High Court by praying for a writ of certiorari. The prayer clause in the writ petition reads, In view of the aforesaid premises your Lordships may be pleased to issue a writ of certiorari or any other appropriate order..... . The judgment of the Single Judge is, thus, traceable to Article 226. The statement made by the Single Judge in his order that no case for interference is made out under Article 227 of the Constitution is not decisive. Moreover, the Division Bench in its order observed, though long drawn arguments were advanced on the question of maintainability of this Appeal, there rally was not a serious contest on the question of maintainability of the Appeal. For all these reasons, we hold that Letters Patent Appeal was maintainable from the order dated October 1, 2007 passed by the learned Single Judge. We answer question (2) in affirmative.

37. By way of foot-note, we may observe that during the course of hearing of the appeal, we were informed by the Senior Counsel for the employer that dispute has been resolved amicably with twelve employees. We gave an opportunity to the remaining employees to settle the dispute with the employer as has been done by twelve employees, and although employer expressed their willingness, but the remaining employees found the offer of the employer unacceptable.

38. In the result, appeal fails and is dismissed with no order as to costs.