**SUPREME COURT OF INDIA**

Gujarat Maritime Board

Vs.

G.C.Pandya

C.A.No.3563 of 2015

(Dipak Misra and Prafulla C. Pant JJ.)

13.04.2015

**JUDGMENT**

**PRAFULLA C. PANT, J.**

This appeal is directed against order dated 18.12.2013, passed by the High Court of Gujarat in Second Appeal No. 172 of 2013 whereby said Court has dismissed the appeal upholding the judgment and decree passed by the first appellate court and the trial court.

We have heard learned counsel for the parties and perused the papers on record.

Brief facts giving rise to this appeal are that respondent G.C. Pandya was Deputy Engineer (civil) with the appellant Gujarat Maritime Board. He was charge-sheeted for certain irregularities allegedly committed by him during the period 1982-1984, due to which the appellant suffered huge losses. In said enquiry the plaintiff/respondent G.C. Pandya was held guilty and awarded punishment of "censure" on 26.6.2002. He was superannuated on 30.6.2002 from service as Superintending Engineer. He (respondent) instituted Civil Suit No. 569 of 2002 before Civil Judge, Porbandar, for declaration that the departmental enquiry held against him and punishment awarded are illegal. The plaintiff further sought his promotion with effect from 1.1.2002. It is pleaded in the plaint that the departmental enquiry was purposely kept pending with a motive to deny promotion to the plaintiff. It was alleged by the plaintiff that the allegations in the charge sheet were false, and the enquiry was initiated to allow promotion of juniors to the plaintiff.

Strangely, though the defendant Gujarat Maritime Board (present appellant) was served and represented through its counsel, but it did not file any written statement contradicting the facts alleged in the plaint.

Since no written statement was filed by the defendant/ appellant, there was no question of framing issues in the suit, and judgment could have been pronounced under Order VIII Rule 10 of the Code of Civil Procedure, 1908 (for short "C.P.C."). However, the trial court formulated the questions to be decided in the suit as under: -

> "(I) Whether the plaintiff establishes that, the charge sheet issued against him and thereafter the order of the departmental inquiry and of the punishment is illegal, unconstitutional and required to be rejected?
>
> (II) Whether the plaintiff establishes that the act of the defendant preventing the plaintiff from promotion on the post of Chief Engineer is illegal, unconstitutional and requires to be rejected?
>
> (III) Whether the plaintiff establishes that, by treating the promotion with effect from 1/1/2002 the plaintiff is entitled and rightful to avail all the rights of the said post?
>
> (IV) Whether the plaintiff is entitled for the prayer sought for?"

The trial court considered the deposition of plaintiff G.C. Pandya and the documentary evidence Ex. 14 to Ex. 25, and answered each question discussing the evidence on record. Submissions of the learned counsel for the parties were considered and it is only thereafter, the trial court (2nd Additional Senior Civil Judge, Porbandar) passed the judgment and decree dated 7.1.2009 in the suit.

Aggrieved by said judgment and decree, the defendant (present appellant) filed Regular Civil Appeal No. 95 of 2009 before the District Judge, Porbandar. After hearing the parties, said Regular Civil Appeal was dismissed by the Additional District Judge, Porbandar, vide judgment and order dated 29.9.2012. The first appellate court framed points of determination and thereafter decided the appeal concurring with the trial court.

The defendant (present appellant) thereafter, challenged judgment and decree passed by first appellate court before the High Court, which was registered as Second Appeal No. 172 of 2013. The High Court dismissed the Second Appeal. Hence, this appeal before us through special leave. Learned counsel for the

appellant argued before us that no substantial question of law was framed by the High Court, as such, the impugned order passed by the High Court is liable to be set aside. It is further contended that the plaintiff had not completed three years of service as Superintending Engineer, as such, he was not entitled to be promoted as Chief Engineer.

However, after going through the papers on record and considering the submissions of the learned counsel for the parties, we find little force in the above argument. As far as actual period served as Superintending Engineer by the plaintiff is concerned, said fact should have been pleaded specifically by the defendant/appellant, but it did not even care to file the written statement before the trial court. When there was no such plea before the trial court, we cannot set aside the concurrent findings of fact of the courts below.

As far as the question of formulation of substantial questions of law in a second appeal is concerned, we agree that before admitting a Second Appeal, it is the duty of the High Court to formulate substantial questions of law as required under Section 100 of C.P.C. But, in the present case, from the impugned order it nowhere reflects that the second appeal was admitted, rather it shows that after hearing the parties the High Court came to the conclusion that there was no substantial question of law involved in the appeal. The High Court has rightly taken note of the fact that the defendant neither chose to file written statement nor led any evidence before the trial court.

No doubt, the question of jurisdiction can be raised at any stage, but in the present case, there was no other forum for the plaintiff where he could have sought his remedy. The High Court has observed that the relief could not have been sought by the plaintiff before the Gujarat Civil Services Tribunal as the defendant was simply a Board and not covered within jurisdiction of said Tribunal. It was not a matter to be heard by the Central Administrative Tribunal either as the plaintiff was not a Central Government employee. As such, we do not find any error in the impugned order passed by the High Court.

In a case where the written statement is not filed, the civil court has the jurisdiction to proceed under Order VIII Rule 10 of C.P.C. However, the orders are not required to be passed in mechanical manner in exercise of the powers contained in the above mentioned provision of law. In Balraj Taneja and another v. Sunil Madan and another[1], this Court has laid down law in paragraphs 25 to 27 on this point, as under: -

"25. Thus, in spite of admission of a fact having been made by a party to the suit, the court may still require the plaintiff to prove the fact which has been admitted by the defendant. This is also in consonance with the provisions of Section 58 of the Evidence Act which provides as under:

"58. Facts admitted need not be proved.-No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

26. The proviso to this section specifically gives a discretion to the court to require the facts admitted to be proved otherwise than by such admission. The proviso corresponds to the proviso to Rule 5(1) Order 8 CPC.

27. In view of the above, it is clear that the court, at no stage, can act blindly or mechanically. While enabling the court to pronounce judgment in a situation where no written statement is filed by the defendant, the court has also been given the discretion to pass such order as it may think fit as an alternative. This is also the position under Order 8 Rule 10 CPC where the court can either pronounce judgment against the defendant or pass such order as it may think fit."

In view of the law laid down by this Court, as above, we are of the view that in the present case the trial court has not acted mechanically. Rather it has discussed the pleadings and the evidence led by the plaintiff, and considered rival submissions of the parties. The only error committed by the trial court is that instead of directing defendant to consider promotion of plaintiff with effect from 1.1.2002, it has declared the plaintiff to have been promoted as Chief Engineer with effect from said date without considering service record of the Officer (plaintiff). The first appellate court and the High Court have also though considered the arguments advanced before them, but erred in noticing the above error committed by the trial court. As such, we have no option but to modify the decree passed by the courts below to the above extent.

For the reasons, as discussed above, we are not inclined to interfere with the impugned judgment and decree passed by the courts below except to the extent as

above. Accordingly, the appeal is partly allowed only to the extent, that instead of treating the plaintiff to have been promoted with effect from 1.1.2002 as Chief Engineer, his case shall be considered by the defendant within a period of three months from today for promotion to the post of Chief Engineer with effect from 1.1.2002, keeping in mind the findings recorded in the suit. No order as to costs.

[1] (1999) 8 SCC 396