

(2008) 12 GUJ CK 0014
In the Gujarat High Court

Case No : Special Civil Application No. 5786 of 2008

Ahmedabad District Co-operative Milk Producers Union
Limited and Another

APPELLANT

Vs

Gemarbhai Jakshibhai Rabari

RESPONDENT

Date of Decision : 08-12-2008

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 25F

Citation : (2008) 12 GUJ CK 0014

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : B.S. Patel, for Petitioners 1 and 2, for the Appellant; P.C. Chaudhari, for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

S.R. Brahmbhatt, J.—Rule. Mr. Chaudhari, learned Advocate for the respondent-workman waives service of notice of rule and with the consent of the consensus of parties the same is fixed forthwith.

2. The petitioner has preferred this petition challenging the award dated 08/06/2007 passed by the Labour Court, Ahmedabad in Reference (LCA) No. 439 of 1996 where under the Labour Court has struck down the action of oral termination of the respondent-workman on 21/01/1995 and ordered reinstatement with 50 % of the back wages and with continuity of service on his original post.

3. It was the case of the petitioner workman before the concerned Court that he was working as labour in the petitioner-co-operative society since four years in a dock department and he was required to fetch cream from 4 O'clock to 12 O'clock in the night. He was paid wages of Rs. 22/- per day at the end of the month. During his duty, the respondent met with an accident and after undergoing treatment when he reported for duty on 21/01/1995 with fitness

certificate, he was not permitted to resume his duty and he was unceremoniously terminated without following due procedure of law or without complying with Section 25(f) of the ID Act. The termination was illegal and therefore he was entitled to be reinstated. The petitioner through its written statement contested the claim of the workman in its entirety and put up contention that the workman had in-fact abandoned his service from 10/09/1993 and as such he was not entitled to any relief. The workman had never been permanently employed. The workman was working as Rojamdard and he did not report from 10/09/1993 and therefore he cannot have any claim with regard to any compensation u/s 25F of the ID Act. The workman did not attend the duty even as Rojamdard in the preceding year.

4. The Labour Court after hearing both the sides held in favour of the workman allowing the said reference as aforesaid vide its order which is impugned in this petition.

5. Shri B.S.Patel, learned Advocate appearing for the petitioner contended that the workman could not establish the case with regard to his serving 240 days in the preceding year; nor could he establish claim with regard to his oral termination from 21/01/1995 as stated and recorded by the Court. The factum of accident which is pressed into service for justifying his absence from 10/09/1993 to 21/01/1995 has also not been mentioned with its proper facts in the statement of claim so as to call for any proper adjudication. The workman has abandoned his job and he was daily rated employees. The reliance placed upon the document which was a temporary i-card issued at the relevant time wherein the word "Hangami" i.e. temporary was scored off and permanent i.e. "Kayami" had not been scored off. On the strength of this document, an attempt was made to show permanency, which the Labour Court had accepted and therefore the award of Labour Court being perverse, per se and deserves to be quashed and set aside.

6. Shri Chaudhari, learned Advocate appearing for the respondent-workman contended that the Labour Court has rightly held that the oral termination came to be effected from 21/01/1995 was illegal. The workman's name continued on the muster roll of the petitioner till 21/01/1994 and therefore the award which has proceeded on that basis deserves to be sustained. He further submitted that the document in form of temporary i-card coupled with the testimony of one Shri Akshay Mehta, who happened to be the employee of the petitioner, would go to show that the workman had attained the permanent status and as such he was not required to prove the working of 240 days in the preceding year. He submitted that the working of 240 days in the preceding year is raised for the first time before the Court. The factum of abandoning is not in any way established, as notice issued and produced at page- 61 is not sufficient proof and therefore merely production of notice would not amount to prove that the notice was issued and therefore the said notice is of no avail to the petition.

7. This Court has heard the learned Advocates for the respective parties and has

perused the award impugned in this petition.

8. Following facts emerging from the record are to be set out before adverting to rival contention of the parties.

Statement of claim in the instant case go to show that the respondent-workman in his own version has stated that he was paid wages at the rate of Rs. 22/- per day at the end of the month.

The workman has clearly mentioned in the statement of claim that on account of accident while on duty he could not attend the office till 21/01/1995.

The workman has not mentioned anywhere the factum of accident, treatment taken, the days of hospitalization and the circumstances prevented him from attending the duty.

The workman has in his statement of claim mentioned that on 21/01/1995 after gaining his fitness, he obtained certificate of fitness and produced the same to resume his duty.

The workman has in the written statement claimed non-compliance of provisions of Section 25(f) of the I.D. Act.

9. As against this, the testimony of the witnesses of both the parties with regard to rival version also deserves to be looked into.

10. The Labour Court has proceeded on the footing as if in this situation the petitioner was under obligation to comply with Section 25(f) of the ID Act when the workman was denied permission to resume on 21/01/1995. Now, for coming to his conclusion, the Labour Court was under duty to examine and record its satisfaction with regard to condition precedent warranting for compliance with Section 25(f) of the ID Act. The Labour Court has not even adverted to the factum with regard to accident and absence of requisite certificate coming forward on the part of the workman for establishing his claim.

10.1 As against this it has come on record that from 10/09/1993 the workman could not attend the duty till 21/01/1995, when for the first time after the accident he approached the petitioner. This Court has called upon Shri Chaudhary to explain even in this Court under Article 227 of the Constitution of India as to what was the nature of the injury that had prevented the workman from resuming his duty, to which he had said that milk cane which was carried had fallen on the leg and therefore some stitches were warranted. This on the face of it cannot be said to be so serious accident preventing the workman from discharging his duty or reporting his duty for such a long period. This in itself would go to militated against the veracity of the version of the workman produced before the Court.

11. The finding of the workman with regard to Section 25(F) of the I.D. Act can be said to be perverse and the award based upon its requires to be quashed and set aside. Accordingly, the petition is allowed and impugned award is quashed

and set aside. Rule made absolute to the aforesaid extent. However, there shall be no order as to costs.