
(2007) 07 GUJ CK 0015

In the Gujarat High Court

Case No : Special Civil Application No. 8756 of 2000

Amreli District Panchayat

APPELLANT

Vs

Rakhubhai Jivansinh

RESPONDENT

Date of Decision : 16-07-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25G, 25H, 25T

Citation : (2007) 07 GUJ CK 0015

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

Bench : Single Bench

Advocate : H.S. Munshaw, for the Appellant; P.H. Pathak, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.—Shri H.S. Munshaw, learned Counsel for the petitioner; Shri P.H. Pathak, learned Counsel for the respondent.

2. The petitioner-employer, being aggrieved by the award dated 19.5.2000 passed by the Labour Court, Amreli in Reference Case No. 47/98 is before this Court with a submission that the learned Court below was absolutely unjustified in holding that in view of the violation of Sections 25H, 25G and 25F of the Industrial Disputes Act, 1947, the respondent workman was entitled to reinstatement.

3. The short facts necessary for disposal of the present case are that the respondent-workman came to the Labour Court with a submission that he was appointed on 29 days' work with an artificial break right from 1982 to 29.6.87 and he was abruptly removed from service. He submitted before the Court that he had worked for more than 240 days in 12 calendar months preceding the date of illegal retrenchment and that the work, even if it was of temporary nature, in view of the principles of *Slack come first go* and preferential treatment to the workman, the retrenchment was illegal. It was also the case of the workman that after the illegal retrenchment of the workman, yet another person was employed

at his place.

4. The employer appeared before the Court and contested the matter on all possible counts. Shri Munshaw, learned Counsel for the petitioner-employer submitted that the work was of temporary nature, the workman had failed in proving that he had worked for 240 days. He also submitted that present is a case where no adverse inference could be drawn, because, every time appointment orders were issued and the case of the workman was never that sometimes there was oral appointment. He submits that if the workman failed in producing the complete records, then, no adverse inference could be drawn against the present petitioner.

5. He also submitted that temporary work came to an end though sub-division continued and there was no suggestion to the employer that after removal of the workman, yet another person was appointed at his place.

6. Shri P.H. Pathak, learned Counsel for the workman submitted that the findings of the Court below are that there was breach of provisions of Sections 25G and 25H of the Act. He however submitted that the Court has found it as a fact that the work continued and yet another person was appointed. He also submitted that the work continued even after the removal of the workman, therefore, non-availability of the work could not be projected as a ground. On being asked to read such finding, Shri Pathak read from part of para-13 of the award of the Labour Court. I should immediately record that what Shri Pathak read was not the finding recorded by the Court below but in fact, was a statement of the workman and the Court below was referring to the statement.

7. On being asked that on what basis, the Court has found violation of Section 25H, Shri Pathak submitted that the Court has so found and has found it as a fact. On being asked to read such finding, Shri Pathak was unable to read such finding but he however insisted that as the Court has found that there was violation of Section 25H, it should be presumed that the workman continued and as the workman has given name of another employee, the Court below should hold that the work continued. He also submitted that non-production of the records would necessarily lead to an adverse inference against the employer.

8. The employer had come to the Court with a submission that after June, 1986 to January, 1987, the workman had not worked. According to them, for the period between January, 1987 to 29th June, 1987, the workman worked only for 153 days and in the 12 calendar months preceding the date of illegal retrenchment, the workman had worked for 157 days only. He submits that in case, the workman had not completed 240 days, then, violation of Section 25G or Section 25H would not help and assist the case and cause of the workman.

9. Placing reliance upon the judgment of the Supreme Court in the matter of The Range Forest Officer Vs. S.T. Hadimani, , it was submitted by Shri Munshaw that the basic burden to prove that the workman had worked for 240 days would always be upon the workman. Shri Pathak, relying upon the judgment of the

Supreme Court in the case of R.M. Yellatti Vs. The Assistant Executive Engineer, submitted that the question of burden of proof would depend upon the facts of each case and if the workman had produced everything which was in his possession and despite the application, documents have not been produced by the employer or inspection is not given, as found in the case of R.M. Yellatti [supra], no adverse inference can be drawn against the workman.

10. From the facts, it would clearly appear that whenever an order of appointment was made, written order was issued, some of such orders have been produced by the workman but he has not stated before the Court below that for the period between June, 1986 to 31st December, 1986, instead of written orders, oral orders were issued. If such is not the case pleaded by the workman and other side comes and says that after June, 1986 first appointment order was issued on 3.1.87, then, there is no good reason to disbelieve the statement of the employer. True it is that if the workman produces whatever he possesses and requires the other side to produce the complete service records or details of appointment and such details are not produced by the employer, then, the Court can draw adverse inference against the employer. In the present case, the workman did not say before the Court below that he had worked any time during 1st July, 1986 and 31st December, 1986. In absence of such statement, oral submissions cannot be accepted nor it can be presumed that there were any work orders. The Court below was not justified in drawing adverse inference against the employer for not giving inspection of the complete service records.

11. So far as the violation of Section 25G or Section 25H is concerned, from the judgment of the Supreme Court in the case of Jaipur Development Authority v. Ram Sahai and Anr. JT 2006 [2] SC 520, it would clearly appear that such violation would not assume any importance had the workman not worked for 240 days in 12 calendar months preceding the date of illegal retrenchment.

12. I must also observe that the Court below had not recorded any finding that after the removal of the workman, work continued or anybody else had worked at the place of the workman. The Court below has also not given any reasons to hold as to why there was violation of Sections 25T and 25H of the Act.

13. For the reasons aforesaid and legal position as clarified by the Apex Court, I must hold that the Court below was unjustified in making the award in favour of the workman. The award made by the learned Labour Court dated 19.5.2000 in Reference Case No. 47/98 is hereby set aside and quashed. The petition deserves to and is accordingly allowed. Rule is made absolute accordingly. No costs.