
(2010) 12 GUJ CK 0080
In the Gujarat High Court
Case No : S.C.A. No's. 10041, 10235 of 2010

Bachsangji Chehraj Thakur and Others	APPELLANT
Vs	
Deputy General Manager and Others	RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Citation : (2011) 3 LLJ 631

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.A. PUJ, J.—In both these petitions, more or less common issue is involved and both these petitions are heard together. Hence, they are being disposed of by this common judgment and order.

2. Special Civil Application No. 10041/2010 is filed by three workmen, challenging the award dated September 30, 2009 passed by the Industrial Tribunal, Ahmedabad in Reference (ITC) No. 3/2008, denying the relief of reinstatement with full back wages including all the consequential benefits and merely granting ad hoc compensation of Rs. 40,000/- in lieu of reinstatement and back wages.

3. Similarly Special Civil Application No. 10235/2010 is filed by six workers, challenging the award passed by the Industrial Tribunal, Ahmedabad in Reference (ITC) No. 2/2008, denying the relief of reinstatement with full back wages including the consequential benefits and merely granting ad hoc compensation of Rs. 40,000/-.

4. In both these petitions, notice was issued by this Court on September 1, 2010 pursuant to the notice, Mr. Ajay R. Mehta, learned advocate appears on behalf of the respondent Commission.

5. The case of the petitioners in S.C.A. No. 10041/2010 is that they were

employed by the respondent Corporation as casual labourers for a very long period. Their services came to be terminated by the respondent Corporation without any notice or hearing and without complying with the mandatory provisions of Industrial Disputes Act, 1947 or without complying with the provisions of the Certified Standing Orders of the respondent Corporation. A dispute was raised by the petitioners on December 31, 1988 which could not be settled during conciliation and it was referred to the Industrial Tribunal, Ahmedabad by the appropriate Government. The petitioners have filed their independent Statement of Claim vide Exhibit-5, 8 and 9 before the Industrial Tribunal, Ahmedabad, narrating all the factual details regarding their service etc. and stating that they were regularly working with the respondent Corporation in the form of casual labourers, but in fact, they were doing the regular, permanent and perennial nature of job of the respondent Corporation and they had produced the necessary supporting documents regarding their service. The respondent Corporation has filed written statement on July 10, 1991 vide Exhibit-16, 19 and 20 and opposed the claim of the petitioners though they were working directly under the supervision of the officers of the respondent Corporation. The petitioners have filed application on March 12, 1992 before the Tribunal for seeking production of documents which were very much important and necessary for deciding the dispute and controversy involved in the case. The Industrial Tribunal, vide its order dated October 1, 1992 passed below Exhibit-25 directed the respondent Corporation to grant inspection of the documents enumerated in the applications submitted by the petitioners. But the same was not allowed by the respondent Corporation and vital documents like muster roll and seniority list etc. were not produced by the respondent Corporation despite the specific request made by the petitioners. A report also came to be submitted by the petitioners. Despite the order of the Industrial Tribunal, the respondent Corporation did not comply with the said order for production of the material documents having direct bearing on the issue involved in the case. The respondent Corporation had not produced any documentary evidence or any oral evidence in order to substantiate the pleadings and the points taken by the respondent Corporation in defence. The petitioners again submitted application at Exhibit-64 for the production of the documents enumerated therein and the Presiding Officer has issued certain directions to the respondent Corporation. However, the respondent Corporation did not comply with the said directions of the Court. The petitioners have, therefore, submitted another application on September 6, 2001 at Exhibit-73, requesting the Court to draw an adverse inference against the respondent for non-production of required documents as ordered by the Court. The request of the petitioners were granted by the Court vide an order passed below an application Exhibit-73. The petitioners thereafter examined four witnesses in support of their claim for seeking their reliefs, as prayed for in the Statement of Claim. The Presiding Officer, however, did not think it fit to examine the documents or appreciate the same and partly allowed the reference only to the extent of awarding Rs. 40,000/- towards ad hoc compensation without their induction in regular service with all consequential

benefits including back wages.

6. It is this judgment and award which is under challenge in the present petition.

7. So far as, S.C.A. No. 10235/2010 is concerned the facts and submissions are more or less identical. A dispute was raised by the petitioners on March 23, 1990, which could not be settled during conciliation and ultimately it was referred to the Industrial Tribunal, Ahmedabad for adjudication. The petitioners have submitted their independent Statement of Claim on November 28, 1990. The respondent Corporation filed written statement on January 3, 1992. The petitioners preferred application at Exhibit-201 for the production of documents enumerated therein on January 4, 1999. An order was passed below that application on the same day, issuing certain directions to the respondent Corporation. Since the directions were not complied with, petitioners submitted an application at Exhibit-207 and 208, making grievance in that behalf. An application was filed at Exhibit-209 on January 6, 2001, requesting to pass an appropriate order in view of the conduct of the respondent Corporation. The petitioners examined the witnesses in support of their claim, ultimately the impugned award and judgment was passed on October 29, 2009, awarding ad hoc compensation of Rs. 40,000/- to each of the workmen without their induction in regular service with all consequential benefits including back wages.

8. It is this judgment and award which is under challenge in the present petition.

9. Mr. Y.H. Vyas, learned advocate appearing for the petitioner has submitted that award under challenge passed by the Industrial Tribunal, denying the claim of the petitioners for reinstatement with back wages and awarding ad hoc compensation of Rs. 40,000/-only, is absolutely erroneous, bad in law and not sustainable in the eye of law. He has further submitted that the Presiding Officer while passing the impugned award, has committed a serious error of law of ignoring and overlooking the documents as well as oral deposition of the witnesses, examined on behalf of the petitioners demonstrating that the petitioners were doing the regular work in the respondent Corporation which were performed by its regular workmen and were working directly under the supervision and control of the officials of the respondent Corporation. He has further submitted that the arrangement of engaging workers for a period of 90/120 days in 12 consecutive months instead of filling of the regular posts was a sham arrangement and was merely a camouflage to avoid the benefits of beneficial labour laws which inter alia includes Certified Standing Orders. He has further submitted that the respondent Corporation being a State and model employer, is not expected to behave in which it has acted and behaved in the present case which would amount to unfair labour practice to the concerned workmen. He has further submitted that the Presiding Officer has not considered and overlooked various circulars and instructions, issued by the respondent Corporation which clearly stipulate that the workmen could not be allowed to complete more than a particular period of work so that they do not enter into any dispute to claim the legal benefits available to them under law. The

Industrial Tribunal failed to examine the vital issue regarding the intermittent break given by the respondent Corporation to the concerned workmen so that the workmen may not complete at least 240 days of service for a period of 12 consecutive months for the purpose of claiming regularization of service and benefits under the Industrial Disputes Act. He has further submitted that Certified Standing Orders were not considered in the proper perspective which provide for regularization of service of a temporary labourer. He has further submitted that the Presiding Officer should have drawn an adverse inference on account of non-production of various important material documents, despite the orders of the Court i.e. (i) Salary Register, (ii) Attendance Register, (iii) Muster Roll and (iv) Seniority List which would demonstrate the nature of job and the status of the workmen. He has further submitted that the other findings and conclusions reached by the Presiding Officer regarding the continuous service of the concerned workmen for not more than 240 days, are erroneous, misconceived and without any substance. He has further submitted that even after terminating the services of the concerned workmen, the respondent Corporation was getting the same work done by engaging labourers on contractual basis to avoid the statutory liability. He has further submitted that the oral evidence of the petitioners to the effect that they were engaged by the respondent Corporation for the same nature of work after giving break in service under different names of persons, though the persons having the same names were not in existence. Considering the facts and circumstances of the case, Mr. Vyas has submitted that judgment and award passed by the Industrial Tribunal deserves to be quashed and set aside in each of these petitions.

10. In support of his submissions he relied on the decision of the Hon'ble Apex Court in the case of Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana), wherein it is held that:

It has been repeatedly held that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Sections 25-F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated. Clause (b) of Section 25-F casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. If the workman is asked to collect his dues from the cash office the same is not considered sufficient compliance with Section 25-F. The workman cannot be retrenched without payment at the time of retrenchment, compensation computed in terms of Section 25-F(b). If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance with Clauses (a) and (b) of Section 25-F of the Act.

11. Mr. Vyas further relied on the decision of the Hon''ble Apex Court in the case of Director, Fisheries Terminal Division Vs. Bhikubhai Meghajibhai Chavda, wherein it is held that at p. 7 of LLJ:

75. The appellant has inexplicably failed to produce the complete records and muster rolls from 1985 to 1991, in spite of the direction issued by the Labour Court to produce the same. In fact there has been practically no challenge to the deposition of the respondent during cross-examination. In this regard, the Court extracted the passage from the decision of the Hon''ble Apex Court in the case of Municipal Corporation, Faridabad Vs. Siri Niwas, and observed that at p. 763:

A Court of law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a Court the evidence is withheld.

12. Based on the aforesaid decisions of the Apex Court and looking to the factual matrix of the case, Mr. Vyas has strongly urged that both the petitions deserve to be admitted and impugned awards passed by the Industrial Tribunal are required to be stayed.

13. Mr. Ajay R. Mehta, learned advocate appearing for the respondent, on the other hand has submitted that the reference itself would have been dismissed by the Industrial Tribunal. He has further submitted that all the workmen were casual workmen and they were working on daily wage basis. They were not appointed as per the provisions contained in the ONGC Act, 1969 or R and P Regulation, 1980. They were appointed only on a fixed salary and for fixed work. No sooner the time was over and the work was completed their service have come to an end and hence they are not considered to be retrenched. The provisions of Section 2(oo)(bb), are applicable to the case of the petitioners workmen. He has further submitted that none of the workmen has worked more than 240 days in a calendar year and hence the provisions of Section 25-F, G and H are not applicable to them. He has further submitted that the workmen have stated on oath in their depositions that they have worked in the ONGC on different occasions and different departments. Their appointments were made without issuing public advertisement or without calling for the names from the employment exchange, and they were never interviewed. He has, therefore, submitted that the Industrial Tribunal has rightly rejected their references claiming reinstatement with back wages and awarded a lump-sum compensation, considering the period for which they have worked. He has, therefore, submitted that no interference is called for in the award passed by the Industrial Tribunal.

14. In support of his submissions, he relied on the decision of the Hon''ble Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, wherein it is held as under at p. 737 and 738 of LLJ:

34.....Unless the appointment is in terms of the relevant rules and after a

proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which is described as "litigious employment", he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The Courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

15. Mr. Mehta further relied on the decision of the Hon'ble Apex Court in the case of Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, wherein it is held as under at pp. 338 & 341 of LLJ:

7. It is true that the earlier view of the Supreme Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, the Supreme Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure....

15.....An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not be automatically passed.

The award of reinstatement with full back wages in a case where the workman particularly a daily wager, who has completed 240 days of work in a year preceding the date of termination has not been found to be proper. Compensation instead of reinstatement has been held to meet the ends of justice. The, Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee...

16. From the above factual position and the case law on the subject Mr. Mehta has submitted that the impugned award passed by the Industrial Tribunal does not call for any interference by this Court while exercising its writ jurisdiction under Article 227 of the Constitution of India and petitions are, therefore, required to be dismissed.

17. Having heard learned counsels appearing for the parties and having considered their rival submissions in light of the statutory provisions and the decided case law on the subject, the Court is of the view that the impugned award passed by the Industrial Tribunal are just and proper and the same do not call for any interference by this Court while exercising its writ jurisdiction under Article 227 of the Constitution of India. There is no dispute about the fact that the respondents workmen are casual labourers and they were appointed as daily wagers and that too for a particular period and particular work. It is also an admitted position that they have not worked for 240 days in a calendar year. Their appointment was not regular and neither any advertisement was issued nor their names were called for from the employment exchange. Their services have come to an end in 1984-85 and more than 25 years have passed. Many of them must have attained their superannuation age or they would have been on the verge of retirement, if they would have been in the services of the respondent Corporation. As per the decided case law on the subject, more particularly the cases which are referred to herein above, the petitioners cannot claim the reinstatement with back wages. The only relief which can be granted in their favour is to award some reasonable compensation, which the Labour Court has also granted depending upon the various factors which are required to be taken into consideration. The Court, therefore, does not find any infirmity in the award passed by the Industrial Tribunal.

18. Even the judgments cited by the petitioners are not applicable to the facts of the present case. In *Anoop Sharma v. Executive Engineer, Public Health Division No. 1, Panipat (Haryana)* (supra) the Labour Court itself has recorded the finding with regard to the non-compliance of Section 25-F of the Act and the said finding was arrived at on appreciation of the pleadings and evidence of the parties. In the present case, the Labour Court itself has recorded the finding that the petitioner workmen have not completed 240 days of services in a calendar year and there is no violation of the provisions contained in Section 25-F of the Act. Even otherwise, in the case of alleged violation of the provision of Section 25-F of the Act, the Hon'ble Apex Court has taken the view that the reasonable compensation would be awarded to the workmen which the Industrial Tribunal

has already done in the present case and hence no reliance can be placed on the decision of the Hon'ble Apex Court in *Anoop Sharma v. Executive Engineer, Public Health Division No. 1, Panipat (Haryana)* (supra) case. One of the contentions raised on behalf of the petitioners is that the respondent Corporation failed to produce the relevant documents despite the Tribunal direction and hence as per the decision of the Hon'ble Apex Court in the case of *Director, Fisheries Terminal Department v. Bhikubhai Meghajibhai Chavda* (supra), the violations of the provisions contained u/s 25-F and 25-G of the Act should be presumed. In this regard, it is required to be noticed that the petitioners have earlier moved the application for production of documents which was withdrawn unconditionally. The second application moved by the petitioners, praying for the same relief is, therefore, barred by the principle of *res judicata*. Moreover, the petitioners should not have moved such applications time and again, the object behind which is to shift the burden on the respondents. The petitioners were issued appointment orders. Pay slips were given to them. They were not the regular workmen and hence they were not concerned with the muster Roll. Thus, from mere non-production of some documents, the details of which are, otherwise, available with the petitioners, no adverse inference could have been drawn against the respondent. The Industrial Tribunal should not have, therefore, entertained the second application. The Apex Court decision is, therefore, not applicable to the facts of the present case.

19. Considering the entire facts and circumstances of the case, the award passed by the Industrial Tribunal is, therefore, upheld and both the petitions are accordingly dismissed, without any order as to costs.