

(2012) 03 GUJ CK 0029
In the Gujarat High Court
Case No : Spl. C. Appl. No. 6362 of 2002

Balvikas Yojna Adhikari

APPELLANT

Vs

Ahmedbhai Siddiqbhai Malek and Others

RESPONDENT

Date of Decision : 22-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 2(oo), 2(oo)(bb), 25(f), 25F

Citation : (2013) 136 FLR 449 : (2012) 4 LLJ 649 : (2012) LLR 660

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Advocate : P.A. Jadeja, for Mr. D.C. Dave, for the Appellant; Maithill Mehta, AGP, for the Respondent

Final Decision : Allowed

Judgement

R.M. Chhaya, J.—By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Labour Court, Vadodara in Reference (LCV) No. 354 of 1992 dated 31.7.2001, whereby the Labour Court was pleased to allow the Reference and directed the petitioner to reinstate the respondent No. 1-workman with 60% back-wages with other consequential benefits. The Labour Court by the said judgment and award was further pleased to award the cost of Rs. 250. This Court (Coram: A.L. Dave, J.), pleased to pass the following order on 10.7.2002:

Rule. Notice as to interim relief returnable on 8th August, 2002. Ad interim relief in terms of paragraph 8(B) is granted till then.

2. It appears from the record that the matter came up for final hearing before this Court (Coram: P.P. Bhatt, J [as he then was]) on 21.4.2011, wherein following order was passed:

On perusal of papers it appears that the notice issued by this Court on 10th July 2002 was served. But it appears that the respondent did not appear on the

returnable date. Thereafter again, Rule was issued on 17th September 2002 which has not been received back. Hence, fresh Rule is ordered to be issued returnable on 29th April 2011. Direct service is permitted.

3. It appears from the record that even though the respondent No. 1-workman was served, he did not appear and therefore this Court (Coram: R.R. Tripathi, J.) vide order dated 17.9.2002 was pleased to pass the following order:

On 10th July, 2002, Rule was issued and notice as to interim relief was made returnable on 8th August, 2002. Ad interim relief in terms of paragraph 6(B) was also granted, which is extended from time-to-time.

Though Rule as well as notice as to interim relief is served on the contesting respondent No. 1-workman, no appearance is caused by him. It will be in the fitness of things to serve the Rule with returnable date on the respondent-workman.

Office is directed to issue fresh notice of Rule returnable on 10th October, 2002, specifically mentioning that the matter will be taken up for final disposal on that day.

Ad interim relief to continue till final disposal of the petition.

4. The record shows that fresh notice of Rule was also served upon respondent No. 1-workman. In spite of the service upon respondent No. 1-workman he has not appeared today when the matter is taken up for final hearing.

5. Relevant facts which can be carved out from the record of the petition are as under.

6. The petitioner is an Institution which worked as Nodal Agency of State Government for implementing "Integrated Child Development Scheme" (ICDS) wherein Mid-day-Meal Scheme was introduced by the Central Government through the agency of the State Government. It appears from the record that the petitioner institution had godown situated at village Tilakwada, district Vadodara for storing the grains which was received by it for implementing Mid-day-Meal Scheme. The respondent No. 1-workman coming to know that there is vacancy for the post of Chowkidar, he applied for the said post by application dated 28.11.1988. The petitioner organization after scrutiny of the said application appointed respondent No. 1-workman on temporary basis for a fixed period of three months. The said order stipulates that the duty of respondent No. 1 workman was from 6.00 p.m. to 8.00 a.m. The order also recites that such appointment is only for a fixed period of three months on temporary basis.

7. It appears from the record that the said appointment of respondent No. 1 workman was renewed by separate order on the same condition for three months till 28.2.1992. It appears that as the Midday-Meal Scheme was discontinued, the services of respondent No. 1 workman were not required and therefore the services of respondent No. 1-workman were not continued. It is

therefore an admitted position that from 1.3.1992, the respondent No. 1 workman was not working with the petitioner-Organization. Being aggrieved by the same, respondent No. 1-workman raised dispute before the Assistant Commissioner and as the process of conciliation failed, the said dispute came to be referred to the Labour Court, Vadodara, which came to be registered as Reference (LCV) No. 354 of 1992. The Labour Court after hearing the parties and in consideration of the evidence adduced by both the sides i.e. petitioner and respondent No. 1 workman by judgment and award dated 31.7.2001 was pleased to pass an award of reinstatement with 60% back-wages with consequential benefits. Being aggrieved by the same the petitioner has preferred the petition.

8. Heard Mr. Jadeja, learned Advocate for the petitioner and Ms. Malthili Mehta, learned Assistant Government Pleader for respondent No. 3. Though served, no one appeared on behalf of respondent No. 2 as recorded hereinabove.

9. Mr. Jadeja, teamed Advocate appearing for the petitioner has taken this Court through factual matrix of the matter as well as award impugned in the present petition and contended that respondent No. 1 workman was not appointed on regular basis after following due process for recruitment as there was need to protect the grains which were stored in the godown. Respondent No. 1 was appointed for a fixed period for the very purpose and as it can be seen from the record he was appointed for a period of three months. Mr. Jadeja further contended that in the facts and circumstances of the case, the provisions of section 25F of the Industrial Disputes Act, 1947 (for short "I.D. Act") are not attracted. Mr. Jadeja further submitted that in view of the provisions of section 2(oo)(bb) of the I.D. Act, the order dated 25.2.1992 cannot be termed as an order of termination, the same would fall within the exception as carved out by provisions of section 2(oo)(bb) whereby termination of a workman as a result of non renewal of the contract of employment cannot be termed as retrenchment. Mr. Jadeja relying upon the ratio laid down in the case of Haryana State F.C.C.W. Store Ltd. and Another Vs. Ram Niwas and Another, submitted that the case of the petitioner is squarely covered by the ratio laid down by the Hon'ble Supreme Court in the case of Haryana State F.C.C.W. Store Ltd. (supra). Mr. Jadeja therefore pointed out that the Labour Court has committed an error apparent on the face of the record in not considering the nature of appointment and the evidence adduced before the Labour Court. Mr. Jadeja also submitted that the Labour Court has committed an ex-facie error in law and facts in applying the provisions of section 25F. Mr. Jadeja submitted that the Labour Court has misread the appointment order and has wrongly come to the conclusion that the respondent No. 1 workman has continuously worked from December 1992 to February 28, 1992. Mr. Jadeja further pointed out that as aforesaid when the appointment of respondent No. 1 workman was for a specific purpose and for a fixed period, the non renewal of contract with effect from 1.3.1992 cannot be termed as retrenchment and therefore the provisions of section 25F has been wrongly applied by the Labour Court. Mr. Jadeja therefore submitted that in light

of such error apparent on the face of record, the impugned judgment and award deserves to be quashed and set aside. Mr. Jadeja also submitted that even though it was brought on record that the appointment of the workman was on ad-hoc basis for the special purpose and when the said scheme has already been discontinued, the order dated 25.2.1992 cannot be considered as breach of the provisions of section 25F. Mr. Jadeja therefore submitted that the petition deserves to be accepted as prayed for.

10. Ms. Malthili Mehta, learned Assistant Government Pleader has supported the contentions raised by Mr. Jadeja, learned Advocate for the petitioner.

11. On plain reading of the order dated 30.11.1988 It transpires that appointment of respondent No. 1 workman was for temporary and/or ad-hoc basis for a fixed period of three months. The conditions which are enshrined In the said order also clearly spell out that on consideration of the application filed by respondent No. 1-workman he was so appointed from 1.2.1988 on temporary basis for a period of three months on remuneration that may be fixed by the State Government from time-to-time. It also transpires from the further order dated 17.12.1991 (Annexure-V) to the petition that the petitioner was again appointed for a fixed period of three months as the regular appointment of the watchman to guard the godown of the petitioner institution was not made by the competent authority of the Government. It also transpires from the record that for the very purpose of storing the grains in the godown and to secure the same by taking services of respondent No. 1 workman as Chowkidar during night hours was depending upon the Mid-day Meal Scheme which even as per record and impugned order is discontinued from the year 1992. Thus it clearly transpires from the record that the State Government discontinued the Mid-day-Meal Scheme from 29.2.1992 and therefore the contract has not been renewed and therefore the employment of respondent No. 1 was not renewed from February, 1992. It further clearly transpires from the order dated 25.2.1992 that respondent No. 1 workman was appointed for three months from 17.2.1991 on temporary basis. The Hon"ble Supreme Court in the case of Haryana State F.C.C.W. Store Ltd. (supra) has in paragraph Nos. 10 to 15 has observed thus:

10. Since the case turns on the interpretation of section 2(oo)(bb) of the ID Act it will be convenient to quote the said section before proceeding to consider merits of the case:

2. In this Act, unless there is anything repugnant in the subject or context--

(oo) retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not Include--

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned

contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health.

11. On a plain reading of the statutory provision It Is clear that any termination of service of a workman by the employer for any reason whatsoever comes within the meaning of the expression "retrenchment" as defined In section 2(oo) of the Act. Further the section further provides certain exceptions to the wide and comprehensive definition of the term "retrenchment". The exceptions are:

(1) termination of appointment inflicted by way of disciplinary action.

(2) Voluntary retirement of the workman.

(3) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(4) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(5) termination of the service of a workman on the ground of continued ill-health.

12. It follows therefore that if the case of termination of the workman comes within any of the exceptions enumerated in the section then the said termination will not be a case of "retrenchment" within the meaning of section 2(oo).

13. In the case of Uptron India Limited Vs. Shammi Bhan and Another, this Court considering the definition of "retrenchment" In section 2(oo) observed:

27. The definition of "retrenchment" was introduced in the Act by Act 43 of 1953 with effect from 24.10.1953. Clause (bb) was inserted in the definition by Act 49 of 1964 with effect from 18.8.1984.

28. The definition is conclusive in the sense that "retrenchment" has been defined to mean the termination of the service of a workman by the employer for any reason whatsoever. If the termination was by way of punishment as a consequence of disciplinary action, it would not amount to "retrenchment". Originally, there were two other exceptions, namely.

(I) voluntary retirement of the workman, and

(II) retirement of the workman on reaching the age of superannuation If the contract of employment contained a stipulation to that effect.

29. By the Amending Act 49 of 1984, two further exceptions were introduced In the definition by inserting clause (bb) with effect from 18.8.1984; one was the termination of service on the ground of continued ill-health of the workman and the other was termination of service on account of non-renewal, of the contract of employment on the expiry of the term of that contract. If such contract of employment contained a stipulation for termination of service and the services of the workman are terminated in accordance with that stipulation, such termination, according to clause (bb) would also not amount to "retrenchment".

14. The position was reiterated in Harmohinder Singh Vs. Kharga Canteen, Ambala Cantt., .

15. In such a case the question of complying with the conditions precedent to retrenchment of workman provided in section 25(f) of the Act will not arise. In the present case the Labour Court relying on the oral and documentary evidence cited on behalf of the management, particularly the Order of the Managing Director sanctioning the engagement of the workmen concerned held that the engagement/appointment of the workmen concerned was for a specific purpose and for a particular period and since the purpose for their engagement/appointment was over and the period of appointment had expired their disengagement was in terms of the contract of service, and therefore, not a "retrenchment" within the meaning of section 2(oo) of the Act. The High Court has not recorded a finding that there was no contract of service between the management and the workmen concerned. In view of the evidence on record the High Court could not and indeed has not recorded any finding that there was no contract of service between the management and the workmen concerned. Since there exists a contract of service with the terms and conditions as noted earlier the position Is Inescapable that the case of disengagement/termination of the workman concerned did not amount to retrenchment, in particular facts and circumstances of the case the Labour Court rightly came to the conclusion that the workmen were entitled to no relief in the case. The High Court was clearly in error In Interfering with the Award passed by the Labour Court. Accordingly, the appeals are allowed. The Judgments of the High Court in CWP No. 9471/99 and CWP No. 9472/99 dated 22.9.2000 allowing the writ petitions filed by the respondent workmen are set aside and the Award of the Tribunal is restored. There will, however, be no order for costs."

12. The contention raised by Mr. Jadeja, learned Advocate for the petitioner is well founded. The Labour Court has committed an error apparent on the face of the record In coming to the conclusion that the respondent workman has worked for more than 240 days between. 1989 and 1992 and solely on that basis the Labour Court has applied the provisions of section 25F of the I.D. Act and has thus committed an error in not considering the nature of appointment which was for a fixed period and for specific purpose. Secondly, as evident from the evidence on record, the special purpose of running the godown also diminished as is indicative from the record that Mid-day-Meal Scheme was discontinued from

28.2.1992 and therefore the period of three months which was to expire on 28.2.1992 was not renewed or continued by the petitioner institution. Considering the nature of appointment the same would fall within the exception carved out in section 2(oo) more particularly exception 4. This vital fact is not considered by the Labour Court. The Labour Court has also wrongly compared the case of the persons employed by District Panchayat in the present case wherein the petitioner institution was a special, purpose vehicle for the purpose of implementation of the particular scheme. The observation made by the Labour Court that the contention raised by the petitioner institution to the effect that the appointment of respondent No. 1 workman was on ad-hoc and temporary basis that too for a fixed period is an afterthought, is itself an error apparent on the face of record inasmuch as that the very appointment letter speaks eloquent of the fact that it was for a fixed period of three months. It has also come on record that the stock of grains which was to be used for the purpose of implementation of the Mid-day-Meal was being stored by the petitioner institution and for security of the same respondent No. 1 was appointed, as observed above and as the scheme was discontinued contract was not renewed. Hence, the contentions raised by the petitioner deserves to be upheld. The judgment and award passed in Reference (LCV) No. 354 of 1992 dated 31.7.2001 deserves to be quashed and set aside. Resultantly, the petition is allowed. The award passed in Reference (LCV) No. 354 of 1992 dated 31.7.2001 passed by the Labour Court, Vadodara, is hereby quashed and set aside. Rule made absolute with no order as to costs.