

(2015) 09 GUJ CK 0030

In the Gujarat High Court

Case No : Special Civil Application No. 1986 of 2015

Balwantsinh Budhabhai Chauhan

APPELLANT

Vs

Taluka Development Officer and Others

RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Constitution of India, 1950 — Article 227

Industrial Disputes Act, 1947 — Section 2(oo)(bb), 25-B, 25-F, 25-G, 25-H

Citation : (2015) 147 FLR 622 : (2016) 1 LLN 125

Hon'ble Judges : V.M. Pancholi, J.

Bench : Single Bench

Advocate : U.T. Mishra, for the Appellant; Paritosh Calla, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Pancholi, J.—This petition is filed under Article 227 of the Constitution of India, wherein the petitioner has challenged the award dated 29.10.2013 rendered by Labour Court, Godhra, in Reference (LCG) No. 786/1998, whereby the reference of the petitioner has been dismissed. Heard learned advocate Mr. U.T. Mishra for the petitioner. Though served, none present for respondent No. 1.

2. Learned advocate for the petitioner submitted that petitioner was working as work-charge employee in the respondent Panchayat since 29.4.1983. He was appointed as work-charge clerk. However, his services came to be terminated from 4.5.1986 without issuance of any notice and without following the procedure prescribed under section 25-F of the Industrial Disputes Act. The respondent has also violated the provisions of section 25-H of the Industrial Disputes Act. Petitioner, therefore, raised a dispute, which was culminated into Reference (LCG) No. 786 of 1998. Learned advocate Mr. Mishra, thereafter, contended that the petitioner filed statement of claim against which the written statement was filed by the respondent Panchayat vide Exh. 10. Deposition of the petitioner was recorded at Exh. 11. The Labour Court, after considering the documentary as well as oral evidence on record, dismissed the reference of the

petitioner by impugned award and therefore this petition is preferred.

3. Learned advocate Mr. Mishra contended that the Labour Court has not properly considered the appointment order dated 29.4.1983, whereby the petitioner was appointed as work charge employee in the pay scale of Rs. 260-6-308. The Labour Court has committed an error while observing that the petitioner was appointed for scarcity work only. The said finding is contrary to the documentary evidence produced on record. It is contended that the petitioner has completed more than 240 days in each calendar year and at the time of terminating the service of the petitioner the respondent has not complied with the mandatory provisions of section 25-F of the Industrial Disputes Act. He further contended that the Labour Court has wrongly rejected the reference solely on the ground that the case of the petitioner is covered under section 2(oo)(bb) of the Industrial Disputes Act. It is further contended that since the petitioner's services came to be illegally terminated and no seniority list was prepared, junior employees are continued in the employment and the office of respondent No. 1 is still functioning and the employees are working. Thus, the finding recorded by the Labour Court that the petitioner was appointed for scarcity work is absolutely illegal and contrary to the record. He, therefore, submitted that the award passed by the Labour Court be quashed and set aside.

4. Learned Advocate Mr. Mishra has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of Director, Fisheries Terminal Division Vs. Bhikubhai Meghajibhai Chavda, . In para 15 to 21, the Hon'ble Supreme Court observed and held as under:

"15. The respondent claims he was employed in the year 1985 as a watchman and his services were retrenched in the year 1991 and during the period between 1985 to 1991, he had worked for a period of more than 240 days. The burden of proof is on the respondent to show that he had worked for 240 days in preceding twelve months prior to his alleged retrenchment. The law on this issue appears to be now well settled.

16. This Court in the case of R.M. Yellatti Vs. The Assistant Executive Engineer, , has observed:

"17However, applying general principles and on reading the aforesaid judgments, we find that this Court, has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only, upon the workman stepping up in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of

adverse inference ultimately would depend thereafter on the facts of each case."

17. Applying the principles laid down in the above case by this Court, the evidence produced by the appellants has not been consistent. The appellants claim that the respondent did not work for 240 days. The respondent was a workman hired on a daily wage basis. So it is obvious, as this Court pointed out in the above case that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. He has come forward and deposed, so in our opinion the burden of proof shifts to the employer/appellants to prove that he did not complete 240 days of service in the requisite period to constitute continuous service.

18. It is the contention of the appellant that the services of the respondent were terminated in 1988. The witness produced by the appellant stated that the respondent stopped coming to work from February, 1988. The documentary evidence produced by the appellant is contradictor) to this fact as it shows that the respondent was working during February, 1989 also.

19. It has also been observed by the High Court that the muster roll for 1986-87 was not completely produced. The appellants have 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, it would be pertinent to mention the observation of three Judge Bench of this Court in the case of Municipal Corporation, Faridabad Vs. Siri Niwas, , where it is observed:

"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 this contentions. The matter, however, would be different where despite direction by a Court the evidence is withheld."

20. It is not in dispute that the respondent's service was terminated without complying with the provisions of section 25-F of Industrial Disputes Act. Section 25-G of the Act provides for the procedure for retrenchment. The section reads--

"25-G. Procedure for retrenchment.--Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman."

21. The Labour Court based on the pleadings and evidence on record has come to the conclusion that the services of some of the employees junior to the respondent was continued after the respondent was discharged from its duties.

The dates of joining of some of the fellow employees of the respondent like Mohanbhai, Kalubhai and Nanjibhai were not produced by the appellants. The appellants have clearly failed to prove that the services of no junior employee was continued when the services of the respondent was terminated. Thus, the procedure laid down in section 25-G has also not been followed. The findings on facts by the labour cannot be termed as perverse and need no interference."

5. I have considered the arguments advanced on behalf of the learned advocate for the petitioner. I have also gone through the material produced on record and the impugned award. From the written statement Exh. 10 filed by the respondent No. 1, it is clear that in the year 1983 the petitioner was appointed in connection with the scarcity work. He was not regularly employed with the respondent No. 1. Respondent No. 1 has produced documentary evidence on record vide Exh. 21 to 26. From the documentary evidence produced on record, Labour Court has recorded that petitioner was appointed on 29.04.1983. It is also born out from the record that petitioner has worked during the period between 1983 to 1986 as and when the work with regard to scarcity was available. However, when such type of scarcity work was over his services were automatically terminated. Thus, it cannot be said that respondent No. 1 has retrenched the petitioner. Labour Court has rightly held that case of the petitioner is covered under definition of Section 2(oo)(bb) . Thus, respondent has not violated the provisions of section 25-F or 25-B of the Industrial Disputes Act. No error is committed by the Labour Court while passing the impugned award. The scope of judicial review is limited and this Court cannot re-appreciate the evidence while exercising powers under Article 227 of the Constitution of India. It is further required to be noted that as per the case of the petitioner, his services came to be terminated in May 1986, whereas the reference was filed in the year 1998. The decision relied upon by learned advocate for the petitioner is not applicable to the facts of the present case. In the present case, respondent No. 1 appointed the petitioner for specific work in connection with the scarcity and therefore as and when such work is over, his services were not required thereafter. Hence, this petition deserves to be dismissed and accordingly it is dismissed.