

(2006) 07 GUJ CK 0031

In the Gujarat High Court

Case No : Special Civil Application No. 6353 of 2006 and Civil Application No"s. 5369 and 5857 of 2006 in Special Civil Application No. 6353 of 2006

Bhavnagar Zilla Sahakari Sangh Ltd.

APPELLANT

Vs

Dhiren P. Parekh

RESPONDENT

Date of Decision : 19-07-2006

Acts Referred:

Improper and Service Regulations — Regulation 103, 5
Industrial Disputes Act, 1947 — Section 2, 2(5), 25F

Citation : (2006) 07 GUJ CK 0031

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Shirish Joshi, for the Appellant; Sangeetaben Pahwa, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned Advocate Mr. Joshi for petitioner and Ms. Pahwa for respondent workman. Through this petition, petitioner Bhavnagar Zilla Sahakari Sangh Ltd. Has challenged the award passed by the labour Court, Bhavnagar in Reference (LCB) No. 495 of 1989 dated 1st February, 2006 wherein the labour court has granted reinstatement with continuity of service with 40 per cent of the back wages for intervening period with all other consequential benefits.

2. Learned Advocate Mr. Joshi appearing for the petitioner submitted that the appointment of the workman was by illegal method/irregular procedure. Respondent was not appointed under the provisions of bye laws and rules under the Cooperative Societies Act, 1961 and, therefore, respondent is not entitled for any benefit of Section 25F of the ID Act, 1947. He also submitted that the respondent was appointed as part time employee for specified period and his services were terminated on expiry of the term for which he was appointed as part time employee and, therefore, labour court ought not to have passed the

award in question. He submitted that this contention was raised by petitioner in its written statement filed before the labour court vide Exh.5. He also submitted that no work was available after one year and, therefore, services of the workman were terminated after one year. By drawing attention of this Court to Exh. 7/5 referred to in para 10 of the impugned award, it was submitted that the said resolution does not bear signature of any authorized person of the petitioner establishment and, therefore, labour court has erred in relying upon Exh.7/5. It was also his submission that the labour court has erred in granting 40 per cent back wages for intervening period. Except these submissions, no other submission was made by Mr. Joshi. No decision was cited by him before this Court in support of his submissions.

3. On the other hand, learned Advocate Ms. Pahwa appearing for the workman submitted that the respondent was appointed by petitioner by specific resolution with effect from 8.8.1988, was working with the petitioner from 11.00 a.m. To 6.00 p.m. And has completed 240 days continuous service and service of respondent was terminated on 20.7.1989 without following the mandatory provisions of Section 25F of the ID Act, 1947. She also submitted that the part time employees are also covered by the definition of Section 2(s) of the ID Act wherein the term "workman" has been defined. She also submitted that the illegal or irregular appointment has nothing to do with the compliance of mandatory provisions of Section 25F of the ID Act, 1947. It was her submission that there is no provision made in the ID Act, 1947 which would give such distinction for terminating services of workman. Therefore, she submitted that the labour court has rightly appreciated oral and documentary evidence on record and has rightly set aside the order of termination and granted 40 per cent back wages for intervening period. She also submitted that the labour court has not committed any error which would require interference of this Court.

4. I have considered the submissions made by the learned advocates for the parties. I have also perused the impugned award made by the labour court.

5. Labour Court has considered the matter comprehensively while dealing with each and every contentions raised by petitioner before it. As regards contention raised by Mr. Joshi before this Court that as the appointment of the respondent was illegal/irregular, therefore, compliance of Section 25F of the ID Act, 1947 is not necessary, perusal of the record makes it clear that no such contention was raised by petitioner before labour court and it has been raised before this Court for the first time. Labour court has given detailed reasons after considering documents on record as well as appreciating oral evidence produced before it. Respondent was examined vide Exh.11. Three witnesses were examined on behalf of the petitioner vide Exh. 38, 52,58 and vide mark 68/1, one affidavit of Vakhatsinh J.Gohil was filed. Labour court has also considered the pay slip and resolution passed by the society while appreciating the evidence of workman vide Exh.11. Labour court has considered that the workman was working since eleven months on the post of clerk cum cashier as per resolution dated 8.8.1988 vide

Exh. 7/4 w.e.f. 20.11.1988; he came to be given responsibility of cashier as per resolution vide mark 7/6. Vide Exh.7/5, salary was fixed at Rs. 250.00 and his duty hours were from 11.00 a.m. to 6.00 p.m. Right from the date of appointment till the date of termination, the workman had completed continuous service of 240 days.

6. Provisions of Section 25F have not been followed by the petitioner while terminating the services of the workman. The contention of learned advocate Mr.Joshi that the respondent was appointed as part time employee is not correct and no evidence is led by petitioner before labour court to such contention. On the contrary,evidence of the witness for the petitioner suggest that the working hours of the respondent workman were from 11.00 a.m. to 6.00 p.m. However, in Section 2(5) of the ID Act, 1947, definition of the term "workman" has been given wherein part time employee is also covered. No distinction is there between part time and full time employees. In case of both kind of cases, Section 25F is applicable if the employee is satisfying the ingredients of Section 2(s) and is covered by Section 2(s) of the ID Act, 1947. Workman has denied the fact that he was appointed only for one year as part time employee. It is also denied by him that he was working with Balvantrai Mehta Oil Mill. Said Balvantrai Mehta was examined before the labour court wherein he deposed that the workman was working prior to 10 years as rojamdar and for 2 to 4 years, was coming as daily rated employee. Thus, as per the oral evidence of said Balvantrai Mehta before the labour court, workman was working in his oil mill during the period which is prior to the period in question of one year from which the respondent was working with petitioner society. Therefore, considering the evidence of said witness, labour court has come to the conclusion that it is not proved by the petitioner that the workman was permanent employee of Balvantrai Mehta Oil Mill because respondent was working with petitioner from 8.8.1988 which period was not covered by the oral evidence of Balvantrai Mehta. Labour Court observed that an impression has been created by petitioner before the labour court that the petitioner is trying to mislead the court and is making efforts to escape from the liability. Termination order dated 20.7.1989 was not disputed by petitioner. Thereafter, labour court considered the evidence on record that the workman has completed 240 days continuous service and it was not disputed by the petitioner and in view of the evidence on record before the labour court, labour court come to the conclusion that against the evidence of the workman, though petitioner was having documentary evidence or original record but the same was not produced by petitioner before the labour court. Labour court, therefore, came to the conclusion that from 8.8.88 to 30.6.89 of total period of working, 327 days have been proved by respondent workman before labour court and yet, while terminating the services of workman, petitioner has not complied with the provisions of Section 25F of the ID Act, 1947 and, therefore, order of termination has become void ab initio. Labour court therefore set aside the order of termination and after considering the length of service, nature of job, qualification, averments made by workman and

since no evidence has been produced by petitioner to establish gainful employment of workman, labour court was right in exercising discretionary power in granting 40 per cent back wages for intervening period instead of granting full back wages to workman. Therefore, according to my opinion, labour court has rightly decided/adjudicated the reference and has rightly passed the award in question and in doing so, it has committed no error.

7. Contention raised by the learned Advocate Mr. Joshi before this Court that since the appointment of the petitioner was illegal and/or irregular, there is no need to comply with the mandatory provisions of Section 25F of the ID Act, 1947 is required to be rejected in view of the decision of the apex court in case of *Vikramaditya Pandey v. Industrial Tribunal and Anr.* reported in 2001 AIR SCW 310. It was also a case of clerk employed in cooperative bank on ad hoc basis. In that case, continuous service was extended for over three years with small motivated breaks. Relief of reinstatement with back wages was denied on the ground that his recruitment was not as per service rules and that service rules prevail over labour laws. Apex court held that it was improper and service regulations do not prevail over Industrial Disputes Act. Apex court observed as under in para 6 of the said judgment:

6.xxx

By plain reading of the said Regulation, it is clear that in case of inconsistency between the Regulations and the provisions of the Industrial Disputes Act, 1947, the State Act, the Workmen's Compensation Act, 1923 and any other labour laws for the time being in force, if applicable to any cooperative society or class of cooperative societies, to that extent, Regulations shall be deemed to be inoperative. In other words, the inconsistent provisions contained in the Regulations shall be inoperative, not the provisions of the other statutes mentioned in the Regulation 103. The Tribunal in this regard correctly understood the Regulation but wrongly refused the relief on the ground that no reinstatement can be ordered on a regular employment in view of the provisions contained in the said Regulation. But the High Court read the Regulation otherwise and plainly misunderstood it in saying that if there is any inconsistency between the Regulations and the Industrial Disputes Act, 1947 and other labour laws for the time being in force the Regulations will prevail and the Industrial Disputes Act, 1947 and other labour laws shall be deemed to be inoperative. This misreading and wrong approach of the High Court resulted in wrong conclusion. In the view it took as to Regulation 103 the High Court proceeded to state that even if there was retrenchment in view of Regulation 5 of the Regulations, the Labour Court was not competent to direct reinstatement of the appellant who was not recruited in terms of Regulation 5 because the Labour Court had to act within the ambit of law having regard to the Regulations by which the workman was governed. In this view the High Court declined relief to the appellant which in our view cannot be sustained. The Tribunal felt difficulty in ordering reinstatement as the appellant was not a regular employee. The appellant ought

to have been ordered to be reinstated in service once it was found that his services were illegally terminated in the post he was holding including its nature. Thus, in our opinion, both the Tribunal as well as the High Court were not right and justified on facts and in law in refusing the relief of reinstatement of the appellant in service with back wages. But however having regard to the facts and circumstances of the case and taking note of the fact that the order of termination dates back to 19.7.1985 we think it just and appropriate in the interest of justice to grant back wages only to the extent of 50%.

Recently, apex court has in case of Nagar Maha Palika (Now Municipal Corporation v. State of UP and Ors. Reported in AIR 2006 SCW 2497, observed as under:

The termination was in violation of Section 6. The respondent cannot be said to have been appointed on temporary basis pursuant to the said GO dated 19.12.1985 or such appointments cannot be said to be were made for a fixed tenure within the meaning of the provisions of Sub-clause (bb) of Clause (oo) of Section 2. But the appointment of respondents have been made in violation of the provisions of the Adhinyam. An appointment made in violation of the provisions of Adhinyam is void. The same however although would not mean that the provisions of the Industrial Disputes Act are not required to be taken into consideration for the purpose of determination of the question as to whether the termination of workmen from service is legal or not but the same should have to be considered to be an important factor in the matter of grant of relief.

8. Therefore, in view of the observations made by the apex court in aforesaid decisions, contention raised by learned Advocate Mr. Joshi before this Court cannot be accepted and the same is, therefore, rejected.

9. I have perused the award. After considering the submissions made by the learned advocates for the parties and also after considering the reasons assigned by the labour court, according to my opinion, labour court has not committed any error in passing the award in question and such an award would not call for any interference of this Court in exercise of the powers under Article 227 of the Constitution of India.

9. Labour court has rightly made the award in question Unless the findings recorded by the labour court are proved to be perverse or contrary to the evidence on record, this Court cannot disturb the same being the finding of fact. Here, since it has not been proved by the petitioner that the findings of labour court are perverse or contrary to evidence on record, these findings of fact cannot be disturbed by this Court.

10. This aspect has been considered by the apex court in Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives, : (1995)6SCC576 . Relevant observations made by the apex court in para 9 of the said judgment are therefore reproduced as under:

The High Court under Article 227 cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

In *Ouseph Mathai and Others Vs. M. Abdul Khadir*, : AIR2002SC110 , the apex court observed as under in para 4 and 5 :

It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said Article as a matter of right. In fact power under this Article cast a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this Article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

5. In *Waryam Singh and Another Vs. Amarnath and Another*, this Court held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, . In AIR 1975 1297 (SC) : AIR1975SC1297 this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a Court of appeal when the Legislature has not conferred a right of appeal. After referring to the judgment of Lord Denning in *R v. Northumber Compensation Appeal Tribunal, Exparte Shaw* 1952 (1) All ER 122 this Court in *Chandavarkar Sita Ratna Rao v. Ashalata S. Gurnam* held : (SCC p.460 para 20)

20. It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings are perverse and not based on any material evidence or it resulted in manifest injustice (see *Trimbak Gangadhar Telang and Another Vs. Ramchandra Ganesh Bhide and Others*, : AIR1977SC1222). Except to the limited

extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error.

Therefore, in view of the above observations, there is no substance in this petition and the same is required to be rejected. Same is therefore rejected.

In view of the order passed by this Court in the main matter, no orders in Civil Application NO. 5857 of 2006 and 5369 of 2006 and same are disposed of.