
(2010) 03 GUJ CK 0028
In the Gujarat High Court
Case No : L.P.A. No. 150 of 1998

Chief Conservator of Forest and Others

APPELLANT

Vs

Ashok N. Pandya and Others

RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:

Constitution of India, 1950 — Article 309, 311
Industrial Disputes Act, 1947 — Section 2

Citation : (2010) 4 LLJ 799

Hon'ble Judges : R.M. Doshit, J;M.D. Shah, J

Bench : Division Bench

Advocate : Mini Nair, AGP, for the Appellant; P.H. Pathak, for the Respondent

Final Decision : Allowed

Judgement

R.M. Doshit, J.—This Appeal preferred under Clause 15 of the Letters Patent arises from the order dated March 21, 1997 passed by the learned single Judge in the above Special Civil Application No. 5350/1994.

2. The Respondents writ Petitioners are employed under the Forest Department of the State of Gujarat. The Petitioners are engaged by the Appellant No. 3 Range Forest Officer on daily wages for maintenance of nursery and forest area in the district Bhavnagar. The Petitioners claimed that they were engaged as 5 daily wage employees from 3 to 20 years and that they were entitled to the benefit of semi-permanent service benefits conferred under the Resolution dated October 17, 1988 passed by the State of Gujarat in its Roads and Buildings Department. Learned single Judge, under the impugned order dated March 21, 1997, following the common judgment dated March 4, 1996 passed by a learned single Judge in group of petitions, allowed the petition. Learned single Judge held that the Petitioners were entitled to the benefit under the above mentioned Government Resolution dated October 17, 1988. Therefore, the present Appeal.

3. Learned Assistant Government Pleader Ms. Nair has appeared for the

Appellants. She has submitted that the questions whether or not the Department of Forest of the Government of Gujarat is an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 and whether or not such employees are entitled to the benefit under the Government Resolution dated October 17, 1988 are set at rest by the judgment of the Full Bench of this Court in the matter of Gujarat Forest Producers, Gatherers and Forest Workers Union Vs. State of Gujarat,

4. The Full Bench has, in the above judgment held,

"The Forest and Environment Department of the State Government is not an industry u/s 2(j) of the Industrial Disputes Act, 1947 and the question whether any of its unit, establishment or undertaking is an industry or not will depend upon the nature of the work done by such entity and only when the activity undertaken amounts to an activity for production or distribution of goods and/or services for satisfying wants and desires of consumers, in the sense in which the concepts are understood in the field of industrial economy, satisfying the third ingredient of the triple ingredients test, that such unit, establishment or undertaking of the Department can be said to be industry, unless falling in the categories removed by constitutional and competently enacted legislative provisions from the scope of the Industrial Disputes Act as indicated in Clause (c) of Item IV of the guidelines laid down by the Supreme Court in paragraph 161 of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, including the law falling under Articles 309 - 311 of the Constitution."

The bench further held:

"The Government Resolution dated October 17, 1988 is applicable to the daily wagers of the Forest and Environment Department engaged in the work of maintenance and repairs of constructions in that Department, and not to the daily wagers engaged in other types of work in that Department."

5. In view of the above decision of the Full Bench of this Court, we must hold that the impugned decision of the learned single Judge does not lay down a good law. Admittedly, the writ Petitioners were engaged under the Range Forest Officer for maintenance of nursery and forest area. The writ Petitioners are not engaged in the construction activities referred to by the Full Bench. The writ Petitioners are, therefore, not entitled to the benefit under the resolution dated October 17, 1988 passed by the Government of Gujarat in its Roads and Buildings Department.

6. For the aforesaid reasons, this Appeal is allowed. The impugned order dated March 21, 1997 made by the learned single Judge in the above Special Civil Application No. 5350/1994 is set aside. Special Civil Application No. 5350/1994 is dismissed.