

(2016) 01 GUJ CK 0089

In the Gujarat High Court

Case No : Special Civil Application Nos. 16131, 16132, 16133, 17858, 17859 of 2006, 6480, 6485, 6486, 6487 and 7299 of 2007

Deputy Executive Engineer

APPELLANT

Vs

Ashish P. Dave

RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(j), Section 2(oo), Section 25F, Section 25G, Section 25H, Section 25J

Citation : (2016) 01 GUJ CK 0089

Hon'ble Judges : K.M. Thaker, J.

Bench : Single Bench

Advocate : K.H. Baxi, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

K.M. Thaker, J.—1. In the captioned group of petitions Special Civil Application No. 16131 of 2006 is filed by Gujarat Water Supply Sewage Board (hereinafter referred to as the "petitioner board" for sake of convenience) wherein it has challenged the award dated 6.5.2006 passed by learned Labour Court at Surendrangar in Reference (LCS) No. 117 of 1996 and in Special Civil Application No. 16132 of 2006 the petitioner board has challenged order dated 8.5.2006 passed by learned Labour Court at Surendrangar in Reference (LCS) No. 118 of 1996 and in Special Civil Application No. 16133 of 2006 the petitioner board has challenged order dated 4.5.2006 passed by learned Labour Court at Surendrangar in Reference (LCS) No. 95 of 1996 and in Special Civil Application No. 17898 of 2006 the petitioner board has challenged order dated 3.5.2006 passed by learned Labour Court at Surendranagar in Reference (LCS) No. 97 of 1995 and in Special Civil Application No. 17859 of 2006 the petitioner board has challenged order dated 24.4.2006 passed by learned Labour Court at Surendrangar in Reference (LCS) No. 94 of 1996 whereas in Special Civil Application No. 6480 of 2007, Special Civil Application No. 6485 of 2007 and in Special Civil Application No. 6486 of 2007 and in Special Civil Application No.

6487 of 2007, Special Civil Application No. 7293 of 2007 the workmen concerned in above mentioned reference cases (hereinafter referred to as the respondent - workmen concerned) have challenged the same awards which are placed under challenge by the petitioner board i.e. awards passed by the learned Labour Court at Surendranagar in Reference (LCS) Nos. 95 of 96, 97 of 95, 118 of 1996, 117 of 1996 and 94 of 1996.

1.1 It is jointly submitted by learned advocates for the petitioner board and the respondent - concerned workmen that the said 5 separate awards are almost similar and by the said awards the learned Labour Court has partly allowed the respective reference cases and have granted similar and identical relief in favour of the concerned workmen inasmuch as the learned Labour Court has directed the petitioner board to reinstate the concerned workmen on their original posts without benefit of back wages.

1.2 It is further jointly submitted that the petitioner board has challenged the said 5 awards so far as and to the extent by which the learned Labour Court directed petitioner board to reinstate the concerned workmen whereas the concerned workmen have challenged very same awards so far as and to the extent by which the learned Labour Court declined to grant benefit of back wages and restricted the relief only to reinstatement. The respondent - concerned workmen have taken out petitions to claim benefit which is denied i.e. back wages whereas the petitioner board has challenged the same awards so as to challenge the benefit which is granted by learned Labour Court i.e. direction to reinstate the workman.

1.3 The learned advocates for the petitioner and concerned workmen have made their respective submissions which are common in respect of the said 5 awards and they have jointly submitted that the petitions may be heard and decided together. In this view of the matter, this group of petitions are decided by this common judgment.

2. The concerned workmen raised industrial dispute against alleged termination of their service by the petitioner board. The said dispute came to be referred by appropriate government for adjudication to the learned Labour Court at Surendranagar. The separate Orders of Reference culminated into Reference (LCS) Nos. 95 of 96, 97 of 95, 118 of 1996, 117 of 1996 and 94 of 1996.

2.1 During the proceedings before the learned Labour Court the concerned workmen filed their respective statements of claim. The allegations and contentions raised and relief prayed for by the concerned workmen in their respective statements of claim were opposed by the petitioner board by filing its written statements. The contesting parties also placed on record evidence in support of their respective cases and on conclusion of the stage of evidence learned advocates for the petitioner board and the respondent - concerned workmen put forward their respective submissions.

2.2 The learned Labour Court took into account the material available on record

and also considered rival submissions and reached to the conclusion that the petitioner board had terminated service of the concerned workmen and the said action of the petitioner board (i.e. terminating service of the concerned workmen) is in violation of Section 25F and Section 25G. Having reached to such conclusion the learned Labour Court considered it appropriate to direct the petitioner board to reinstate the respondent - concerned workmen. However considering the facts and circumstances of the case the learned Labour Court also considered it appropriate to decline benefit of back wages to the respondent - concerned workmen.

2.3 The petitioner board claims that the learned Labour Court ought not have granted benefit of even reinstatement and the said relief also should have been declined.

2.4 On the other hand the concerned workmen claims that when the learned Labour Court reached to the conclusion that the board's action whereby the service of concerned workmen came to be terminated is in violation of statutory provisions then, as a corollary learned Labour Court out to have granted direction to the board to pay back wages and the said relief should not have been denied.

3. The concerned workmen in Reference (LCS) No. 117 of 1996 alleged that the petitioner illegally and arbitrarily terminated his service w.e.f. 30.4.1985 and that he was working with the petitioner board since 4 years before his service came to be terminated on 30.4.1985. He also alleged that at the relevant time he was working as Helper at salary of Rs. 841.10.

3.1 The concerned workmen in Reference (LCS) No. 118 of 1996 also claimed that the petitioner terminated his service w.e.f. 30.4.1995 and that he was working with the petitioner board since 4 years and at the relevant time he was working as Helper at salary of Rs. 141.50.

3.2 Both the workmen in the said reference case claimed that they had served notice dated 27.5.1995 demanding that they should be reinstated in service with consequential benefit.

3.3 The concerned workmen in Reference (LCS) No. 95 of 1996 also claimed that the petitioner terminated his service w.e.f. 5.9.1993 and that before his service was terminated he was working with the petitioner board since last 3 months and at the relevant time he was working as Helper at salary of Rs. 42/- per day. He claimed that after his service was terminated on 5.9.1993, on 22.2.1996 he had served demand notice claiming reinstatement with consequential benefit.

3.4 The concerned workmen in Reference (LCS) No. 97 of 1995 alleged that the petitioner terminated his service w.e.f. 1.7.1992 and that before his service was terminated he was working with the petitioner board since 4 years and at the relevant time he was working as Helper at salary of Rs. 840/- and that after his termination w.e.f. 1.7.1992 he had served demand notice dated 1.4.1995 claiming reinstatement and consequential benefit.

3.5 The concerned workmen in Reference (LCS) No. 94 of 1996 alleged that the petitioner terminated his service w.e.f. 30.7.1995 and that before his service was terminated he was working with the petitioner board since last 18 months as Helper at salary of Rs. 42/- per day and that after his service was terminated he served demand notice dated 22.2.1996 claiming reinstatement with consequential benefits.

3.6 All 5 claimants alleged that their service were terminated illegally and arbitrarily by oral order and without following any procedure prescribed by law. They also alleged that at the time of termination the petitioner board had not paid retrenchment compensation and before terminating their service notice was not issued or salary in lieu of notice was not paid. The claimants alleged that the petitioner board terminated their service in violation of Section 25F, 25G and 25H though they had worked for more than 240 days.

4. The petitioner board opposed the claims and allegations by said 5 claimants. With regard to the claim in reference case No. 117 of 1996 the petitioner board claimed that the said reference is not maintainable as its activity does not come within purview of in term "industry" under Section 2(j) of the Act and that the claimant workmen had not worked for 240 days with the petitioner board and that the claimants had worked intermittently during period from 1992 to 1994 inasmuch as in June 1992 the claimant worked for 30 days, in July 1992 he worked for 30 days, in September 1993 he worked for 15 days, in October 1993 he worked for 31 days and in November and December 1993 he worked for 30-31 days respectively and in July 1994 he worked for 31 days whereas in August and September 1994 he worked for 31-30 days. It was also claimed that the claimant worked with the petitioner board on adhoc, temporary and daily wage basis without being appointed in accordance with the procedure prescribed by rules.

4.1 With regard to the claim in reference No. 118 of 1996 the petitioner board claimed that the claimant had worked for 31 days, 286 and 31 days in January, February and March 1994. The board also claimed that the claimant worked with the board on adhoc, temporary and daily wage basis and that he was not appointed in accordance with and after following procedure prescribed by rules.

4.2 With regard to the claim in reference No. 95 of 1996 the petitioner board claimed that the said claimant had worked for 15 days in September 1993, 31 days in October 1993, 30 days in November 1993 and 31 days in December 1993. It was also claimed that the claimant worked with the petitioner board on adhoc, temporary and daily wage basis and he was not appointed in accordance with the procedure prescribed by rules.

4.3 With regard to the claim in reference No. 97 of 1995 the petitioner board claimed that the said claimant worked intermittently during period from 1993 to 1996. It was claimed that the claimant workman worked for 90 days in 1993, 114 days in 1994, 140 days in 1996 and he did not work for single day in 1995.

It was also claimed that the claimant worked with the petitioner board on adhoc, temporary and daily wage basis and was not appointed in accordance with and after following procedure prescribed by rules.

4.4 With regard to the claim in reference No. 94 of 1996 the petitioner board claimed that the said claimant worked intermittently during period from 1994 to 1995. It was claimed that the claimant worked for 31 days in October 1994, 30 days in November 1994, 31 days in December 1994, 31 days in January 1995, 28 days in February 1995, 31 days in March 1995, 30 days in April 1995 and 31 days in May 1995. It was also claimed that the claimant worked with the petitioner board on adhoc, temporary and daily wage basis and he was not appointed in accordance with and after following procedure prescribed by rules.

4.5 So as to defend the said reference cases (except in one reference case) and to counter the evidence placed on record by the claimant workman, the petitioner board examined, in all 5 reference cases, one/common witness viz. Mr. Ansari, Deputy Executive Engineer whereas the concerned workmen deposed for themselves and did not examine any other witness. In Reference (LCS) No. 118 of 1996 the petitioner did not examine any witness.

5. Mr. Baxi, learned advocate for the petitioner submitted that the learned Labour Court failed to appreciate that the concerned workmen were engaged on casual and ad hoc basis and that they were engaged for temporary period on daily wage basis and that therefore they do not have any right in law to claim reinstatement and/or back wages and the learned Labour Court ought not have granted such relief directing the petitioner board to reinstate the respondent - concerned workmen. He also submitted that the said 5 claimants had not worked for 240 days and one of the 5 claimants i.e. claimant in Reference No. 95 of 1996 had worked even according to his own claim only for 3 months. Mr. Baxi, learned advocate for the petitioner submitted that the respondent - concerned workmen were called for work only when need arose and that therefore any question of terminating their service did not arise inasmuch as their engagement would end as soon as they would complete the work. He also submitted that the concerned workmen failed to establish that they had worked for 240 days in preceding 12 months and/or that they were regularly appointed and that therefore learned Labour Court ought not have directed board to reinstate the concerned workmen. He also submitted that when the decision of learned Labour Court declining the claim for back wages is correct and justified, the decision granting relief of reinstatement is unjustified and deserves to be set aside.

6. Per contra, Mr. Shah, learned advocate for the concerned workmen submitted that service of the concerned workmen were terminated without following period prescribed by law and that therefore direction to reinstate the respondent - concerned workmen is legal, just and proper. He submitted that service of the 5 claimants were terminated by oral order and despite the fact that the concerned workmen had worked for 240 days in 12 months any procedure prescribed by law was not followed and the termination of their service was effected without

complying the condition prescribed by Section 25F or Section 25G. He also submitted that subsequently other persons were engaged however, claimants were not called for work/reinstated and therefore the board committed breach of Section 25H also. He also submitted that after examining the evidence on record even learned Labour Court found that the petitioner had terminated service of the concerned workmen and that their service were terminated in violation of statutory provision. He submitted that when even the learned Labour Court was satisfied that the service of the claimants were terminated in violation of statutory provision then relief to pay the back wages should have been granted. Learned advocate for the concerned workmen defended the order directing the petitioner board to reinstate the concerned workmen on the ground that when the service of concerned workmen is terminated in violation of statutory provisions the relief of reinstatement should be granted. On the same ground he also justified the claim for back wages and challenge against the learned Labour Court's decision declining the claim for back wages.

7. I have heard learned advocates for the petitioner and respondent - concerned workmen at length and considered their respective submissions. I have also considered the material on record and I have examined the award passed by the learned Labour Court.

7.1 From impugned 5 awards it has emerged that in all 5 cases the concerned workmen had called for production of documents, more particularly the muster roll and pay register for the period during which they were engaged by the petitioner board. It has also emerged from the record, more particularly from the observation by learned Labour Court in the awards impugned in this group of petitions that despite specific demand for production of documents, the petitioner board did not place on record complete set of muster roll or pay register for entire period for which the respondent - concerned workmen had worked with the petitioner board. In some cases the petitioner board placed on record few muster roll but did not place complete record for entire period in question, in respect of any claimant.

7.2 In this view of the matter, learned Labour Court considered it appropriate to draw inference against the petitioner board and recorded findings that the claim of the respondent - concerned workmen that they had worked for 240 days is deemed to have proved. Of course the said findings of fact is unjustified and unsustainable so far as the case of the claimant in Reference (LCS) No. 95 of 1996 is concerned inasmuch as the said workmen even according to his own claim had worked only for 3 months before he was discontinued. In this view of the matter, learned Labour Court committed error in drawing adverse inference even in case of the claimant who had worked for only 3 months. The inference that said claimant had worked for 240 days is unjustified and incorrect and contrary to the facts of the case of said workmen. It is also noticed that one of the 5 claimants had worked for 18 months whereas other 3 claimants claimed that they had worked for 3-4 years.

7.3 It is true that neither the claimants nor the petitioner board placed any material on record to establish the date from which the concerned claimants were initially engaged and started working with the petitioner board. The concerned workmen claimed that they were orally engaged and their attendance was marked in the register but any documents with regard to their engagement were not given by the petitioner board. On such premise the claimants demanded production of attendance register and pay register which the petitioner board did not place on record before the learned Labour Court.

7.4 Except in case of the claimant who undisputedly worked only for 3 months in all cases even the petitioner board has not disputed the fact that respondent - concerned workmen had worked for more than 12 months. There is neither any material nor any justification emerging from the record which could convince this Court to hold that the conclusion by the learned Labour Court is erroneous or unjustified or contrary to evidence available on record. Therefore, the said conclusion cannot be faulted. Since the petitioner board did not place complete documents on record, though demanded by the concerned workmen, the inference drawn by the learned Labour Court cannot be faulted, except in one case mentioned above.

8. In this background the undisputed factual aspect viz. that at the time when the engagement of the claimants were discontinued the petitioner the board had not issued any notice and not paid retrenchment compensation, is required to be considered.

8.1 As mentioned earlier, except in one case mentioned earlier the factum about total number of days for which the concerned workmen worked is established before the learned Labour Court.

8.2 Learned Labour Court has, by adverse inference recorded conclusion that the respondent - concerned workmen had worked for 240 days before their service was discontinued. As observed earlier there is nothing on record to warrant and justify interference with the said findings of fact.

8.3 Under the circumstances the obligation to pay retrenchment compensation to 4 claimants out of total 5 claimants had arisen.

8.4 It is undisputed fact that the petitioner board did not pay retrenchment compensation to any claimant.

8.5 Therefore, learned Labour Court's conclusion that the petitioner board discontinued the claimants, or terminated their service, without complying the condition under Section 25F and thereby committed breach of Section 25F cannot be faulted and cannot be interfered with except in case of the claimant in Reference No. 95 of 96.

9. In this view of the matter it comes out from the facts of the case and the findings recorded by the learned Labour Court that the learned Labour Court has accepted the case of the workmen that their services came to be terminated by

oral order by the petitioner board and that the services of the claimants were terminated without complying the condition under Section 25F and thereby the petitioner board committed breach of Section 25F.

9.1 Once it is found that the employer's action is taken in breach of any statutory provision then, ordinarily, the consequence would be order directing the employer to reinstate the illegally terminated workmen.

9.2 Such direction would, normally be passed unless some exceptional circumstance(s) are pleaded and established by the employer. In such case the Court may mould the relief. In present case any exceptional circumstance(s) are neither pleaded nor established.

9.3 In this circumstances the learned Labour Court's order directing the petitioner board to reinstate the claimants cannot be faulted so far as the four claimants are concerned, however in case of the claimant in Reference No. 95 of 1996 the said direction which is based on strength of the findings recorded that the board's action is violative of Section 25F of the Act is not sustainable because the said claimant had worked only for 3 months and that therefore the obligation to comply the condition under Section 25F qua the said claimant does not arise.

9.4 Therefore, the question would arise as to whether the award in the said reference case should be set aside.

9.5 So as to deal with the answer to said question it is necessary to take into account that having regard to the facts and circumstances and after considering the evidence on record the learned Labour Court has also recorded finding and conclusion that the board's action of discontinuing all 5 claimants is violative of Section 25F of the Act. In this context it is pertinent to note that after examining the evidence on record the learned Labour Court has recorded finding of fact that before discontinuing the service of said 5 claimants the petitioner Board had not prepared and notified seniority list and thereby the petitioner Board violated provision under Section 25G of the Act.

9.6 The petitioner board has failed to establish that the said findings and conclusion is perverse or contrary to facts.

9.7 From the record any material is not brought to the notice of this Court that the seniority list, as contemplated by Section 25G read with Rule 81 of Industrial Dispute Gujarat Rules, was prepared and notified/displayed in accordance with the said provision.

9.8 It is not even claimed by the petitioner board that such seniority list was prepared and displayed as contemplated and provided for by the said provision.

9.9 Thus, there is nothing on record to convince this Court to take any view different from the view taken by the learned Labour Court with regard to breach of Section 25G of the Act.

9.10 It is pertinent that Section 25G stands and operates on its own and independent of Section 25F and to attract the applicability of Section 25J it is not necessary that the concerned workmen must fulfill condition viz. worked for not less than 240 days in preceding 12 months. Any workman whose termination comes within purview of the term retrenchment i.e. within purview of section 2(oo) of the Act, even if he did not work for 240 days in preceding 12 months before his service came to be terminated, would be entitled for protection under Section 25G and if a workman who has not worked for 240 days is terminated by way of "retrenchment" as defined under Section 2(oo) of the Act but without following procedure prescribed and contemplated under Section 25G of the Act i.e. without preparing and displaying seniority list and without complying the principle "last come first go" then such termination would be illegal and in breach of statutory provision. Such illegal termination would also invite and justify the direction to reinstate such workman.

10. In this view of the matter even if the learned Labour Court's finding with regard to breach under Section 25G does not hold good so far as the claimant in Reference No. 95 of 1996 is concerned, however his case stands covered by the finding and conclusion of the learned Labour Court with regard to Section 25G of the Act. Since the termination of service of the claimant in Reference No. 95 of 1996 is found to be in breach of Section 25G of the Act, the order directing the petitioner board to reinstate the said claimant in Reference No. 95 of 1996 cannot be faulted.

11. Thus, for the foregoing reasons and in light of the above discussion the awards impugned in present petitions passed by the learned Labour Court in respect of 5 claimants in Reference (LCS) Nos. 95 of 96, 97 of 95, 118 of 1996, 117 of 1996 and 94 of 1996 and the direction obliging board to reinstate 5 claimants do not suffer from any infirmity and said direction does not suffer from any error of law or jurisdiction.

12. For the foregoing reasons and in light of above discussion the Board's challenge against the awards raised in Special Civil Application No. 16131 of 2006, Special Civil Application No. 16132 of 2006, Special Civil Application No. 16133 of 2006, Special Civil Application No. 17858 of 2006 and Special Civil Application No. 17859 of 2006 fails and cannot be sustained. The said petitions deserve to be, and therefore they are hereby dismissed.

13. Now so far as the issue related to back wages is concerned, the workmen have filed petitions being Special Civil Application No. 6480 of 2007, Special Civil Application No. 6485 of 2007, Special Civil Application No. 6486 of 2007, Special Civil Application No. 6487 of 2007 and Special Civil Application No. 7299 of 2007 and challenged the decision of the learned Labour Court declining to grant the claim for back wages.

14. On this count it cannot be overlooked that one claimant out of the 5 claimants had worked only for 3 months prior to the date when he came to be

discontinued whereas one other workman had worked only for 18 months before he was discontinued and other 3 workmen had worked for not more than 3 to 4 years before they were discontinued. All 5 claimants were engaged without following procedure of selection and recruitment and without their being any vacancy on permanent sanctioned post. Further more than 20 years have passed since the said claimants came to be discontinued.

15. In this view of the matter and with regard to the said aspects, this Court is of the view that learned Labour Court has not committed error in declining the claim for back wages.

16. Therefore, the petitions filed by the workmen assailing award by learned Labour Court and the decision refusing the relief and claim for back wages, do not deserve to be entertained.

In the result the petitions filed by the workmen are not entertained and are rejected. Rule in all captioned petitions stand discharged.

Orders accordingly.