

(2016) 01 GUJ CK 0081

In the Gujarat High Court

Case No : Special Civil Application No. 16992 of 2005

Deputy Executive Engineer

APPELLANT

Vs

Bhikhabhai Pujabhai Gohel and Others

RESPONDENT

Date of Decision : 11-01-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, Section 33, Section 33A

Citation : (2016) 01 GUJ CK 0081

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

Bench : Single Bench

Advocate : Sunil C. Patel, Advocate, for the Appellant; Yogen N. Pandya, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

K.M. Thaker, J.—1. Heard Mr. Patel, learned advocate for the petitioner and Mr. Yogen Pandya, learned advocate for the respondents.

2. In present petition, the petitioner has prayed, inter alia, that:--

"9(B) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, quashing and setting aside the impugned award dated 28.02.2005 passed by the Presiding Officer, Labour Court, Anand in Reference (LCA) No. 298 of 1992, at Annexure "C" to the petition."

3. The petitioner is aggrieved by award dated 28.02.2005 passed by the Presiding Officer, Labour Court, Anand in Reference (LCA) No. 298 of 1992, whereby the Learned Labour Court has directed the petitioner to reinstate four respondents workmen and to pay 25% of back wages.

4. So far as factual background is concerned, it has emerged from the record and submissions by learned advocates for the petitioner and respondents that undisputedly, and by their own admission, four respondent-workmen were

engaged on Daily Wage basis.

4.1 Likewise, undisputedly and by their own admission four respondents were working with the petitioner and engaged by the petitioner in the work related to repairs and maintenance of roads, which, according to the petitioner is purely temporary and casual work which arise only when requisition for repairs and/or maintenance of road is received.

4.2 Undisputedly, the respondents were engaged by the petitioner on such casual, intermittent and daily wage basis during the period from June, 1981 to June, 1986, and thereafter, the petitioner discontinued to engage said four respondents.

4.3 Feeling aggrieved by the said action of the petitioner of discontinuing to engage them with effect from 21.06.1986, the four respondents raised industrial dispute which was referred for adjudication at Labour Court, Nadiad.

4.4 Before the learned Labour Court the respondents filed statement of claim. In their statements of claim, the respondents admitted that they were engaged on daily wage basis and were engaged for work of repairs and maintenance of road. They alleged that they were engaged in June, 1981 and their service were illegally terminated with effect from 21.06.1986. They also claimed that the work for which they were engaged, continues, however, their service have been terminated. On such allegation, the petitioner claimed reinstatement.

5. Before proceeding further, it is relevant and necessary to mention more particularly in view of certain observations by the Learned Labour Court in the impugned award, that even in their statement of claim, the respondents had not mentioned anything about any pending dispute. Any fact about pending dispute and any contention that the action of discontinuing them was in breach of Section 33 of the Act was not pleaded by the said four respondents in their statements of claim.

5.1 It is also pertinent that despite the fact that neither such contention was pleaded nor proved, the Learned Labour Court took into consideration such factual aspects and that too with regard to reference which, prima-facie appears, was filed in 1998 i.e. almost 12 years after the service of respondents were terminated and on the ground that though a dispute was pending, permission was not sought for, the Learned Labour Court passed the impugned award.

6. In response to the statement of claim, the petitioner filed its reply/written statement, wherein the petitioner asserted that the respondents were engaged on casual, intermittent and daily wage basis as and when the works related to maintenance/repairs of road are required and that the names of respondents were not sponsored by employment exchange and any procedure for selection and recruitment was not followed. The Petitioner claimed that there was no vacancy on the establishment of the petitioner. The petitioner also claimed that the respondent had not worked for 240 days in preceding 12 months. Therefore,

the demand by the respondent was not just and maintainable.

7. The Court after considering the material on record and the submissions by the claimant workmen and present petitioner, the Learned Labour Court passed the award and directed the petitioner to reinstate the respondents and to pay 25% backwages.

8. Mr. Patel, learned advocate for the petitioner submitted that the respondents had not worked for 240 days during 12 months preceding the alleged date of termination (21.06.1986). He also submitted that the respondents were engaged on daily wage and ad-hoc basis in the work related to maintenance and repairs of road which itself is in casual in nature. He also submitted that the respondents were engaged without following the procedure prescribed for selection and recruitment. Learned advocate for the petitioner also submitted that the petitioner had placed on record the statement of attendance of the respondents to support the submission that respondents had not worked for 240 days in preceding 12 months. Therefore, there was no obligation to comply the provision under Section 25F of the Industrial Dispute Act. He also submitted that the Learned Labour Court failed to appreciate the said aspect. Mr. Patel, learned advocate for the petitioner submitted that in absence of vacancy award deserves to be set-aside.

9. Mr. Pandya, learned advocate for the respondents opposed the submission by Mr. Patel, learned advocate for the petitioner and also opposed the petition. Learned advocate for the respondents submitted that undisputedly the respondents were working with the petitioner. He also submitted that the petitioner had placed statement of attendance on record of Learned Labour Court, however, muster roll were not produced, and therefore, the Learned Labour Court has drawn inference that the respondents had worked for 240 days. Learned advocate for the respondents submitted that there is no error or illegality committed by the Learned Labour Court in presuming that the respondents had worked for 240 days in preceding 12 months. Learned advocate for the respondents submitted that the petitioner did not comply condition prescribed under Section 25F of the Industrial Disputes Act, and therefore, the action of discontinuing the respondents was illegal. He also submitted that the work in which the respondents were engaged continued with the petitioner, and therefore, also the action of the petitioner was bad in law. Learned advocate for the respondents also relied on the observation of the Learned Labour Court that the petitioner terminated the service without seeking permission from the Learned Labour Court though dispute by way of reference under Reference No. 735/98 was pending and therefore, also the petitioners action was bad in law.

10. I have considered the material on record and I have considered the submissions for the learned advocates for the contesting parties.

11. In present case, it is not in dispute that the respondents were engaged by the petitioner on daily wage basis. It is also not in dispute that the type and

nature of work for which four respondents were engaged was casual, ad-hoc, and intermittent inasmuch as the respondents undisputedly and by their own admission, were engaged for work related to repairs and maintenance of road/s.

11.1 Thus, the respondents were being engaged on daily wage basis as and when need or request for repairs and maintenance of road arise. Therefore, their engagement was intermittent casual and on daily work basis.

11.2 It is also not in dispute that in present case the said four persons were engaged without following any procedure, selection and recruitment. Their names were not sponsored by employment exchange.

11.3 It also not dispute that the respondents were not engaged on any clear and existing vacancy.

11.4 It is also not in dispute that the respondents worked, on such casual, intermittent and daily wage basis for period of about 5 years and they were disengaged by the petitioner in June, 86, (i.e. from or around 21.06.1986).

12. Thereafter, the respondents raised industrial dispute after serving demand notice dated 18.01.1997.

13. From the award and more particularly, in light of the discussion with regard to issue No. 2, it has emerged that the petitioner herein had placed on record Patrak which reflected the attendance of the respondents.

13.1 The Learned Labour Court has with regard to issued No. 2 recorded details of attendance of the respondents which was reflected from the said Patrak which was placed on record by the petitioner.

13.2 From the details of the attendance which are recorded by the Learned Labour Court with regard to issue No. 2 (internal page 16 of the award), it emerges that during period of 12 months preceding the date of alleged termination i.e. 21.06.1986, the respondents had not worked for 240 days. The details which are recorded by the Learned Labour Court with regard to issue No. 2 bring out and establish that during the period of preceding 12 months, the respondents had not worked for 240 days.

14. However, Learned Labour Court proceeded on the premise that the details mentioned in the Patrak were not complete and that original muster roll were not produced on record. On the said ground, the Learned Labour Court proceeded to draw inference that the four respondents must have worked for 240 days. In the process, the Learned Labour Court brushed aside the details of the attendance of the respondents which were placed on record by the petitioner.

15. On this count, it is pertinent to mention that against the details regarding attendance of four respondents which were placed on record by the petitioner, any material to counter the said details were not placed on record by the respondents. However, on the premise that original muster roll were not placed on record, the Learned Labour Court considered it appropriate to draw inference

that the four persons had worked for not less than 240 days.

16. It is pertinent that Learned Labour Court failed to consider that what was relevant and necessary was to ascertain whether the persons had worked for 240 days in preceding 12 months or not.

17. However, without addressing and deciding the issue as to whether the said legal requirement was satisfied or not and without considering that Section 25f emphasizes the expression preceding 12 months and not merely completion of 240 days, the learned Labour Court proceeded in the matter and passed the award by drawing inference that the respondents had worked for 240 days and since any compensation was not paid, there was breach of Section 25F.

18. Thereafter, the Learned Labour Court proceeded to observe in the award the petitioner had discontinued the person without seeking prior permission from the Learned Labour Court though dispute (Reference) was pending.

19. It is pertinent to note that Section 33 of the Industrial Dispute Act, impose obligation on the employer to seek prior permission or approval from the Learned Labour Court or the Tribunal or Conciliation Officer, as the case may be, in the event, any dispute is pending.

20. The condition precedent for attracting Section 33 of the Act is that a dispute must be pending and that the person who has raised the grievance about breach of Section 33 of the Act must be concerned workman in the pending dispute. Whereas in present case, the Learned Tribunal proceeded on the premise that the petitioner had not sought prior permission or approval from the Learned Labour Court though any dispute was not pending and the learned Court lost sight of the fact that the dispute which is considered as pending at the time when the respondents were discontinued from service was made in 1998 and registered as Reference (IT) No. 735 of 1998.

21. Therefore, it is necessary to recall that the service of the respondents were allegedly terminated in June. 1986, whereas the dispute which the Learned Labour Court has considered pending was raised and referred to the Learned Labor Court in 1998 i.e. after the alleged termination was effected. Meaning thereby, Reference (IT) No. 735 of 1998 was not pending at the time in June, 1986, when the service of the respondents were allegedly terminated.

22. The Learned Labour Court failed to notice above mentioned aspect viz. that the reference of 1998, was not pending at the time when the respondents were discontinued in 1986.

23. At this stage, it is relevant to mention that from the material available on record of present petition, learned advocate has failed to show anything which would reflect that when the respondents were discontinued i.e. in June, 1986, any dispute was pending, wherein the respondents can be said to be concerned workman.

24. The Learned Court has not considered and has not addressed this aspect and without recording conclusion that the four respondents were concerned workmen in the Reference the Court proceeded on presumption. Actually in view of fact that the said reference dispute was not pending at the time when the respondents were relieved vital pre-conditions for attracting section 33A did not exist and were not fulfilled. The learned Labour Court should have ascertained as to whether the said conditions were fulfilled or not.

25. It is pertinent to mention that while referring to the Reference No. 735 of 1998, the Learned Labour Court has not mentioned subject matter of the reference, therefore, it is not possible to hold that the act of discontinuing the respondents was in any manner connected with the alleged pending dispute. However, it appears that the learned Court lost sight to this aspect.

26. In this view of the matter, the findings by the Learned Labour Court that the petitioners action of discontinuing the respondents allegedly from 21.06.1986 was taken without seeking prior permission or approval of the Court, and therefore, the action is bad, is not sustainable.

27. In this view of the matter, both the grounds on which the Learned Labour Court has based the award are not sustainable.

28. There is nothing on record to show that any dispute, wherein the respondent workmen were the concerned workmen, was pending June, 1986, i.e. at the time when the persons were relieved. Despite such fact, the Learned Labour Court faulted the petitioners action on the ground that it was taken without prior permission or approval.

29. However, one important aspect still survives viz. even according to petitioners admission the respondents worked with the petitioner for a period of about 5 years and when they were relieved, the seniority list, as required under the Industrial Disputes Gujarat Rules was not prepared and notified before relieving them. The said condition was not complied. The action of the petitioner is, to this extent and on this count, was not in accordance with the prescribed procedure.

30. Under the circumstances, it appears that interest of justice would be served if the respondents are awarded reasonable compensation while setting aside the impugned award.

31. Having regard to the above mentioned aspects and the decision in the case of Assistant Engineer, Rajasthan Development Corporation Vs. Sitam Singh (, 2013 5 SCC 136), and the decision in the case of Bharat Sanchar Nigam Limited Vs. Bhuramal (, 2014 7 SCC 177) and the decision in the case of Senior Superintendent Telegraph, Bhopal Vs. Santosh Kumar Seal & Ors. (, 2010 6 SCC 773), it appears that direction to pay compensation at the rate of 25000/- to the respondents would serve the interest of justice. Therefore, following order is passed.

The award impugned in present petition i.e. award dated 28.02.2005 in Reference (LCA) No. 298 of 1992 is set aside on the condition that the petitioner shall pay sum of Rs. 25000/- to each respondents within four weeks.

With the aforesaid observation, present petition is disposed of.