

(2014) 06 GUJ CK 0040

In the Gujarat High Court

Case No : Special Civil Application No. 1755 of 2007

Deputy Executive Engineer

APPELLANT

Vs

Rajnikant Chotalal Pitwa

RESPONDENT

Date of Decision : 21-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 17B, 33, 33A

Citation : (2014) 143 FLR 85 : (2014) 3 LLN 129

Hon'ble Judges : Akil Abdul Hamid Kureshi, J

Bench : Single Bench

Advocate : Bharat T. Rao, Advocate for Petitioner No. 1, Advocate for the Appellant; Vinita S. Vinayak, Advocate for Respondent No. 1, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Akil Abdul Hamid Kureshi, J.—This petition is directed against the judgment of the Labour Court, Junagadh dated 6.12.2006 in Complaint Case No. 4/2002. Brief facts are as under :

2. The petitioner Gujarat Water Supply and Sewerage Board ("the Board" for short) had engaged the respondent as a typist. Though there is some dispute about the nature and the terms on which he was so engaged, it is undisputed that he worked as a typist from March 1998 till June 2002. On 13.12.2001, the Union of the workers made an application to the Board on behalf of respondent workman pointing out that he was engaged as a typist since March 1998, initially on a fixed salary of Rs. 900/- per month. Later on he was being paid on daily wage basis. Since last two months he was paid once again fixed salary, this time at the rate of 1300/- per month. The salary comes to less than minimum wages fixed by the Government. He has been discharging duties sincerely and honestly for more than three years. His service therefore, may be regularised. The benefits of regularisation are being denied to him though regular vacancies are

available. A copy of this demand letter was also endorsed to the Assistant Labour Commissioner. On 21.2.2002 the Assistant Labour Commissioner wrote to the Board stating that the Union has approached the Assistant Labour Commissioner under letter dated 13.12.2001 raising industrial dispute. This was received by the Labour Commissioner on 19.12.2001. Accordingly conciliation case was registered on 19.2.2002. Thus since the demands of the Union are pending before the Conciliation officer, the employer therefore in terms of section 33A of the Industrial Disputes Act should not alter the conditions of service of workman. Despite such proceedings being pending since the workman apprehended termination, he moved complaint case no. 4/2002 seeking stay against employer. The Labour Court on 21.6.2001 granted interim protection to the workman. This order was challenged before this Court in Special Civil Application No. 1755/2007. After initially staying the operation of the said order, writ petition was partially allowed by judgment dated 5.12.2005. The proceedings were remanded before the Labour Commissioner for fresh consideration. In the meantime, since the services of the workman were terminated, the workman amended the complaint case no. 4/2002 and questioned the termination on the ground that the same was effected without following proceedings required u/s 33A of the Industrial Disputes Act. On such application, the labour Court passed the impugned order. The Labour Court came to the conclusion that the services were terminated without following the mandatory requirements. Reference was pending before the Labour Court. No permission was taken. The Labour Court therefore, declared the termination illegal and directed reinstatement of the workman with full back-wages by impugned order dated 6.12.2006. The defence of the Board that the workman voluntarily stopped coming for work with effect from 1.6.2002 was not believed. From the evidence on record, labour Court came to the conclusion that the employer's theory was baseless. It is this order the Board has challenged in this petition.

3. Learned counsel Shri B.T. Rao for the Board raised two contentions. He firstly contended that the services of the workman were never terminated. He voluntarily stopped coming to work after 10.6.2007. The Labour Court therefore erred in setting aside the so-called termination order. His second argument was that Labour Court had no jurisdiction to pass the order because on the date when the service was allegedly terminated, there was no reference pending before the Labour Court. By virtue of pending conciliation proceedings, section 33A of the Industrial Disputes Act would not apply.

4. On the other hand learned advocate Ms. Vinayak for the workman opposed the petition contending that there was ample evidence to establish that the workman had not abandoned the services. Labour Court therefore, committed no error.

5. As noted earlier, it is an admitted facts that respondent workman discharged duties with the Board for nearly three years before the Union took up his cause for regularisation of his service. When the proceedings before the Assistant Labour Commissioner was pending, application was made before the Labour

Court for protection in terms of section 33A of the Industrial Disputes Act. The service of the workman were, as held by the Labour Court, terminated without following any procedure.

6. Though strenuously urged before me by the counsel for the petitioner, it is not possible for me to hold that the workman had voluntarily stopped reporting for duty. This is so for several reasons. Firstly, the labour Court has come to findings of fact contrary to this. In exercise of writ jurisdiction under Articles 226 and 227 of the Constitution, unless such findings are shown to be perverse, it would not be open for me to interfere. Secondly, there was ample evidence to permit the Labour Court to come to such a conclusion. Even the officer of the employer had admitted that the workman had reported for duty on 21.5.2002. There was no further evidence with respect to his not reporting for duty thereafter. Even otherwise, it would be unnatural to believe that the respondent workman who had activated the Union to take up his cause for regularisation of his service having rendered three years of almost continuous service, would almost immediately thereafter, abandon the service. This is also in conflict with his action of approaching the Labour Court with an application for protection against his termination. If there was no threat of termination, but the workman himself was not interested in the work, it is difficult to appreciate why the worker would have moved such an application before the Labour Court. Considering all these aspects of the matter, findings of fact arrived at by the labour Court in my opinion calls for no interference.

7. The only short question that survive now is of power of the labour Court to entertain the application. Section 33A itself prescribes that where an employer contravenes the provisions of section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or national Tribunal, the aggrieved employee may make an application in writing to such officer or Court and who would adjudicate on such complaint as if it were a dispute. Section 33 in turn provides inter-alia that during the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a labour Court or Tribunal in respect of an industrial dispute, no employer shall in regard to any matter connected with any dispute, alter to the prejudice of the workmen concerned, the conditions of service applicable to them immediately before the commencement of such proceeding.

8. In the present case, reference was made on 10.6.2002. Findings of the Labour Court is that the workman was on duty as on that date. In terms of section 33 of the Industrial Disputes Act, therefore, service conditions in connection with the dispute of regularisation could not have been altered. The Court thus had jurisdiction to entertain the complaint of breach of section 33. It was in this context that the Labour Court in terms of section 33A of the Industrial Disputes Act, declared the termination illegal.

9. Under the circumstances, order of the Labour Court setting aside terminations

calls for no interference. However, looking to the service rendered by the workman prior to his termination and the intervening period, direction for payment of 100% back-wages is substituted by 50% back-wages for the intervening period. This would include section 17B benefits which are stated to have been paid so far.

10. With these directions, the petition is disposed of. Rule made absolute to above extent.