
(2017) 01 GUJ CK 0146
In the Gujarat High Court
Case No : 8964 of 2007

DIPAK N. BHATT

APPELLANT

Vs

LILADHAR PASOO FORWARDERS PVT. LTD.

RESPONDENT

Date of Decision : 09-01-2017

Acts Referred:

[Industrial Disputes Act, 1947](#), [Section 2\(s\)](#)/
[Section 25\(f\)](#) - Definitions - Prohibition of financial aid to
illegal strikes and lock-outs

Citation : (2017) 01 GUJ CK 0146

Hon'ble Judges : K M Thaker

Bench : Single Bench

Advocate : Ashish M Dagli, Ketan D Shah

Final Decision : Disposed

Judgement

1. Heard learned advocates for petitioner and respondent. In present petition, the petitioner has challenged award dated 28.11.2006 passed by learned Labour Court at Gandhidham (Kachchh) in Reference (LCR) No.29 of 2003, whereby learned Labour Court rejected the Reference. Feeling aggrieved by the said decision and award, the petitioner i.e. the original claimant has taken up present petition.

2. So far as factual background is concerned, it has emerged from the material available on record of this petition and from submissions by learned advocates that the claimant raised industrial dispute with the allegation that the employer illegally terminated his service by oral order/ instruction on 04.02.2001 and that despite the fact that he had worked continuously and regularly from December, 1992 to February, 2001, the employer discontinued his service without complying provisions prescribed by law and in violation of principles of natural justice.

3. Appropriate government referred the dispute for adjudication. The dispute was registered in Reference (LCR) No. 29 of 2003. In his statement of claim, the claimant alleged that he was in service with opponent Company and that he

joined his service in December, 1992. He also claimed that he was paid Rs.2800/ per month and that though his designation was sitesupervisor, he was required to work as loader and was engaged in work of loading and unloading and to also do the work related to custom clearance. With such allegation he demanded that he should be reinstated in service.

4. Opponent employer failed to file reply/ written statement. Learned Labour Court took note of the fact that the opponent employer has not filed written statement. When the claimant moved application that stage of filing written statement by the employer may be closed, learned Labour Court passed the order and closed the stage of written statement/ reply by the employer. Thereafter, evidence of the claimant was recorded. The Opponent employer failed to lead any evidence, either documentary or oral. Thereafter, the opponent employer failed written submissions.

5. Learned Labour Court considered the material available on record including the written arguments by opponent employer and thereafter passed the award which is impugned in present petition.

6. Mr. Malay Patel learned advocate for Mr. Dagli, learned advocate for the applicant i.e. original claimant assailed the award and submitted that the learned Labour Court failed to appreciate that the claimant was employed and working as workman and that he was not employed in Supervisory category and he was no working as Supervisor and without appreciating the said fact, learned Labour Court held that the claimant was employed and was working as Supervisor. He further submitted that learned Labour Court also failed to appreciate that the claimant's service was terminated illegally and arbitrarily. He submitted that claimant worked with Opponent employer from December, 1992 to February, 2001 i.e. for almost 9 years and that, therefore, his service could not have been terminated without complying provision under Section 25(F) of the Industrial Dispute Act and without granting opportunity of hearing. He submitted that in present case neither opportunity of hearing was granted nor retrenchment compensation was paid. He also submitted that even notice pay was also not paid and the service of the claimant was terminated by oral instruction. He submitted that without appreciating the said facts the learned Labour Court rejected the Reference. He submitted that the opponent employer failed to place any evidence on record contrary to the documents placed on record by the claimant and the claimant's oral evidence and that, therefore, the impugned award is erroneous and arbitrary and deserves to be set aside.

7. Mr. Shah learned advocate for the opponent employer could not dispute the fact that the employer did not file reply/ written statement and also did not lead any evidence, documentary or oral.

8. Mr. Shah, learned advocate for Opponent employer submitted that it was the claimant who had stopped reporting for work and his service was not terminated by the Company and that, therefore, any question or any need to comply with

the provision under Section 25(F) of the Industrial Disputes Act or principles of natural justice did not arise.

9. He submitted that learned Labour Court has examined the award from both perspectives and final conclusion is against the claimant on both grounds i.e. on merits of the dispute as well as on the ground that claimant worked in Supervisory category with salary of more than Rs.1600/and that, therefore, he could not come within purview of workman and, therefore, he could not have raised industrial dispute. He submitted that the said finding by learned Labour Court on the basis of evidence and that, therefore, there is no error in the award and the petition may not be entertained.

10. I have considered rival submissions and material available on record as well as the impugned award.

11. On reading the impugned award, it has emerged that the learned Labour Court has held, after considering claimant's evidence and other material available on record, that the claimant was employed as and he was working as Site Supervisor / Field Supervisor and that his duties were of supervisory nature. Having reached to such conclusion, the learned Labour Court held that the claimant cannot be termed "workman" under Section 2(s) of the Industrial Disputes Act.

12. However, from the material available on record, it has emerged that the claimant had placed on record Identity Card which the learned Labour Court does not seem to have taken into account.

13. Further, the claimant also seems to have placed on record the provident fund slip and his appointment order.

14. It seems that the learned Labour Court also did not take into account the said documents.

15. The learned Labour Court has observed in the award that the claimant himself described his appointment as that of supervisor and from his oral evidence also, it emerged that the claimant performed work of supervision over the loading and unloading work and he also used to supervise the work related to custom clearance of the goods. Considering the said evidence, the learned Labour Court reached to above mentioned conclusion.

16. Besides this, the learned Labour Court has also observed that during his oral evidence, the claimant failed to mention name of the officer who orally instructed him that his service is terminated. The learned Labour Court has observed that the claimant failed to establish that his service was terminated by oral instructions.

17. During hearing of this petition, learned advocate for the petitioner, i.e. original claimant failed to show any evidence from the record which could convince this Court that the findings of fact recorded by the learned Labour Court

are unjust or contrary to record and perverse.

18. Therefore, there is no basis or justification to find any fault with the conclusion recorded by the learned Labour Court, more particularly when any evidence from record is not shown by the claimant to support his submission that the conclusions and findings of fact recorded by the learned Labour Court are erroneous and perverse. Under the circumstances, the said findings cannot be faulted.

19. Besides this, it is also relevant to note that the claimant raised dispute after about two years.

20. It has emerged from the record that according to his own claim, service of the claimant was terminated in February 2001, whereas the claimant seems to have raised dispute in 2003.

21. Further, from the document placed on record, it has emerged that according to his own claim, the date of birth of the claimant is 10.7.1966. Thus, the claimant has already crossed 50 years of age.

22. In view of such facts, there is no reason or justification to interfere with the impugned award.

23. However, there is one aspect which requires specific reference.

24. In this context, it is relevant and necessary to mention that the opponent employer had submitted written arguments before the learned Labour Court.

24.1 In its written arguments, the opponent employer contended that the company had not terminated service of the claimant and it was the claimant who stopped reporting for work and if the claimant is ready and willing to report for work, the company is ready to allow him to resume duties.

24.2 Besides this, from the observations by the learned Labour Court, it has also emerged that at the time of hearing before the learned Labour Court, one Mr.Trilokbhai Raval, Chief Accountant of the company was present before the learned Labour Court and the said officer of the company categorically informed the learned Labour Court that if the claimant is ready to report for work, the company will allow him to resume duties.

24.3 When the said submission and statement by the opponent company is taken into account, then it appears that the submission by learned advocate for the claimant to the effect that the claimant may be allowed to resume duty in light of the submission of the opponent employer before the learned Labour Court, appears justified.

25. Learned advocate for the claimant would submit that having regard to the said submission in written arguments and the submission by Chief Accountant of the company, the learned Labour Court at least ought to have directed the company to abide by the submission and statement in written arguments and the statement by the officer of the company.

26. The said submission appears justified.

27. Therefore, while disposing of the petition and though any error in the impugned award is not made out and any justification to interfere with the award is not made out, it is observed and clarified that the company should abide by the submission and statement made before the learned Labour Court. It is appropriate to mention at this stage that Mr. Shah, learned advocate for Company fairly submitted, ofcourse after taking instruction from the concerned and authorised officer of the Company, that the Company will abide by statement and submission made before learned Labour Court and if the applicant reports for duty, he will be allowed to rejoin the service and report for duty.

28. Mr.Dagli, learned advocate for the workman submitted that the claimant is ready to report for duty on the date and time which may be informed by the opponent company. Therefore, it is observed and clarified that the opponent company will, in compliance of the statement made before the learned Labour Court, inform the claimant about the date and time when he should report for work.

29. With the aforesaid directions and observations, the petition is disposed of.