

(2009) 06 GUJ CK 0003

In the Gujarat High Court

Case No : Special Civil Application No. 8081 of 2000

District Health Officer

APPELLANT

Vs

Salimbhai Osmanbhai

RESPONDENT

Date of Decision : 19-06-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Industrial Disputes Act, 1947 — Section 25F, 25G, 25H

Citation : (2009) 123 FLR 83

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : HS Munshaw, for the Appellant; DG Chauhan, for the Respondent

Judgement

S.R. Brahmbhatt, J.—Heard learned Counsel for the parties.

2. The petitioner - District Health Officer, Amreli under Article 227 of the Constitution of India challenged the Award dated 19.5.2000 passed by the learned Presiding Officer, Labour Court, Amreli in Reference Case No. 1799 of 1988, Rajkot, Reference Case No. 130 of 1993, Bhavnagar and Reference Case No. 68 of 1998, Amreli, declaring that the termination dated 31.7.1988 of the services of the workman, was contrary to provisions of Sections 25F, 25H and 25G of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for short) and hence required to be quashed and set aside and after quashing the same, ordered reinstatement with continuity of service and full back wages and award cost of Rs. 651/-.

3. Facts in brief deserve to be set out as under.

4. It was the case of the respondent workman before the Competent Court that he was serving as Daily Wager under the petitioner at Rs. 13/- per day as Peon since last 4 years prior to his termination and without following any procedure of law and provisions of Section 25F, of the Act, his services came to be terminated on 31.7.1988. The workman thereafter issued notice for reinstatement and

raised demand on 9.8.1988 and ultimately, raised Industrial Dispute, which was referred to the Competent Court, wherein, it was numbered as Reference Case No. 1799 of 1988, Rajkot, Reference Case No. 130 of 1993, Bhavnagar and Reference Case No. 68 of 1998, Amreli. Before the learned Labour Court, the respondent workman contended that despite 4 years continuous service, without any rhyme or reason or without following procedure prescribed under the Act, his services came to be terminated on 31.7.1988, which was per-se, illegal and required to be quashed and set aside. The petitioner took a stand before the learned Labour Court that the workman was appointed purely on temporary basis and provisions of Sections 25F, , 25G and 25H of the Act were not applicable in the facts and circumstances of the case of respondent workman. It was further contended by the petitioner that the Public Health Centre, wherein, the workman was working as Peon was closed and as the workman was working as Daily Wager and as and when the work was available with petitioner. It was also contended that the workman of his own volition stopped coming for discharging his duties, meaning thereby, he abandoned his job. After recording its finding with regard to no evidence of workman being appointed regularly and no evidence of workman not completing 240 days in the preceding year, the Labour Court came to the conclusion that termination dated 31.7.1988 was illegal, contrary to law and therefore, quashed the same and ordered reinstatement with continuity of service with full back wages by impugned Award dated 19.5.2000, which is impugned in the petition under Article 227 of the Constitution of India.

5. Shri Munshaw, learned advocate appearing for the petitioner contended that the workman was only employed as Daily Wager and as such he had no right to invoke protection u/s 25F, of the Act. Shri Munshaw further submits that workman had discharged his duties only as and when work was available and in absence of work, the workman was not called for discharging his duties. Learned Labour Court has ignored this aspect. He has further submitted that the Primary Health Centre, where the workman worked, was closed down by the Government and therefore, services of the workman was not required and hence, this aspect ought to have been appreciated by the learned Labour Court.

6. Shri Chauhan, learned advocate for the respondent has submitted that this Court (Coram: P.B. Majmudar, J.) vide order dated 27.8.2001, modified the award qua reinstatement has not been stayed and only the back wages has been stayed. He further submits that pursuant to order dated 27.8.2001, the workman, therefore, was required to be reinstated and accordingly, the petitioner has reinstated the workman vide order dated 1.1.2002 and since then, he has been discharging his duties. In view of this, he submits that this Court may not disturb the award with regard to continuity of service, as already granted in the given facts and circumstances by learned Labour Court. He further submits that direction qua grant of full back wages may be modified and instead of full back wages, this Court may slash down the back wages upto 85% so that the workman may have some relief to meet the expenses of the litigation, so 15% back wages would be acceptable to the workman in case Court is modifying the

Award. On merits, Shri Chauhan, learned advocate appearing for respondent submitted that the petitioner has not taken a stand with regard to non-completion of 240 days on the contrary, it has come on record that workman has discharged his duties 4 years prior to termination and completion of 240 days is no question at all. The fact remains that as per the stand taken by petitioner, the workman was merely a Daily Wager and as the Primary Health Centre, where he was working, was closed, his services were terminated. This being not a ground absolving the petitioner from its duty u/s 25F, of the Act and submitted that this Court may not interfere with the petition under Article 227 of the Constitution.

7. This Court has heard learned Counsel for the parties and perused the papers. The following indisputable facts which could be gathered from the facts are required to be set out as under:

8. The Labour Court has unequivocally recorded that the workman had discharged his duties since 4 years prior to his termination, which came into being on 31.7.1988.

9. The workman issued notice seeking reinstatement and conciliation on 9.8.1988.

10. The specific stand with regard to non-completion of 240 days has not been taken by the petitioner employer before the learned Labour Court.

11. Labour Court has recorded in unequivocal finding that the provisions of Sections 25F, , 25G and 25H of the Act were not complied with.

12. The Labour Court has relied upon the decisions of the Bombay High Court as well as Madras High Court for holding that the petitioner was not absolved of complying with the provisions of ID Act even in case of Daily Wager.

13. The factum with regard to abandoning the job by the respondent has not been believed. On the contrary, the Labour Court has categorically held that termination was effected with effect from 31.7.1988 as the Public Health Centre was closed.

14. In view of the aforesaid indisputable facts, it is required to be noted that employer petitioner has taken a contrary stand of abandoning job by the workman to justify its stand and closure of Public Health Centre. Abandoning the job has rightly not been believed by the learned Labour Court. Had this been there case, then, for the short period i.e for few days, notice for retrenchment would not have been issued, and had the notice been withdrawn, then the workman would have been reinstated immediately.

15. Be that as it may. The facts remain to be noted that the petitioner has not categorically taken any stand before the learned Labour Court with regard to respondent not completed 240 days and in absence of any such stand and rather, the stand was taken that as workman being only Daily Wager, Section 25F, is not required to be complied with, go to show that the Labour Court's conclusion with

regard to breach of Section 25F, is absolutely just and proper. So far as breach of Section 25F, is concerned, the natural conclusion would be that of reinstatement in absence of any such pleading.

16. With regard to back wages, this Court is of the view that in absence of specific pleading in statement of claim with regard to employee- workman being unemployed during the entire period and in view of the submission of the learned Counsel for the respondent with regard to slashing down the back wages upto 85%, the workman is granted 15% of back wages, as the workman has already been reinstated, no further order is made in that behalf. The petition deserves to be partly allowed and the award is required to be modified so far as back wages is concerned.

17. Accordingly, this petition is partly allowed. The award qua reinstatement with continuity of service is not disturbed. Whereas, the direction in award qua back wages is hereby modified and it is held that the workman is entitled to 15% of the back wages without any interest as the matter is pending in this Court. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.