

(2019) 07 GUJ CK 0164

In the Gujarat High Court

Case No : R/Special Civil Application No. 24052 Of 2005

EXECUTIVE ENGINEER & 1 Other(S)

APPELLANT

Vs

JAYABEN RAMJIBHAI & 1 Other(S)

RESPONDENT

Date of Decision : 24-07-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo)(bb), 25G, 25F

Evidence Act, 1872 — Section 3

Constitution Of India, 1950 — Article 227

Citation : (2019) 07 GUJ CK 0164

Hon'ble Judges : G.R. Udhwani, J

Bench : Single Bench

Advocate : Hs Munshaw, Nilesh M Shah

Final Decision : Allowed

Judgement

1. Judgment and award dated 04.04.2005 rendered by the Labour Court, Surendranagar in a Reference (LCS) No.83 of 1993 is sought to be assailed in this petition under Article 227 of the Constitution of India.

2. Alleging the wrongful termination the respondent nos.1 and 2 came out with the fact that they were appointed in Class-IV on 31. 01.1990 and were wrongfully terminated in the year 1993 without adhering to Sections 25F and 25G of the Industrial Disputes Act, 1947 ('the I.D.Act', for short). The dispute eventually culminated into the Reference (supra) wherein case of the workmen contending the breach of Section 25F was not accepted but the Labour Court found breach of Sections 25G and 25H of the I.D.Act only on the statement of the workmen for the first time during their oral testimony and that too without relevant details except the name of such workmen.

3. On the other hand the claim of the workmen came to be disputed by the petitioner employer with the contention that respondent No.1 Jayaben served the department between the year 1970 and 1980 and respondent no.2 Manibhai served the department between 1969 and 1979 and both of them abandoned the

work after the aforesaid dates. It was also contended that the work of the workmen was taken over by the State and Section 2(oo)(bb) of the I.D.Act was applicable to the facts of the present case; although no evidence was adduced by the employer in this regard.

4. In light of the above factual and legal aspects the questions raised in this petition are required to be addressed.

5. While appreciating the evidence in the context of Section 25B of the I.D. Act finding of fact relying upon the record produced by the petitioner that the workman was not in continuous service came to be rendered and thus breach of Section 25F was not established. Under the circumstances the only substantial question requiring consideration is whether there was any material with the Labour Court to base the finding as to breach of Section 25G and 25H. The former provision contemplates the principle of 'last come first go' in case of retrenchment of the workman, later contemplate a preference to be given to the retrenched workman in the eventuality of the employer necessitating the similar work which the retrenched workman was doing, before employing substitute of the workman. Needless to say that before invoking the said provisions the basic facts must form the material / evidence in the proceedings. Perusal of statement of claim of the workman makes it amply clear that no such substantial assertions with necessary details were made by the workmen except pleading violation of the provisions. In the Examination-in-Chief however few names were uttered by them and during the cross-examination a suggestion was put to the authority of the petitioner that the workman was employed since 1970 and still the persons appointed after the said date were working after the termination of the services of the workmen. The suggestion was affirmed by the witness and the submission is made by learned counsel for the workmen that having admitted the said fact the petitioner now is estopped from questioning the same herein and that too without raising the plea in that regard in the petition. This Court is not impressed by the said submission for the simple reason that nowhere the workmen contend his / her having been appointed since 1970. It is his / her specific case that since 10 years of alleged retrenchment he / she was working with the petitioner. The dispute was raised in the year 1993 and thus reckoning 10 years preceding the said date, it can be said that the workman was working from 1993, if at all his / her case was to be accepted in this context. Thus, in absence of his case of working with the petitioner between the year 1970 and 1990 the so called admission (supra) would not come to the aid of the workmen. In other words, when according to the workman himself or herself he / she was born in the employment only in 1990, the question of reckoning period between the year 1970 and 1990 for ascertaining the seniority of the workman would not arise. No suggestion was made to the witness that there was retention of the juniors as on the year 1990 or there was employment of similarly situated persons after termination of the workmen in the year 1990 and therefore the admission above stated is of no consequence.

6. In the opinion of this Court, in absence of foundation of facts required for establishing breach of Section 25G and 25H, no such breach was established and the Labour Court was under the serious misconception of law to constitute the baseless statement by the workman and that too for the first time in the Examination-in- Chief, as evidence. There can be evidence only in support of the pleadings, in absence of the pleadings, a bare statement (supra) would not constitute the evidence. Furthermore fact devoid of material would not constitute suitable material for reaching to a conclusion indicated Section 3 of the Evidence Act. May be that the provision of the Evidence Act would not apply in its letter and spirit to the cases arising under labour legislation, the principle enshrined therein can be invoked in given case. Thus, in the opinion of this Court the Labour Court had no material with it to rest the finding as to breach of Section 25G and 25H; on.

7. Had there been any material establishing breach of Sections 25G and 25H, then only the question of delay would have arisen inasmuch as, as indicated above the two provisions cast an obligation upon the employer and it would be for the employer to establish that retention / appointments if any were long before the date of reference and that workman had the knowledge of the said fact. This Court therefore would not go into question of delay in the peculiar facts of the case.

8. It is brought to the notice of this Court that in absence of the injunction against reinstatement, the workmen have been reinstated in the year 2005 and were also awarded the benefits contemplated under Government Resolution dated 17.10.1988. Learned counsel for the workmen places on record the order dated 28. 04.2011 in that regard which makes it clear that workman Jayaben Ramjibhai Chauhan and Manilal Lakhmanbhai Valand have been given the benefit of Government Resolution dated 17. 10.1988 with effect from 17.04.2011. Both the workmen have respectively retired on 20.08.2018 and 31.03.2015. Thus, insofar as their reinstatement and the benefit above stated in Government Resolution dated 17.10.1988 are concerned, it is a fait accompli and cannot be reversed even by allowing this petition. Such benefits therefore would be retained by the workmen.

9. Except as above, for the forgoing reasons the petition succeeds. The impugned judgment and award is quashed and set aside.