

(2008) 09 GUJ CK 0085

In the Gujarat High Court

Case No : Special Civil Application No. 1132 of 2008

Friends Co-operative Credit Society Ltd.

APPELLANT

Vs

Tarunkumar Ratilal Shah

RESPONDENT

Date of Decision : 15-09-2008

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2008) 119 FLR 1113

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

Bench : Single Bench

Advocate : A.M. Parekh, for the Appellant; T.R. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.—Rule. Mr. Mishra, learned Counsel waives service of Rule on behalf of respondent. By consent, Rule is fixed forthwith.

The petitioner-employer has preferred this petition under Article 227 of the Constitution-of India challenging the award passed by the Labour Court, Vadodara dated 16.11.2007 in Reference (LCA) No. 1591 of 1998 declaring that the termination of the respondent workman effected by the petitioner on 1.7.1998 was illegal and therefore quashed the same and directed the petitioner to reinstate the workman with 25% back wages and continuity of service and awarding Rs. 1000/- towards expenses. This award is impugned in the present petition.

2. Shri Parekh, learned Counsel appearing for the petitioner submitted that workman has not proved that he had worked for 240 days. The findings of the Labour Court are therefore, contrary to evidence on record and therefore, the same deserves to be quashed and set aside. Shri Parekh has further submitted that the petitioner is ready and willing to offer fresh appointment to respondent workman even during the pendency of the Reference and there is a

communication between the parties to this effect. Thus, the respondent has not availed the said opportunity and then in itself go to show that the respondent workman had not been interested in pursuing his service with petitioner. Shri Parekh further submitted that award impugned otherwise also is not in consonance with law and therefore, deserves to be quashed and set aside. Shri Parekh has fairly and candidly admitted before this Court that unfortunately, the employer petitioner has not taken up contention with regard to applicability of Section 2(oo)(bb) of the I.D. Act nor has there been any finding on this aspect though catena of orders issued in favour of the workman, go to show that workman was appointed for stipulated period of time. Shri Parekh submitted that the I.D. Act would be applicable to the petitioner but in that view of the matter, when the conditional order of appointment is passed, the contract being that of stipulated time, the retrenchment, if any, cannot be said to be a retrenchment so as to attract the provision of Section 25-F of the I.D. Act. Shri Parekh submitted that as there was no work, the petitioner had to retrench the concerned employee.

3. Shri Mishra, learned Counsel appearing for the respondent workman submits that petitioner employer before the Labour Court has not taken up any contention with regard to invoking of Section 2(oo)(bb) and therefore, there is no discussion in the award. Shri Mishra further submitted that the order of appointment produced before the Court go to show that it was mere formality of issuing order and respondent workman continuously worked with the petitioner. The last order is dated 27.2.1998, wherein, though, it is mentioned that the respondent was to work upto 29.5.1998, in fact, as recorded by the Labour Court, he was discharged only on 30.6.1998 and was permitted to work upto 30.6.1998. This in itself would go to show that there cannot be said to be any conditional order or stipulated time. He submits that this finding of the Labour Court need not be interfered by this Court under Article 227 of the Constitution of India. In answer to the earlier submission of Shri Parekh with regard to applicability of I.D. Act to the petitioner, he relied upon the decision of this Court (Coram: H.K. Rathod, J.) rendered in Special Civil Application No. 4572 of 2007 dated 4.12.2007.

4. Heard learned Counsel for the parties at length and perused the records and proceedings. The orders of appointment produced on the record go to show that the petitioner employer was under notion that issuance of such orders would give them liberty to discharge the service of the workman without following the rigours of the provisions of I.D. Act. It has come on record that though there were various appointment orders, the workman concerned had worked continuously from the date of his first appointment till he was retrenched on 30.6.1998. It also go to show that last order of appointment which was issued to respondent contents stipulation that his services would be ending on 29.5.1998, whereas, thereafter no appointment order is issued and he was permitted to continue on his work till 30.6.1998. The Labour Court observed specifically that no evidence either oral or documentary be adduced by the petitioner employer.

As against that, the workman led oral as well as documentary evidence in support of his case and as those evidences remained uncontroverted, the Labour Court recorded its finding that workman did continuously work for more than 240 days and therefore, there was a breach of provisions of Section 25-F of the I.D. Act. This Court is against the aforesaid backdrop, considered it to be absolute, just and proper and hence no interference is called for under Article 227 of the Constitution of India.

5. In the result, the petition fails and is therefore, dismissed. Rule is made absolute. There shall be no order as to costs.