

(2014) 12 GUJ CK 0044

In the Gujarat High Court

Case No : Special Civil Application No. 7994 of 2006

Ganpatsinh Dhirsinh Dodia

APPELLANT

Vs

The Sub-Provisional Officer

RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Constitution of India, 1950 — Article 227

Industrial Disputes Act, 1947 — Section 2(j), 25(f)

Citation : (2015) 146 FLR 222 : (2015) LabIC 1124 : (2015) 2 LLJ 297

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : P.H. Pathak, Advocate for the Appellant; D.G. Chauhan, Advocate for the Respondent

Judgement

Mukesh R. Shah, J.—By way of this petition under Article 227 of the Constitution of India the petitioner-workman has prayed for an appropriate writ, order or direction to quash and set aside the impugned judgment and award passed by the learned Presiding Officer, Labour Court No. 1, Bharuch dated 21/12/2004 in Reference No. 100/1992 by which the learned Labour Court has dismissed/rejected the said Reference solely on the ground that respondent-Gujarat Pollution Control Board is not an "Industry within the meaning of Section 2(j) of the Industrial Disputes Act".

2. The petitioner-workman, who was working with the respondent-Board, raised an industrial dispute challenging the illegal termination alleging inter alia that there was breach of Section 25(f) of the Industrial Disputes Act. The dispute was referred to the learned Labour Court, Bharuch for its adjudication and by the impugned judgment and award the learned Presiding Officer, Labour Court, Bharuch dismissed/rejected the said Reference solely on the ground that the respondent-Board is not an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act.

2.1. Feeling aggrieved and dissatisfied with the impugned judgment and award

passed by the learned Labour Court, the petitioner-workman has preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. Ms. Rena Kamani, learned advocate appearing for Shri P.H. Pathak, learned advocate appearing on behalf of the petitioner has submitted that the learned Labour Court has materially erred in rejecting the Reference on the ground that the respondent-Board is not an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act. It is submitted that looking to the activities of the respondent-Board, which is borne out from the record and/or evidence on record, the learned Labour Court has materially erred in holding that the respondent-Board is not an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act. It is submitted that in number of cases the learned Labour Court has entertained the Reference against the respondent-Board and has adjudicated the dispute on merits. It is submitted that therefore in the facts and circumstances of the case the learned Labour Court has materially erred in holding that the respondent-Board is not an "industry within the meaning of Section 2(j) of the Industrial Disputes Act" and, therefore, it is requested to allow the present Special Civil Application and quash and set aside the impugned award and remand the matter to the learned Labour Court to decide the Reference afresh in accordance with law and on its own merits.

4. Shri D.G. Chauhan learned advocate has appeared on behalf of the respondent. He has not disputed and as such has fairly conceded that in so many other cases the learned Labour Court and/or Industrial Court/Tribunal have entertained the Industrial dispute with respect to the employees/workmen of the Board and have decided the matters on merits. Under the circumstances, he is not in a position to satisfy the Court how the impugned judgment and award passed by the learned Labour Court dismissing the Reference on the ground that the respondent is not an industry can be sustained. Under the circumstances, he has requested to pass an appropriate order and as such does not invite any further reasoned order while quashing and setting aside the impugned judgment and award and remanding the matter to the learned Labour Court.

5. Having heard the learned advocates appearing on behalf of the respective parties and considering the impugned judgment and award passed by the learned Labour Court, it appears that the learned Labour Court has rejected/dismissed the Reference solely on the ground that the respondent-Board is not an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act. However, it is required to be noted and it is not in dispute that in all other cases the learned Labour Court/Industrial court/Tribunal have entertained the dispute between the employee/workmen of the respondent-Board and have decided and adjudicated the dispute on merits. On facts and considering the Commercial Industrial activities of the respondent-Board, it cannot be said that the respondent is not an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act. As observed hereinabove, the learned advocate appearing on behalf of the respondent does not press for any reasoned order

while quashing and setting aside the impugned judgment and award and remanding the matter to the learned Labour Court to decide the Reference afresh in accordance with law and on its own merits. Under the circumstances, this Court is not further assigning any further reasoned order while quashing and setting aside the impugned judgment and award and remanding the matter to the learned Labour Court. Even otherwise, on merits also, this Court is of the opinion that the learned Labour Court has materially erred in rejecting the Reference on the ground that the respondent is not an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act.

6. In view of the above and for the reasons stated hereinabove, the present petition succeeds. The impugned judgment and award passed by the learned Presiding Officer, Labour Court No. 1, Bharuch dated 21/12/2004 in Reference No. 100/1992 is quashed and set aside and the matter is remanded to the learned Labour Court to decide the Reference afresh in accordance with law and on its own merits and after giving an opportunity to all the concerned. Considering the fact that the Reference is of the year 1992, the learned Labour Court to decide and dispose of the Reference on remand at the earliest and preferably on or before 31/12/2014. All the concerned are directed to cooperate with the learned Labour Court for early disposal of the Reference and within the stipulated time stated hereinabove. Rule is made absolute to the aforesaid extent.

Registry is directed to send the writ of this order to the learned Labour Court forthwith.