

(1964) 01 GUJ CK 0003

In the Gujarat High Court

Case No : Special Civil Application No. 867 of 1960

Girdharlal Laljibhai

APPELLANT

Vs

Nagrashna M.N. and Another

RESPONDENT

Date of Decision : 08-01-1964

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25C, 33C

Citation : AIR 1964 Guj 231 : (1964) 8 FLR 415 : (1964) 5 GLR 413

Hon'ble Judges : J.M. Shelat, J;J.B. Mehta, J

Bench : Division Bench

Advocate : C.T. Daru, for the Appellant; I.M. Nanavati, for the Respondent

Final Decision : Dismissed

Judgement

Mehta, J.—This is a petition under Art. 227 of the Constitution of India praying for an appropriate order quashing the order of the second labour court, Ahmedabad, dated 29 July 1960, in Recovery Application No. 44 of 1959. The petitioner was a badli folder in the bleach folding department of a cotton textile undertaking run by respondent 2 which is an industrial establishment employing more than 50 persons. The petitioner filed an application under S. 33C of the Industrial Disputes Act, 1947, in the labour court on the ground that he was laid off by respondent 2 in the months of July, August, September, October and November 1958 for 3, 9, 1, 17 and 19 days respectively and that he was not paid lay-off compensation for those days. He prayed for computation of the benefit of lay-off compensation payable to him, and for a certificate being issued to the Collector for recovery of that amount. In that application the fact that the petitioner had put in a continuous service of more than one year was not disputed. Further the fact that the petitioner's name was borne on the muster rolls of the industrial establishment was not denied by respondent 2. Respondent 1 dismissed the said application by an order dated 29 July 1960 on the ground that a badli workman was not entitled to get work unless a permanent workman or a probationer was absent. It was not the case of the petitioner that a

permanent workman or a probationer was absent on the days in question and, therefore, he was not entitled to get any lay-off compensation and his application was dismissed. The petitioner has, therefore, come before us challenging the said order.

2. The short question that arises in this petition is whether a badli worker who had completed one year's continuous service could claim lay-off compensation on the days on which he would not be employed as no permanent workman or a probationer had remained absent on the days in question. The term "lay-off" has been defined in S. 2(kkk) as under :

""lay-off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or for any other reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched."

3. Then follows the explanation which is not material for our purpose. This definition of the word "lay-off" has now been interpreted by the Supreme Court in the case of Management of Kairbetta Estate, Kotagiri Vs. Rajamanickam and Others, as under :

"It is clear that the lay-off takes place for one or more of the reasons specified in the definition. Lay-off may be due to shortage of coal or shortage of power or shortage of raw materials or accumulation of stocks or breakdown of machinery or any other reason. "Any other reason" to which the definition refers must, we think, be a reason which is allied or analogous to reasons already specified."

4. It is, therefore, settled that the lay-off must be for any of the reasons which are mentioned in this definition or for any similar or analogous reason. Sri Daru, the learned advocate for the petitioner, contended that the category which is found to be common in all these reasons is that the reason is beyond the control of the employer. The standing orders settled under the Bombay Industrial Relations Act, 1946, which are determinative under S. 40 thereof and which govern the parties before us define "a badli worker" as under : "badli" is one who is employed in the post of a permanent operative or a probationer, who is temporarily absent. It is, therefore, clear that a badli worker's right of employment is dependent on there being some temporary vacancy of a permanent employee or a probationer. He has no right to get work every day. Therefore, if a badli worker is not able to get employment on a particular day because no permanent worker or a probationer was absent on that day, it could not be said to be a case of lay-off of that badli worker on the day in question, for some reason which was beyond the control of the employer. It is implicit in the definition of the word "lay-off" that the workman must have a right to get the work or the employment on the day in question and he must have been refused employment on that day for any of the reasons falling under S. 2(kkk). The

learned Judge, was, therefore, right in holding that from the very nature of his employment a badli worker was not entitled to work, unless a permanent workman or a probationer was absent and that the question of refusal or failure to give him employment could only arise when a permanent workman or a probationer was absent.

5. Sri Daru further contended that in view of the explanation to S. 25C, the petitioner ceased to be a badli worker at all. Turning to S. 25C, the relevant portion of S. 25C, Clause (1), provides as under :

"Whenever a workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid off, he shall be paid by the employer for all days during which he is so laid off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid off." :

Then follows the proviso which is not material for our purpose. Then, there is an explanation which runs as under :

""badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the purposes of this section, if he has completed one year of continuous service in the establishment."

6. The main part of this section first excludes a badli workman from its scope which would disentitle a badli workman from claiming compensation if he was laid off. But the explanation provides that after one year's continuous service he shall cease to be regarded as such for the purposes of this section. The effect of these words which we have italicized is to entitle even such a badli workman to obtain compensation as in the case of a permanent workman if he was laid off on the day in question. Because he was first sought to be excluded, the explanation seeks to bring him within the scope of the section to a limited extent. The explanation provides that it is only for the purposes of S. 25C, i.e., for the purposes of the claim of compensation, that a badli worker ceases to be regarded as such. That would not change the very nature of his employment under which he has a right to get employment only in the vacancies. In fact the explanation in terms makes it clear not only by the words "for the purposes of this section," but also by defining a badli worker specifically as a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment. He must not be a person who is only on the badli list and who would have only a chance of employment if a permanent post becomes vacant but his potential rights must be actualized on the day in question. The term "is employed" leaves no doubt that the explanation seeks to cover a badli worker in whose case actual substitution has taken place, i.e., some

workman on the muster rolls has been absent and in his place he is actually employed on the day in question. Therefore, the explanation would not apply at all to a case where there is no question of any vacancy being filled in by employing badli worker in place of some other workman on the muster rolls. The petitioner's case is not that some permanent workman was absent on the day in question. The learned Judge, was therefore, right in holding that the effect of the explanation was that when a badli worker was available the employer must provide a badli worker with work if he had completed one year's continuous service. If the employer failed to do so, the badli workman would be entitled to get lay-off compensation, if he had completed one year's continuous service. To put any other construction would not only make the words "for the purposes of this section" redundant but would also lead to a very absurd result. If the factory worked, only a permanent workman would have a right to get an employment and there being no badli vacancy no badli would be entitled to get work even if he had put in one year's continuous service. While if the factory was closed as a result of breakdown, etc., not only all the permanent workmen but also all the badli workmen who had put in one year's continuous service would be entitled to get lay-off compensation. There could be no right of any lay-off compensation in absence of a right to get employment on the day in question as per the terms of the contract of employment. The right to get work or employment is implicit in the very concept of "lay-off." We, therefore, hold that the learned Judge was right in his view that a badli workman who had completed one year's continuous service was not entitled to claim lay-off compensation for the days on which he could not be employed as no permanent workman had remained absent on the days in question. Even if it was possible to take a different view, we cannot hold that the view of the learned Judge was a perverse one or such as no reasonable man could take. The order of the learned Judge does not therefore, disclose any patent error of law and he has not failed to exercise his jurisdiction, and no interference with his order is justified at our hands. The petition, therefore, fails and is dismissed. Rule is discharged. No order as to costs.