
(1993) 08 GUJ CK 0035

In the Gujarat High Court

Case No : Special Civil Application No. 3048 of 1989

Gram Panchayat, Damnagar

APPELLANT

Vs

Sharadkumar D. Acharya

RESPONDENT

Date of Decision : 17-08-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25(B)(2), 25F

Citation : (1994) 1 GLR 579 : (1995) 1 LLJ 51

Hon'ble Judges : R.A. Mehta, J;B.J. Shethna, J

Bench : Division Bench

Judgement

Mehta, J.—The petitioner-Gram Panchayat is aggrieved by the judgment and award of the Labour Court granting reinstatement with back wages to the respondent-workman.

2. The Labour Court has held that the action of termination of the services of the respondent was retrenchment and condition precedent laid down in Section 25-F of the Industrial Disputes Act, 1947 had not been followed and, therefore, the termination was illegal and void.

3. The learned counsel for the petitioner-Panchayat submitted that the workman was on probation and, therefore, termination of service within the probation period would not amount to retrenchment as defined in Section 2(oo) of the I. D. Act. Secondly it was submitted that the petitioner had not completed one year of continuous service and, therefore, no retrenchment compensation was payable and, therefore, the condition precedent was not applicable in the present case. Thirdly, it was submitted that the post, which the petitioner was occupying, has been abolished as a measure of economy and, therefore, reinstatement could not have been ordered. And fourthly it was submitted that having regard to the poor financial condition of the petitioner-Gram Panchayat, the award for back wages should not have been passed.

4. The first contention is concluded by the Supreme Court in the case of

Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another, , wherein it has been held that Section 2(oo) covers every case of termination of service except those which have been embodied in the definition and, therefore, discharge from employment or termination of service of a probationer, would also amount to retrenchment and compliance with the requirements of Section 25-F in the case of such termination is essential and necessary consequence of non-compliance with Section 25-F would render the termination void. Therefore, the first contention must fail.

5. The second contention is also covered by the provision of Section 25(B)(2)(a) of the I. D. Act, as held by the Supreme Court in the case of Employers in Relation to Digwadih Colliery Vs. Their Workmen, . It is true that the workman had not been in continuous service for a period of full 12 months or one year and in fact his service was of about 9 months only. However, the deeming provision of Sub-section (2) of Section 25-B is applicable in the present case which provides that a workman shall be deemed to be in continuous service for a period of one year, if the workman, during the period of twelve calendar months preceding the date of termination, has actually worked under the employer for not less than 240 days. In the present case, the workman has worked for more than 240 days in the preceding 12 calendar months and therefore, he is deemed to be in continuous service for a period of one year and, therefore, retrenchment compensation was payable and it is admittedly not paid. Second contention also, therefore, must fail.

6. Thirdly, it is submitted that the post has been abolished and, therefore, reinstatement could not have been granted. It is true that the Panchayat had abolished the post as a measure of economy and terminated the services of the workmen. However, the Panchayat did not fulfill the requirements of Section 25-F and, therefore, termination is illegal and void and he has to be reinstated and, if necessary, the post has to be re-created to comply with the order of reinstatement. It is not open to an employer to contend that since the employer had abolished the post, the order of reinstatement could not be complied with. It would amount to giving licence to the employer to illegally terminate the services and to render the Court helpless in granting reinstatement. That would be perpetuating illegality and injustice. Therefore, petitioner's third contentions has no merit.

7. Lastly, it was submitted that because of the precarious financial condition of the Panchayat, the back wages should not have been awarded. Once it is held that the condition precedent has not been followed, the termination is void and ineffective and the workman is deemed to be continuing the service and entitled to back wages. The reason given of poor economic condition of the employer is not substantiated factually and is not of any avail legally.

8. All the contentions of petitioner fail and hence the petition is dismissed. Rule discharged with no order as to costs.

9. Learned Counsel for the petitioner prays that in order to enable the petitioner-Panchayat to approach the Supreme Court, the petitioner-Panchayat may be granted some interim stay. This petition came to be filed in 1988 and numbered in 1989 and there has not been any interim relief. Therefore, there is no question of granting or continuing any interim relief now. Hence, this request is rejected. It may also be noted that for non-compliance with the order, a contempt petition is filed in this Court and the same is admitted and is pending.