

(2006) 01 GUJ CK 0015

In the Gujarat High Court

Case No : Special Civil Application No. 352 of 2004

Gujarat Agriculture University

APPELLANT

Vs

Abdulmajid Mahemudmiya Kazi

RESPONDENT

Date of Decision : 24-01-2006

Acts Referred:

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

Citation : (2006) 01 GUJ CK 0015

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : D.G. Chauhan, for the Appellant; T.R. Mishra, for the Respondent

Judgement

H.K. Rathod, J.—Heard learned Advocate, Mr. D.G. Chauhan, on behalf of petitioner and learned Advocate, Mr. U.T. Mishra, on behalf of respondent.

2. In the present petition, petitioner - University has challenged the award passed by Labour Court, Anand in Reference No. 900 of 1992 (Old No. 162 of 1991) dated 24th September, 2003. The Labour Court, Anand has set aside the termination order and granted reinstatement with continuity of service and with 50% back wages of interim period with effect from 1st April, 1990.

3. Learned Advocate, Mr. Chauhan, has submitted that two contentions were raised by petitioner before Labour Court in written statement. First contention is that petitioner - University is not an "industry" within the meaning of Section 2(j) of I.D. Act, 1947 and the second contention is that respondent is not workman within the meaning of Section 2(s) of I.D. Act, 1947. He submitted that this fact has been admitted by workman in his statement of claim that he was appointed as a teacher and performed the work as a teacher from 2nd January, 1989 to 1st April, 1990. In para.5 of statement of claim, this fact has been disclosed and not only that, in cross-examination of workman also, this fact was admitted by respondent - workman that it is true. Therefore, learned Advocate, Mr. Chauhan, submitted that when respondent - workman is not

covered by definition of Section 2(s) of the I.D. Act, 1947 because of working as a teacher, Labour Court has no jurisdiction to examine the issue under the provisions of Industrial law. Learned Advocate, Mr. Chauhan, has submitted that first contention about industry is not pressed by him but, he only relied upon the second contention that workman was working from 2nd January, 1989 to 1st April, 1990 as a teacher. He relied upon the decision of Apex Court in case of Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others, of the said judgment is reproduced as under:

10. The Court held that the employee Mukerjee involved in that case was not a workman u/s 2(s) of the Act because he was not mainly employed to do any skilled or unskilled manual or clerical work for hire or reward, which were the only two classes of employees who qualified for being treated as "workman" under the definition of the expression "workman" in the Act, as it stood then. As a result of the above decision, in order to give protection regarding security of employment and other benefits to sales representatives, Parliament passed a separate law entitled the Sales Promotion Employees (Conditions of Service) Act, 1976. It is no doubt true that after the events leading to the above decision took place section 2(s) of the Act was amended by including persons doing technical work as well as supervisory work. The question for consideration is whether even after the inclusion of the above two classes of employees in the definition of the expression "workman" in the Act a teacher in a school can be called a workman. We are of the view that the teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or post-graduate education cannot be called as "workmen" within the meaning of section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching. We agree with the reasons given by the High Court for taking the view that teachers cannot be treated as "workmen" as defined under the Act. It is not possible to accept the suggestion that having regard to the object of the Act, all employees in an industry except those falling under the four exceptions (i) to (iv) in section 2(s) of the Act should be treated as workmen. The acceptance of this argument will render the words "to do any skilled or unskilled manual, supervisory, technical or clerical work" meaningless. A liberal construction as suggested would have been possible only in the absence of these words. The decision in Management of May and Baker (India) Ltd. Vs. Their Workmen, precludes us from taking such a view. We, therefore, hold that the High Court was right in holding that the appellant was not a "workman" though the school was an industry in view of the definition of "workman" as it now stands.

3.1 Learned Advocate, Mr. Chauhan, has submitted that apart from that, whether

respondent - workman has completed 240 days or not. But, when he was not covered within the definition of workman, then, I.D. Act itself is not applicable and, therefore, there is no need to examine the second question, whether respondent - workman has completed 240 days" service or not. Learned Advocate, Mr. U.T. Mishra, submitted that respondent was not actually working as a teacher but, he was giving some technical education to the students and, there was no Educational Institution. The petitioner - University offered him to work as an Instructor or teach some technical subject and, therefore, strictly considering the definition, he is covered by the definition of workman. He submitted that petitioner - University is an "industry" and workman is covered by definition of workman u/s 2(s) of the I.D. Act and has completed 240 days on the basis of the voucher produced by respective parties on record and, therefore, Labour Court has rightly granted benefits to the workman while setting aside termination order. According to learned Advocate, Mr. Mishra, Labour Court has not committed any error which require interference by this Court while exercising the power under Article 227 of the Constitution of India.

4. I have considered the submissions made by both learned Advocates. I have perused the award passed by Labour Court, Anand. I have also also perused the statement of claim, written statement and oral evidence of both parties. Considering the statement of claim filed by workman, particularly Para.5, in which it was admitted by respondent that he was working as a teacher in petitioner University for the period from 2nd July,1989 to 1st April,1990. These facts were put in cross-examination by petitioner, wherein also, he made categorically a clear admission that facts narrated in Pra.5 of the statement of claim that he was working as a teacher, it is correct. In light of this evidence on record, there is no further evidence is necessary for coming to a conclusion that respondent was working as a teacher. The Labour Court has not properly examined and appreciated the oral evidence led by respective parties. Not only that, but the Labour Court has ignored the statement of claim filed by workman and also cross-examination of workman where admission was made by the workman that he was working as a teacher. Therefore, Labour Court has committed gross error, not appreciated oral evidence as well as the statement of claim filed by workman wherein his clear admission is there that he was working as a teacher for entire period from 2nd July, 1989 to 1st April,1990. Therefore, if these facts are on record established that respondent was working as a teacher, then, in such circumstances, provisions of I.D. Act, 1947 is not applicable. The Labour Court has not given clear finding to come to a different conclusion on the basis of mentioning name of Department as if that workman was working in that category. Actually, the observations by Labour Court in Para.38 (internal page 6) are; Sworkman was appointed on 2.1.1989 and remained in service upto 1.4.1990 wherein workman was continuously working as Farm Mechanic cum Artisan. The Farm Mechanic cum Artisan is the name of Department and not the name of any category in which workman was working, so there is misconception on the part of Labour Court to consider the Department a category wherein

workman was working. This finding is totally perverse and contrary to record and, therefore, requires to be set aside.

5. In view of the observations made by Apex Court and considering the nature of work which was performed by respondent - workman in petitioner - University, it is clear that respondent was working as a teacher for the period from 2nd July, 1989 to 1st April, 1990. This fact was not in much dispute between the parties looking to statement of claim filed by workman in Para.5 and in cross-examination made by petitioner of respondent - workman. Therefore, according to my opinion, fact that respondent was working as a teacher has been proved by petitioner before Labour Court, even though Labour Court has come to contrary conclusion from record. Therefore, such finding is baseless and perverse and require to be set aside. When workman is not covered within the definition of Section 2(s) of the I.D. Act, 1947 then, I.D. Act, 1947 is not applicable to the respondent - workman and Labour Court has no jurisdiction to examine the matter under the provisions of I.D. Act, 1947. In view of this, Labour Court has committed gross error in coming to conclusion that respondent was workman within the definition of Section 2(s) of I.D. Act, 1947. Therefore, award passed by Labour Court in Reference No. 900 of 1992 (Old No. 162 of 1991) dated 24th September, 2003 is hereby quashed and set aside. Rule is made absolute with no order as to costs.