

(2012) 06 GUJ CK 0008

In the Gujarat High Court

Case No : Special Civil Application No. 8158 of 2001

Gujarat Audhyogik Kamdar Sangathan

APPELLANT

Vs

Alindhra Tex Pro Engineers and Others

RESPONDENT

Date of Decision : 29-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 25F, 25G, 25H, 25P

Citation : (2012) 135 FLR 128 : (2013) 1 LLJ 383 : (2013) 1 SCT 207

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

Bench : Single Bench

Advocate : R.V. Desai, for the Appellant; Manish R. Raval, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.—Heard learned advocate for the parties. This petition is filed by General Secretary of Gujarat Audhyogik Kamdar Sangathan, a registered Trade Union, challenging the award and order passed by the Labour Court, Surat on 6.6.2001 in Reference Demand No. 7/97, Reference Demand No. 9/97 and Reference Demand No. 10/97 ordering payment of only Rs. 4,000/- to the workmen named thereunder and rejecting the references qua the demands made thereunder for the reasons recorded therein. The facts in brief, as could be culled out from the memo of the petition deserve to be set out as under for appreciating the rival contentions of learned advocate for the parties.

2. The respondent No. 2 viz. M/s. VG. Industries, had terminated the services of 13 workmen by way of retrenchment on 13th December, 1996. This action of management was considered to be untenable in the eye of law, therefore, agitation was made. The workmen of other companies run by the same management group viz. 11 companies protested the management's action. Therefore, the management brought about termination of all workmen by way of retrenchment vide order dated 25th December, 1996. This action of retrenchment was said to be an action of retaliation against the protesting

workmen as the workmen protested against the illegal termination by way of retrenchment of 13 workmen brought about on 13.12.1996 as stated hereinabove. The workmen whose termination was brought about by way of retrenchment on 13.12.1996 accepted the dues and orders by endorsing therein that it is accepted without prejudice and under protest. After the said compensation was accepted, the workmen raised industrial dispute and also raised demand which was subjected to conciliation proceedings. Ultimately, on failure of conciliation proceedings, the competent Government made reference, which came to be registered as Reference Nos. 7/97, 9/97 and 10/97 as mentioned hereinabove as by and large the facts were common. The common evidences were led. The workmen union made application for consolidating the three references and passing common judgment, which was accepted and accordingly the award dated 6.6.2001 came to be passed, wherein the Court ordered that the workmen were only entitled to receive Rs. 4,000/- in all over and above the amount of retrenchment compensation as the compromise efforts made with other workmen were successful and all other workmen, who were retrenched along with workmen in whose behalf the reference survived were also therefore, entitled to receive the amount of Rs. 4,000/- only. The workmen's other demands and challenges were negated.

3. Being aggrieved and dissatisfied with this order present petitions are filed under Article 226 as well as 227 of Constitution of India. By way of interim order, this Court (Coram : K.M. Mehta, J.) (as he then was) ordered the respondents to pay Rs. 4,000/-, which was ordered in the judgment impugned and admitted the matter on 24.9.2001 and it was sent before this Court for final disposal.

4. The learned advocate for the petitioner invited this Court's attention to the statement of claim, written statement and contended that the workmen raised three demands viz. The workmen should have been paid wages for the period from 13th December, 1996 to 25th December, 1996 that is the day on which their so-called retrenchment was brought about. The second demand was in respect of the retrenchment dues, which were said to be on account of victimization and therefore, on that count the same was vitiated and in alternative, it was submitted that the retrenchment was not brought about the claimants in accordance with the provisions of law and hence, the same was not justified and tenable in the eye of law. The ground for challenging the retrenchment was on account of non-compliance with Rules 81 and 82 of Gujarat Industrial Disputes Rules and non maintenance of procedure of this, despite there being a specific order to this effect by the Court and the third ground was in respect of non- compliance of provision of 25-H of the Industrial Disputes Act, 1947.

5. The learned advocate for the petitioner invited this Court's attention to the narration in the statement of claim and submitted that the entire development of the events from 13th December, 1996 to 25th December, 1996 go to show that the management in order to suppress the lawful agitation and wreak vengeance

upon the protesting workmen illegally terminated the services under the garb of retrenchment u/s 25-F of the Industrial Disputes Act. The said retrenchment was a camouflage to conceal the real motive of wreak of vengeance upon the workmen for which they protested illegal retrenchment, which were brought about by respondent No. 2 illegally.

6. This development of events are sufficient to indicate that there exists sufficient grounds to pursue Labour Court to hold that it was an action of retaliation against the protesting workmen.

7. The learned advocate for the petitioner contended that the action of retrenchment even assuming for the sake of argument without conceding that that was warranted on account of circumstances existing, then also the respondents were not absolved of their statutory liability to comply with provision of section 25-F of the I. D. Act.

8. The learned advocate for the petitioner contended that the factum of payment of compensation is not disputed nor is it disputed that the notice pay in lieu of notice is given. But, these two compliances in itself would not justify the action of retrenchment as if provision of section 25-F is taken into consideration then, it is clearly providing for intimation to Competent Authority and following provision of section 25-G, which indicates that the workmen have to be retrenched as per the seniority and the tenure, most workmen has to be retrenched first under the principle of last come first go.

9. The learned advocate for the petitioner further contended that the workmen could not have been retrenched without there being a proper seniority list maintained under the provision of Rule 81 of the Gujarat Industrial Dispute Rules. The learned advocate for the petitioner invited this Court's attention to the application Exhibit 10 under which unequivocally a demand was made on behalf of the workmen calling upon the respondents to produce the seniority list and other documents mentioned thereunder. As per those documents, the workmen were not likely to be retrenched. The Court made an order below Exh. 10 calling upon the respondents to produce the documents mentioned in Exh. 10. The non-production of those documents should have therefore pursued the Labour Court to draw an adverse inference against the respondents as those documents have not been produced, those documents would not have been in favour of the respondents, therefore, on this count also the Labour Court ought not to have dismissed the reference qua the demand for declaring the retrenchment being bad in eye of law.

10. Learned advocate for the petitioner further contended that the evidence on record indicate that the company after the retrenchment was effected, was functioning by engaging fresh hands and when the fresh hands were engaged for carrying out its activities, no opportunity for being employed was offered to the workmen in compliance with provision of section 25-H of the I. D. Act. The evidence in form of attendance register and report of the factory inspector,

unequivocally would show that companies were functioning and when companies were functioning with fresh hands, before engaging those hands, the companies were required to offer employment to the present retrenched workmen as there is no attempt or no notice as envisaged by this Court, the order of labour Court rejecting references is required to be quashed and set aside.

11. The learned advocate for the petitioner relied upon the following authorities in support of his submission. (1) Gujarat State Machine Tools Corporation Ltd. Vs. Deepak J. Desai, (2) Heirs and Legal representatives of deceased Krishna kumar D. v. Vinubhai Shantilal Sanghavi, 1998 (1) G.L.H. 265 (3) Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, (4) Regional Manager, S.B.I. Vs. Rakesh Kumar Tewari,

12. The learned advocate for the respondents has contended that the petition in the present form is not maintainable at all as even the Labour Court has observed in its award that during the pendency of reference the workmen or majority of workmen settled their disputes and therefore, they chose not to appear before Labour Court in any manner. The learned advocate for the respondents invited this Court's attention to the order under which the references were made and contended that the Reference No. 7/97 contains appendix, which would go to show that as many as 17 workmen were subject-matter of reference seeking relief raising industrial dispute. The Reference No. 9/97 contains as many as 8 workmen and Reference No. 10/97 contains as many as 17 workmen, whereas infact the Labour Court had to confine the decision qua 23 workmen only in total as against total workmen involved in all the three references on account of the fact that the respondents entered into agreement of settlement wherein all the other workmen accepted in addition to the retrenchment an amount of Rs. 4,000/- in lieu of all other claims made against the company-respondents. Thus, the fact remains to be noted that the workmen though figuring in the appendix during the pendency of the proceedings, walk away with an amount of Rs. 4,000/-, which were in addition to the amount paid to them in addition to the retrenchment as per the provision of section 25 (F) of L D. Act.

13. The learned advocate for the respondents contended that close perusal of the statement of claim and written statement would indicate that the workmen laid emphasis upon the so-called victimization and breach or so-called breach of rules and statutory provisions without being mindful of facts required to be pleaded in the statement of claim as foundation for justifying the assertion. Therefore, mere statement or assertion that there exists breach of any rule or statutory provisions in itself would not be sufficient for giving relief in favour of the workmen and therefore, the Labour Court has rightly not granted any relief in favour of the workmen.

14. The learned advocate for the respondents further contended that though the petitioner has filed this petition under Article 226 and also under Article 227 of the Constitution of India, the petition under Article 226 is not maintainable in

view of the fact that the Tribunal that is the Labour Court is not joined as a party so as to urge and therefore, this petition is essentially required to be considered as the petition filed under Article 227 only and the restrained ordinarily observed by the Court under Article 227 would pursued this Court not to interfere with the findings arrived at by the Labour Court depending upon the evidence.

15. The Labour Court has appreciated the development of events, which led to retrenchment event. The retrenchment is brought about on account of nonfunctional of the factories, but that reference in the order of retrenchment ipso facto would not be indicative of any victimization or can be said to be mala fide.

16. The learned advocate for the respondents further contended that the documentary evidences are not sufficient to accept the contention of workmen that there was a victimization or the retrenchment was result of victimization. Infact, strong reliance is placed upon the development of events, but they themselves cannot be said to be sufficient to suggest that the retrenchment was based upon the victimization.

17. The learned advocate for the respondents further contended that the attempt is made to indicate that the section 25-F of I. D. Act, as well as Rule-81 of the Gujarat Industrial Dispute Rules has not been followed. But, infact, the workmen have left their submission at this stage without substantiating the same however on the facts. The workmen did not produced their identity cards, which would have otherwise also made things clear. The workmen could have produced the identity card in order to substantiate their claim. But, they have not chosen to produce any material document in support of their claim and therefore, the Labour Court is arrived at correct conclusion and it cannot be said to be perverse and does not require any interference under Articles 226 and 227 of Constitution of India.

18. Learned Counsel for the respondents relied upon the decision of Apex Court in case of Regional Manager, S.B.I. Vs. Rakesh Kumar Tewari, and contended that this specific pleadings are required to be made in the statement of claim and in absence of such pleadings, the provision of section 25-G as well as section 25-H of I.D. Act, cannot be pressed into service by the workmen and therefore, on this ground also the conclusion arrived at by the Labour Court cannot be said to be perverse at all and does not require any interference under Articles 226 and 227 of Constitution of India.

19. This Court has heard the learned advocate for the parties and perused the documentary evidences and record, which was called for and which is available for perusal before this Court in respect of the three references. Before advertng the rival contention of learned advocate for the parties, it is most expedient to set out indisputable aspects emerging therefrom viz.

(a) The workmen have indicated that they were working in group of factories or industries situated in one premises, but they have not produced any

documentary evidence to indicate that the premises was one. Infact, they have not produced any documentary evidence to show that they were separate body corporate or not. Three industries out of eight industries were separate body corporate is not disputed at all by the workmen. Thus, it can be safely said that the union has not said that these industries were one body corporate. In other words, it is admitted fact that the each of the industries was a different and separate independent unit in terms of Industrial Disputes Act and therefore, each of the industrial unit being an employer was required to be treated as such. Unfortunately, the workmen have missed this fine distinction and they have not treated these eleven industries to be separate body corporate and they have admitted to show that they are under the same management group. The fine distinction with regard to the each industry as a body corporate is thus absolutely missed by the workmen and rather they have admitted that there were eleven industries working at the premises and the same were run by same management group. The management group is nowhere described or defined and the finding of reference by the name of reference and raising the dispute against each of industries would also suggest that there used to be a separate body corporate in which the different group of workmen are working.

(b) The fact remains to be noted that the point of controversy even as per the workmen also arose on account of 13 workmen working in M/s. V.G. Industries were retrenched on 13.12.1996. Therefore, workmen working in other industries also may be situated adjacent to each other protested and agitated on the ground that all industrial units were under same management. The so-called retrenchment of 13 workmen in M/s. V.G. Industries was viewed as illegal retrenchment by the workmen of other industrial units also and they protested and went on strike. As a result thereof, ultimately, the respective management of the industries were compelled to retrench the workmen under the provision of section 25-F of the I. D. Act. This retrenchment effected on 25.12.1996 was disputed as illegal for the reason, stated in their statement of claim, but fact remains that the retrenchment compensation and one month wages in lieu of wages have been accepted by all workmen though by marking "under protest or without prejudice to their right and contentions."

(c) The workmen after accepting the retrenchment compensation and one month's wages in lieu of the notice, which they had accepted under protest and without prejudice to their right, raised industrial dispute and demanded that they be given wages from 13.12.1996 to 25.12.1996 as they were legitimately protesting and on strike during that period and therefore, as the retrenchment of 13 workmen in M/s. V.G. Industries on 13.12.1996 was illegal. They could not have been denied wages for this period as the retrenchment was effected on 25.12.1996. Even that retrenchment was also disputed as the retrenchment compensation and one month's wages were accepted under protest.

(d) The second demand of the workmen was that the retrenchment be declared illegal, as it was brought about as a measure of retaliation on account of

workmen protesting against the illegal retrenchment of workmen in M/s. V.G. Industries on 13.12.1996.

(e) The workmen raised the demand that-the retrenchment of 25.12.1996 be otherwise also declared to be illegal, as the complete compliance of provision of section 25-F of the I. D. Act and Rules 81 and 82 of Gujarat Industrial Dispute Act were not followed by the management while bringing about the retrenchment. And workmen also contended, therefore, on this ground that they are entitled to be reinstated with full back wages.

(f) The fact remains that the reference in all the three references is ordered to be in respect of large number of workmen than 23 workmen for which ultimately reference survived as during their proceedings and even prior there to majority of the workmen accepted settlement offered by the respective management: and accepted Rs. 4,000/- for final settlement there, to end the dispute and did not choose to pursue the reference as noticed by the Labour Court.

(g) The workmen filed their statement of claim in which though there is an averment with regard to non-compliance with the provision of section 25-F of the I.D. Act, but there is no reference to non-compliance with Rule 81 as it is not mentioned. Court has not to adhere that, though non-maintaining of seniority list is mentioned in the statement of claim.

(h) The statement of claim do not contain any specific averment with regard to the non-compliance of section 25-H of the I. D. Act as there appears to be no pleading whatsoever qua section 25-H of the I.D. Act. Of course there is pleading with regard to the companies continuing with fresh" hands.

(i) The written statement contains complete denial of allegation with regard to the victimization as well as allegation with regard to allegation u/s 25-F and other than of I.D. Act. The statement of claim also contains that the workmen brought about a situation where under on account of non-availability of work, the workmen were required to be retrenched and retrenchment is effected after following the procedure of law, including compensation of one month's wages and as the companies were not obliged to take permission of appropriate Government in view of the similar work.

(j) The fact remains to be noted that for the entire dispute qua three different companies, workmen chose to examine three witness of only one company, that is witness Shri Ashokkhai Gondaliya, shri Alokbbhai Arjunbhai and Shri Sanjay Namdev Exh. 19, Exh. 20 and Exh. 21 respectively and all the three employees belonged to M/s. V C. Industries, which was a party in reference No. 10/97 only. In other words, it can be said that three witnesses were examined on behalf of workmen and all the three were workmen of M/s, V G. Industries only and no other workmen of other industries namely M/s. Alindra Tex-pro Engineers or M/s. V.S. Industries were examined at all by the union, in support of their claim.

(k) The management examined eight witnesses and produced the evidence in

support of the claim viz., factory inspector's report and the Attendance Register of the year 1996 and May 1998 and the Register of Identity Cards and contended that as the workmen were daily wagers, these documents were sufficient.

(l) The workmen did file Exh. 10 application in all the three references calling upon the company to produce [1] the attendance register for the year 1996 to August, 1998, [2] the wage register from the year 1996 to August 1998, [3] Seniority list of the workmen, [4] register of identity cards. The Court also ordered production of these documents as demanded. The management produced documents viz., attendance register of May, 1998 and December, 1996 only, and did not produced the seniority list on record. Thus, these two documents, as per the say of the learned advocate for the petitioner were not produced" though ordered by the Court and Court did not draw adverse inference and no affidavit is filed justifying the non-production.

(m) The workmen vide application Exh. 53-A requested the Court to consolidate all the three references, which was accepted and granted by the Court.

(n) The Court framed point of determination and ultimately came to the conclusion that the workmen deserves to be granted Rs. 4,000/- as it is given to other workmen and other demands were not accepted and the order was passed.

Against this aforesaid factual backdrop, now question arises as to whether the award impugned is required to be interfered with or not

20. The fact remains to be noted that the close perusal of statement of claim is clearly indicative of the fact that the workmen heavily relied upon their assertion of victimization and hence, did not specifically either pleaded or established as there was non-compliance with provision of Rule 81. of Gujarat Industrial Disputes Rules or breach of provision of section 25-F of the I. D, Act so as to render the retrenchment illegal.

21. The tenor of the statement of claim does not contain specific pleadings with regard to the breach of provision of section 25-H at all. This Court cannot accept the submission of learned Counsel for the workmen that the averments with regard to the continuing industries with fresh hands is a sufficient pleading for justifying the assertion that there was breach of section 25-G and (H) of the LD. Act per say. Intact, this Court is of the considered opinion that the primary duty cast upon the workmen for establishing prima facie breach of provision of section 25-F, section 25-G and section 25-H of the LD. Act was not discharged by the workmen as initially so far as the statement of claim is concerned, there exists no exact and specific pleading, which would lay foundation for building the assertion in respect of breach of all those provisions of LD. Act,

22. The statement of claim contains specific averment with regard to the workmen of all other industrial undertaking situated adjacent to each other took-up the cause of 13 workmen who were said to be wrongly retrenched on 13.12-1996 in M/s. V.G. Industries. Admittedly, the agitating workmen in whose

case subsequently the retrenchment was brought about by other industries and management were not in any other way concerned with the M/s. V G. Industries or its management for bringing about point of victimization and establishing the same mere averments that all the body corporates and the management were run by the same group is not sufficient. There require specific pleading, averments and establishing all these facts so as to bring about the factum of victimization clearly on record. The workmen in solidarity with other workmen may be agitated on account of the retrenchment brought about in other industries. But, in order to establish that the management of M/s. V.G. Industries, which is bowed before the industry, who brought about illegal retrenchment of 13 workmen on 13.12.1996, it was bounden duty cast upon the workmen to unequivocally bring on record that though- the management were different body corporate, the group was same and they were going in unionizing and ii? collision with each other. In absence of such foundation of pleading, there could not have been any assertion much less in establishing of victimization facts. Though optimistically it may appear that the retrenchment in respect of other workmen effected on 25.12.1996 had a nexus with the strike of the workmen, but workmen did not sought even declaration from the competent Court that their strike from 13.12.1996 till 25.12.1996 was justified or was not illegal strike. The workmen's first demand therefore, qua seeking wages for the period from 13.12.1996 to 25.12.1996 is also not established on account of lack of evidence or declaration qua their remaining on duty or rather their intention to work and offering themselves to work and denial from the management. On the contrary, the pleading and proceedings clearly indicate that the workmen in unionizing with each other did not chose to offer themselves for work from 13.12.1996 to 25.12.1996. Thus, when the workmen have remained absent or rather remaining present and kept away from work for protesting so called illegal termination qua 13 workmen of another industry cannot successfully plead that they are entitled for wages especially so when they have not even sought any declaration in this behalf from the competent Court. Thus, the first demand of the workmen qua wages rightly rejected by the Labour Court and it is in no way illegal and hence my conclusion qua first demand is that no illegality is committed by the labour Court in rejecting the demand qua wages and there is no illegality committed so as to call for any interference of this Court.

23. This bring the Court to discuss the second demand qua victimization and illegal retrenchment brought about on 25.12.1996. The Court is of the considered view that the pleading themselves amply indicate that all the workmen were retrenched, but without such pleading on behalf of the workmen, then there exists no justification of insisting production of seniority list. It is also admitted fact that the seniority list is not produced. Though the employer has stated that seniority list is not maintained. But, the Labour Court clearly observed that the workmen have not produced any evidence on record indicating that they filed complaint against the employer to the concerned officers or authorities under the legislation to indicate that the employers were not maintaining seniority list in

breach of Rule 81 of Gujarat Industrial Disputes Rules. Thus, on this basis the Labour Court has arrived at right conclusion and there cannot be any justifiable argument or pleading qua non-maintenance of seniority list. The Court has not adhered that the non-maintainability of seniority list in itself is in countenance to any order of the Court but the matter would not rest there alone in order to obtain relief. It was duty cast upon the workmen to English that non-maintenance of seniority list and retrenchment of the workmen, keeping the junior workmen in service is amount to violation of section 25-P of I. D. Act and Rule 81 of Gujarat Industrial Disputes Rules. In the instance case, the pleading thus, go to show that the workmen have stated that all the workmen were retrenched. Now, all workmen are retrenched based upon the strike and the circumstances mentioned in the written statement that the situation arose so as to indicate that there exists no work, which could be offered to workmen, who were paid on a daily wages basis, could not have justified and contended that there was any breach so as to call for interference.

24. It is also required to be noted that for establishing breach of the principle of last come first go, it was a duty cast upon the workmen to unequivocally pointed out that which senior workmen was retrenched and which junior was retained. In the instant case, as it is stated herein above and it is reiterated at the cost of repetition, the statement of claim and subsequent pleading and evidence do not indicate as to which senior workmen was retrenched and which junior workmen was retained. Thus, there exists in foundation basic lacuna and the pleading and evidence, which would otherwise go to the root of the matter and, which would not justify any relief to be granted in favour of the workmen on the ground that there is a breach of section 25-F of I.D. Act or Rule 81 of Gujarat Industrial Disputes Rules.

25. This brings the Court to discuss the third demand with regard to continuing the factory with atleast seven workmen. This also is required to be considered from the fact that mere assertion would not be sufficient without establishing that whether the factory was infact working or not and the production was going on or not. If one looks very closely the evidence of management, then it could be evident that all along it is pleaded and established by the management that the function of the factory was not operational and when the workmen did not challenge by way of appropriate pleading that there existed work and despite existing work and production, the workmen were retrenched and as such retrenchment was not warranted. It was, thus, duty cast upon the workmen to call upon the management to produce the figures of the production, the purchase on raw material and any other material, which would indicate either the factory or either the production was going on or not. On the contrary, the factory inspector's report produced on record, indicates that the factory could not have been operational as earlier. The factories were engaging large work force and as against this seven workmen showing on the role would be showing that the production activities were going on in all these organizations. Therefore, on this count also one may safely say that the workmen failed in establishing that

production was going on and despite the work available, they were not given work and retrenched. This would have been actually hit by the fact that the retrenchment was brought about mala fide, but the workmen have not even laid foundation clearly how and in what manner the production was going on. The continuation of electricity ipso facto cannot be said to be a factum going to suggest that factory being operational and producing goods, which goods otherwise produced by the large number of workmen, who were retrenched. This Court is of the considered view that in lieu of the aforesaid discussions, though some of the conclusion of the Labour Court do not indicate justification, but the petition is filed under Articles 226 and 227 of the Constitution of India and therefore, the Court has to restrain in examining the evidences, which are not to be evaluated by the Court and the findings recorded, the facts have to accept if therein. The findings cannot be said to be perverse and is called for interference of this Court under Articles 226 and 227 of Constitution of India and therefore, the petition deserves rejection and accordingly the same is rejected. Rule discharged. However, there shall be no order as to costs.