

(2015) 10 GUJ CK 0043
In the Gujarat High Court

Case No : Special Civil Application Nos. 6805, 6806, 6807, 6808, 7219, 7220, 7221 and 7223 of 2015

Gujarat Eleetricity Board and Others APPELLANT

Vs

Hardas Mesur Chavda and Others RESPONDENT

Date of Decision : 30-10-2015

Acts Referred:

Citation : (2015) 10 GUJ CK 0043

Hon'ble Judges : Paresh Upadhyay, J.

Bench : Single Bench

Advocate : J.V. Bhairavia, Advocate, for the Appellant; Ketan D. Shah, Advocate, for the Respondent

Judgement

Paresh Upadhyay, J.—Challenge in this group of eight petitions is made by the employer and the workmen both, to the different but identical awards passed by the Labour Court, Junagadh dated 11.12.2014, the details of which are reflected in the table hereunder. Since the controversy is identical, the reasoning of the Labour Court in each award is on identical line. The matter pertains to four workmen, who were terminated from service. The Labour Court, by the impugned awards, has awarded reinstatement without back wages. The employer and the workmen both have challenged the same. The electricity company has filed petitions being Special Civil Application Nos. 6805 to 6808 of 2015 challenging the finding of the Labour Court that the discontinuance of service of the workmen was illegal and thereby challenge is to the award of reinstatement. The workmen have filed petitions to the extent of denial of back wages being Special Civil Application Nos. 7219, 7220, 7221 and 7223 of 2015.

2. Mr. Bhairavia, learned advocate for the employer-electricity company has submitted that the workmen were appointed on different dates, on the posts reserved for Schedule Tribe candidates. The workmen at the relevant time had produced certificates, claiming that they belonged to Schedule Tribe. The employer had sent communications to the authority of the Government to

confirm the certificates, based on which employment was secured. It is submitted that since this was not confirmed, show cause notices were issued to the each workman and after due inquiry, termination was effected. It is submitted that this termination was challenged by the workmen, which is set aside by the Labour Court. It is submitted that the action of the employer can not be termed to be illegal in any manner and therefore the award passed by the Labour Court be interfered with. It is submitted that the challenge to the awards as made by the workmen, claiming back wages be rejected.

3. On the other side Mr. Shah, learned advocate for the workmen has contended that, it is not in dispute that the workmen do belong to Schedule Tribe. The controversy was raised by the employer with regard to genuineness of the certificate issued at a particular time by the authority and not with regard to actual status of the workmen being schedule Tribe. Reliance is placed on the certificates issued by the different authorities in favour of the workmen even subsequently. It is submitted that the factum of the workmen belonging to Schedule Tribe, was not in dispute. It is submitted that the Labour Court has rightly set aside the termination and therefore, this Court may not interfere in the petitions filed by the employer. It is submitted that those petitions be dismissed. It is further submitted that denial of back wages by the Labour Court needs to be interfered with and therefore those petitions be allowed.

4. During the course of hearing of this group of petitions, this Court was faced with a situation that, on one hand there is clear preposition of law that no leniency should shown to a person who has obtained public employment on the post reserved for Schedule Tribe, if he does not belong to such category, and on the other hand, the case of the workmen is to the effect that the factum of they belonging to the Schedule Tribe was never in dispute and the only controversy was with regard to some procedural lapse in issuance of such certificate, like the officer who gave certificate ought not to have given it, and some other authority should have done it, like that. Under these circumstances, it was thought proper to take assistance from the State Authority, who was even otherwise party respondent in the petitions. It is noted that, Mr. Utkarsh Sharma, learned Assistant Government Pleader has assisted the Court. The affidavit in reply of the appropriate authority from the Tribal Development Department is filed in each petition. The same is taken into consideration by this Court.

5. Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds as under.

5.1 It is not in dispute that the posts in question were reserved for candidates belonging to Schedule Tribe. It is also not in dispute that, these four workmen were appointed on those posts.

5.2 The controversy before this Court has two dimensions. Firstly, whether the certificates issued in favour of these workmen at the relevant time were correct or not, and secondly, as a matter of fact, whether these workmen belong to

Schedule Tribe or not. This Court has concentrated on the material aspect as to whether, factually these candidates belong to Schedule Tribe or not. For this purpose, assistance of the State Authority is also taken by this Court. The affidavit-in-reply of the concerned officer of the Tribal Development Department of the Government, which is on record, is taken into consideration. As per the said affidavit, if any employer questions the legality or validity of any caste certificate, the procedure is prescribed by the State, which is through the Scrutiny Committee, which looks into the matter. In the present case, no such issue is ever raised by the employer- the electricity company. In the year 2006 also, the certificates are issued by the Competent Authority certifying these four workmen belonging to Schedule Tribe. Those certificates are on record, the genuineness of which is not in question. Under these circumstances, there is ample material on record before this Court to hold that all the four workmen are having valid certificates of their belonging to Schedule Tribe. It would be travesty of justice to say that, these candidates belong to Schedule Tribe in the year 2006 but did not belong to Schedule Tribe before one or two decades i.e. at the time of their appointment. Under these circumstances, it is declared that, the status of all these four workmen of their belonging to Schedule Tribe is supported by the validly issued certificates, which hold the field. Under these circumstances it would be academic to go into the question, as to whether the certificates which were issued by the concerned authority at the relevant time were genuine or not. Suffice it to hold that, the awards passed by the Labour Court setting aside the termination need not be interfered with. For these reasons, the petitions filed by the employer, questioning the award of reinstatement need to be dismissed.

5.3 Coming to the next question as to whether the Labour Court should have awarded back wages or not, is the matter which needs to be looked into in detail. Though the interference by the Labour Court in termination of the workmen is not interfered with by this Court, still it needs to be adjudicated, as to whether the action of the employer could be termed to be so highhanded on the face of the material on record, prevailing then, that the consequential benefits are also required to be granted. For this purpose, the petitions filed by the workmen are admitted, however, no interim relief can be granted in those petitions.

6. For the reasons recorded above, the following order is passed.

6.1 Special Civil Application Nos. 6805, 6806, 6807 and 6808 of 2015 filed by the employer are dismissed. Notice in each petition is discharged. No order as to costs.

6.2 Special Civil Application No. 7219, 7220, 7221 and 7223 of 2015 filed by the workmen are admitted. Rule be issued in each petition.