

(2019) 07 GUJ CK 0142
In the Gujarat High Court

Case No : R/Special Civil Application No. 723 Of 2010

Gujarat State Electricity Corporation Ltd	APPELLANT
Vs	
Darshandan Surapdan Gadhvi	RESPONDENT

Date of Decision : 24-07-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 25B, 25B(i), 25F, 25G, 25H
Constitution Of India, 1950 — Article 227

Citation : (2019) 07 GUJ CK 0142

Hon'ble Judges : G.R.UDHWANI, J

Bench : Single Bench

Advocate : Premal R Joshi, Tr Mishra

Final Decision : Allowed

Judgement

1. Judgement and award dated 27.07.2009 rendered by the Labour Court, Bhuj-Kachchh in Reference LCB Case No. 82 of 1999 setting aside the retrenchment of the opponent and awarding reinstatement with continuity of service with 25% backwages with consequential benefits is sought to be assailed in this petition under Article 227 of the Constitution of India.

2. The workman had concededly worked for 106 days and was terminated in the year 1985 and raised the industrial dispute in the year 1999 which eventually culminated into the reference as above stated.

3. The Labour Court rested its findings broadly on the following aspects:

[1] Workman having been in continuous service for more than 90 days; his retrenchment was in breach of Section 25F of the Industrial Disputes Act, 1947 (for short 'the I.D.Act'); [2] his services could not have been terminated in view of the Circular dated 07.11.1986 prohibiting the termination of the work- charge employee completing more than 90 days; the breach of circular was considered as a breach of Section 25F of the I.D.Act; [3] Section 25G and Section 25H of the I.D. Act were violated.

4. From the rival submissions, following questions fall for consideration of this Court:

[1] Whether Section 25B of the I.D.Act would be attracted in case of the employee not being in continuous service for 240 days or 120 days as the case may be?

[2] Whether the Circular (supra) was applicable in the facts of the present case ?

[3] Whether the Circular could have been read in conjunction with Section 25F of the I.D.Act?

[4] Whether in absence of the specific material establishing breach of Section 25G and Section 25H of the I.D.Act, the impugned judgement and award was rendered without evidence on record in other words for that reason whether impugned judgement and award is perverse?

[5] Whether the impugned judgement and award suffers from non application of mind ?

5. Having perused the record more particularly the impugned judgement and award with the assistance of the learned counsel for the respective parties, this court is of the opinion that the impugned judgement and award evidences the lack of cardinal principles of law, for the following reasons:

[1] The fact that the workman was not in continuous service for 120 days during the preceding six months or 240 days during the preceding twelve months of the date of termination as the case may be was not in dispute. Had the court below taken trouble to glance through Section 25B of the I.D.Act, it would have immediately understood that in absence of the satisfaction of one of the above two conditions, retrenchment was permissible without paying compensation or complying with the other conditions contemplated in the said provision. Thus the finding by the Labour Court as regards breach of Section 25F of the I.D. Act is not based upon the legal provision but is outcome of lack of elementary knowledge as to Section 25B of the I.D. Act.

[2] It was sheer misconception of the Labour Court to rely upon the Circular dated 07.11.1986 which was issued under the circumstances noted by the Labour Court itself in paragraph 21. The relevant quotation is as under:

"In the present case there is sufficient evidence to show that the employee has completed 106 day continuous service preceding to his retrenchment as prescribed by the Circular dated 07.11.1986 issued by the Deputy General Manager (Labour) of the opponent, so this Court has no hesitation in holding that the employee has completed continuous service of more than 90 days (106 days) as per the provision of Section 25-B(i) of I.D.Act because as per Circular No. DGM(L)/IV.S.IT- 878/84/NMR-WC/1011 dated 07.11.1986 issued by Deputy General Manager (Labour) of G.E.B., Baroda which was passed as per order dated 13.11.1983 of the Industrial Tribunal, Ahmedabad by which directions

were given by the Industrial Tribunal, Ahmedabad, it was clarified that the employees who were employed as NMR employees or work-charge employees after the date of the aforesaid order, but had completed continues service of 90 days would be covered by the injunction order and the Board would not be justified in discharging them from service."

[3] Despite being acquainted with the facts as above, the Labour Court refused to understand the purport of the Circular and construed it as a general policy of the petitioner not to discharge the employees with a specified term of service. From the above quotation, the source of the Circular appears to be the order dated 13.11.1983 passed by the Industrial Tribunal, Ahmedabad in a pending dispute before it and it was clarificatory Circular only concerning the employees involved in the dispute in the Industrial Tribunal, Ahmedabad. The dispute in the instant case was being adjudicated by the Labour Court, Bhuj-Kachchh; the Circular was not at all relevant nor did it contain a general policy as above. By misconstruing the circular, serious jurisdictional error was committed by the Labour Court.

[4] The Labour Court also laboured under a misconception of facts and law when it found breach of Section 25G and 25H in absence of the workman naming and proving the retention of persons junior to him in breach of Section 25H of the I.D.Act. Concededly no detailed particulars or the name of the employees so retained were given by the workman. His bald statement was accepted as evidence. Similar is the case with Section 25H of the I.D.Act. It is settled law that a bare statement in the oral evidence would not constitute a material much less an evidence. Thus serious jurisdictional error was committed by the Labour Court in recording aforesaid finding.

[5] The issue of delay in raising the dispute was raised by the petitioner but was not addressed. In view of *Prabhakar vs. Joint Director, Sericulture Department & Anr.* - (2015) 15 SCC 1, it was required to be gone into even if not raised. The burden was upon the workman to demonstrate how dispute was alive after so many years. No such burden was discharged.

[6] It was again misconception of law by the Labour Court to expect seniority list under Rule 81 and 82 of the relevant rules in case of work-charge employee. It is held in (2005) 8 SCC 750- *Surendranagar District Panchayat vs. Dahyabhai Amarsinh* that in absence of regular appointment of workmen, employer is not expected to maintain seniority list of employees engaged on daily wages-casual labour/temporary employment.

[7] Assuming that the appointment of the workman was on a permanent vacant post; that by itself would not invest lien to the post; in the employee in absence of his appointment by a legal procedure. Therefore the findings that he was appointed on permanent vacant post are of no consequence.

[8] The workman has hardly served 106 days before raising the dispute. He could not establish the breach of Section 25F, 25G and 25H of the I.D. Act. The

workman was thus not entitled to compensation for retrenchment. Therefore the submission that relief could be moulded on account of belated reference by denying backwages to the workman has no substance.

6. In above view of the matter, the petition deserves to be allowed. Accordingly allowed. Impugned judgement and award is quashed and set aside.