

(1986) 09 GUJ CK 0014

In the Gujarat High Court

Case No : Spl. Civil Application No. 3435 of 1986

Gujarat State Machine Tools Corporation Ltd.

APPELLANT

Vs

Deepak J. Desai

RESPONDENT

Date of Decision : 08-09-1986

Acts Referred:

Industrial Disputes (Gujarat) Rules, 1966 — Rule 82(1)
Industrial Disputes Act, 1947 — Section 2, 25H

Citation : (1987) 1 GLR 387 : (1994) 3 LLJ 848

Hon'ble Judges : P.R. Gokulakrishnan, C.J;R.A. Mehta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Gokulakrishnan, C.J.—This Special Civil Application is for issuing appropriate writ, order or direction to quash the award annexure-A to the Special Civil Application. The respondent raised a dispute to the effect that he should be reinstated in original post with full back wages. According to the respondent, he was treated as a permanent workman, that he served the Company from 12-10-1982 to 11-4-1983, that he has been discharged without following the procedure and that as such he must be reinstated in service with back wages. It was the contention of the appellant before the Labour Court that the workman was employed purely on a temporary basis and that he has been correctly discharged from service and as such he is not entitled to have the benefit of reinstatement or back wages. The Labour Court, after referring to the Model Standing Orders and also the provisions of Section 25H of the Industrial Disputes Act, came to the conclusion that the respondent must be reinstated in service with continuity of service, but without back wages. Questioning this award, the present Special Civil Application has been filed by the Management. Mr. Nanavati, the learned Counsel appearing for the appellant, submits that the Labour Court had refused to adjourn the matter in spite of the fact, that the Counsel for the Management wanted the case to be adjourned till afternoon. That without any pleading as regards the violation of Section 25H, the Labour Court has taken into

consideration Section 25H of the Industrial Disputes Act and has passed the order and that in any event, Section 25H will not apply to the facts of the case since the respondent cannot have the benefit of definition of Section 2(o), of the Industrial Disputes Act.

2. It is clear from the fact of the case and also admitted by Mr. Nanavati that the case arose prior to 1983 and Section 2(o)(bb) came into force only on 18.8.1984. From the facts of the case, it is clear that the Labour Court has examined the workman and also the evidence adduced by the respondent herein. The appellant did not lead any oral evidence. According to the workman who is the respondent herein, he was doing the work which is of permanent nature. That subsequently he is discharged. Fresh recruitment has been made to the Accounts Deptt. in which he was working and that the Company has also advertised this post in the dailies. Taking all these aspects into consideration, the Labour Court came to the conclusion that the respondent herein is entitled to have the benefit of Model Standing Order and also should be termed as a person employed against a permanent vacancy. As far as this Model Standing Order is concerned, the Supreme Court had an occasion to consider Clause 2(a) and (p) of the said Model Standing Order in SLP (Civil) No. 3882 of 1981 in which the Supreme Court has observed as under:

"A bare reading of the relevant Standing Order shows that on the expiration of the period of probation, either the workman is discharged as being unsuitable or he acquires the status of a permanent workman. There is no hiatus. That is the view taken by the Labour Courts and High Courts and this view is unassailable".

3. As far as the present case is concerned, the respondent worked from 12.10.1982 to 11.4.1983. Hence, there is absolutely no difficulty in applying the principles laid down in the aforesaid Supreme Court's decision to the facts of this case. From the definition of Section 2(o) of the Industrial Disputes Act, as regards the retrenchment, we, do not find anything in this definition to exclude the temporary worker from such a definition. Hence, the argument of Mr. Nanavati to the effect that this definition as it stood at the time of discharge of the present respondent will not include temporary worker cannot be appreciated. Factually also, it cannot be said that the respondent was inducted into service against a temporary vacancy. If that be so, Section 25H will squarely apply to the present case. The argument to the effect that such a pleading has not been made by the workman in statement cannot be made a ground to deny the workman the benefit of Section 25H of the Industrial Disputes Act. Section 25H reads as follows:-

Re-employment of retrenched workmen:

"Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment and such retrenched workmen who offer

themselves for re-employment, shall have preference over other persons".

4. Mr. Nanavati, the learned Counsel for the appellant, submitted that mere advertisement in the newspapers will not in any way offend Section 25H, but on the other hand, it should be taken as invitation for the discharged workman to apply and get himself reinstated. We are not able to appreciate this argument. Section 25H is very clear to the effect that the workmen who are retrenched should be given an opportunity as prescribed by the rules before the Management recruits fresh hands for the same post. Rule 82 of the Gujarat Industrial Disputes Rules clearly envisages the method and manner in which such intimation has to be given to the discharged employee. In this case, Rule 82 (1)(b) will squarely apply. Hence failure to give registered notice which is admittedly not done in this case is fatal to the argument advanced by the Management as regards, compliance of Section 25H. Even on this aspect of the case, we are of the view that the Labour Court is correct in coming to the conclusion that there is violation of Section 25H and on that ground also, the workman has to be reinstated in service. The Labour Court, after taking into consideration the gainful employment of the respondent somewhere has correctly denied the back wages.

5. For all these reasons, we are in complete agreement with the award passed by the Labour Court and as such this Special Civil Application is dismissed.