

(2010) 07 GUJ CK 0028
In the Gujarat High Court

Case No : L.P.A. No. 1445 of 2003 and C.A. No. 10658 of 2003

Gujarat Water Supply and Sewerage Board and Another	APPELLANT
Vs	
Bipinchandra N. Ramanuj	RESPONDENT

Date of Decision : 21-07-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F, 25H

Citation : (2011) 1 LLJ 84

Hon'ble Judges : K.M. Thaker, J; Bhagwati Prasad, J

Bench : Division Bench

Advocate : H.S. Munshaw, for the Appellant; A.K. Clerk, for D.T. Shah, for the Respondent

Final Decision : Allowed

Judgement

Bhagwati Prasad, J.—Heard the learned Counsel for the parties.

2. The learned Counsel for the Appellants has assailed the order of the learned single Judge and has supported the findings of the learned Labour Court.

The Respondent-workman was appointed with the Appellants vide order dated April 16, 1984. Thereafter, the appointment was extended on November 12, 1984 and it was further extended on January 30, 1985. In the appointment orders, it is clearly stated that the appointment will be upto a particular date and/or until regularly selected candidates are available. Final order which was passed on January 31, 1985, contained a stipulation that the appointment is upto July 31, 1985 or if a regular selected candidate is available.

3. According to the Appellants, the appointing authority had already initiated the process of appointment and advertisement had already been issued in that regard. On July 31, 1985, when stipulation as contained in the order dated January 31, 1985, came to be matured, the services of the Respondent-workman were dispensed with and in that light, it was a case covered by Section 2(oo)(bb) of the Industrial Disputes Act and the Labour Court had countenanced the

argument of the Appellants, but the learned single Judge has gone wrong in observing that this cannot be a case covered by the definition of Section 2(oo)(bb). For that, the learned single Judge has relied on the findings arrived at by this Court in a decision, in the matter of Bharat Heavy Electricals Ltd. v. R. V. Krishnarao 1990 I LLJ 87 (Guj). According to the learned Counsel, in that case, termination was on June 14, 1980, therefore, the Division Bench of this Court had held that Section 2(oo)(bb) having been enacted only with effect from August 1984, it cannot have retrospective operation. In that view of the matter, the learned Counsel for the Appellants urged that the findings of the learned single Judge on this count are vitiated for applying the law, which are not applicable in the facts and circumstances of the case. The learned single Judge, according to the Appellants, had gone wrong in not applying the purport of Section 2(oo)(bb) and in that view of the matter, the learned single Judge has erred in reversing the order of the Labour Court.

4. The other aspect which has been considered by the learned single Judge is that such kind of periodical appointment could not have been made because it has to be shown by evidence by employer that there was no continuous work available and such kind of contractual engagement cannot be appreciated.

5. The other aspect considered by the learned single Judge was that in place of the Petitioner, Respondent herein, other persons were recruited and therefore, there is violation of Section 25H of the I.D. Act. According to the learned Counsel for the Appellants, the workman, in his evidence, has not stated at all as to who has been appointed and on what post he has been appointed. Therefore, there is a bald statement that after termination of his services, certain persons have been employed. There is no detail given in the evidence. Therefore, the finding of the learned single Judge on the implication of Section 25H is vitiated and in that regard, the learned single Judge has misquoted that before the other persons are appointed, no opportunity was given to the Petitioner-workman. Therefore, the learned single Judge came to the conclusion that the termination of the services of the Petitioner-workman is not covered u/s 2(oo)(bb) and hence, there is no application of Section 2(oo)(bb). The learned single Judge has further held that it was against Section 25F of the I.D. Act as well.

6. The learned Counsel for the Appellants urged that there is no foundation led by the workman that the termination of the Petitioner could be termed to be in violation of Section 25F of the I.D. Act, because there was no question of Section 25F being in vogue because the case was squarely covered by Section 2(oo)(bb).

7. Per contra, the learned Counsel for the Respondent-workman has submitted that the reliance has been placed by the learned single Judge on the decision rendered in the case of Bharat Heavy Electricals Ltd. v. R. V. Krishnarao (supra) because Section 2(oo)(bb) was not in vogue when initial appointment was made and appointment was continued and therefore, the termination cannot be covered by the provisions of Section 2(oo)(bb).

8. The learned Counsel for the Respondent further urged that the employer cannot invoke the provisions of Section 2(oo)(bb) of the I.D. Act when the work is of subsisting nature. In that regard, the learned Counsel has placed reliance on a case decided by the Supreme Court in the case of S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka,

9. Lastly, the learned Counsel for the Respondent-workman submitted that since the termination occurred because there was an absence for one day, therefore, on that count, it is punitive action and therefore, it will be covered by Section 25F and thus, it would be a termination without following the procedure provided u/s 25F of the I.D. Act or holding any inquiry.

10. We have considered the rival submissions of the learned Counsel for the parties. We are of the considered opinion that the law laid down by this Court in the matter of Bharat Heavy Electricals Ltd. v. R. V. Krishnarao (supra) will not be governed in light of the facts that the termination in that case was on June 14, 1980 and the date was prior to 1984 when Section 2(oo)(bb) came. In the present case, Section 2(oo)(bb) was in vogue when the alleged termination of services has taken place. Therefore, the law relied by the learned single Judge and the learned Counsel for the workman, as regards Bharat Heavy Electricals Ltd. v. R.V. Krishnarao (supra), cannot be said to be applicable in the present set of facts and circumstances. If a reliance is placed on the order of appointment of workman, then we find that it is clearly covered by the definition as contained in Section 2(oo)(bb), wherein it has been stated that if there is a stipulation in the appointment order for termination, then such termination under the stipulation would be covered by Section 2(oo)(bb). In the instant case, it was clearly stated that on July 31, 1985, the term of appointment will come to end or otherwise, if a selected candidate is available. The process of selection has already been started, which is not disputed. In that view of the matter, if the termination was in terms of the stipulation of the appointment order, then it cannot be said that it would be covered by Section 2(oo)(bb) of the I.D. Act. Thus, the findings of the learned single Judge are not correct and erroneous and accordingly, they are set aside.

11. As regards the case of implication of Section 25H of the I.D. Act, the learned Counsel for the Respondent-workman was not in a position to say that who was the employee who was recruited and on what post because none of these ingredients are stated in the deposition of the workman before the Labour Court. Therefore, the finding of the learned single Judge that the workman has suffered consequences of not following the mandate of Section 25H is not based on the facts, as borne out from the material on record. In that view of the matter, those findings are also required to be set aside and they are held erroneous.

12. As regards question of Section 25F of the I.D. Act, if termination was u/s 2(oo)(bb), then question of invoking termination to be covered by Section 25F does not arise. In that view of the matter, the findings of the learned single Judge are held erroneous.

13. In the above view of the matter, we hold that the learned single Judge has gone wrong in setting aside the order of the learned Labour Court and ordering reinstatement of the workman. The order of the learned single Judge is set aside. The order of the Labour Court is ordered to be restored. The appeal is allowed accordingly.

14. In view of the disposal of the appeal, no order is required to be passed in the Civil Application and it is disposed of accordingly.