

(2005) 02 GUJ CK 0039

In the Gujarat High Court

Case No : Special Civil Application No. 9617 of 1996

Gujarat Water Supply and Sewg. Board

APPELLANT

Vs

Dineshbhai M. Solanki

RESPONDENT

Date of Decision : 18-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Gujarat Electricity Board Service Regulations — Regulation 113

Industrial Disputes Act, 1947 — Section 11, 2, 25B, 25F, 25G

Citation : (2005) 02 GUJ CK 0039

Hon'ble Judges : Sharad D. Dave, J

Bench : Single Bench

Advocate : H.S. Munshaw, for the Appellant; Sudha R. Gangwar and R.V. Desai, for the Respondent

Final Decision : Dismissed

Judgement

Sharad D. Dave, J.—The present petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India challenging the Award dtd.6th June, 1996 passed by the Labour Court, Bhavnagar in Reference (LCG) No. 100 of 1993 whereby the petitioner is directed to reinstate the respondent in service with continuity and full back wages with cost of Rs.500/-.

2. This Court (Coram : J.N. Bhatt, J.) vide order dtd.27/11/1996 issued Rule and also granted ad-interim relief.

3. Heard Mr. HS Munshaw learned counsel for the petitioner and Mr. RV Desai learned counsel for the respondent.

4. Mr. HS Munshaw, learned counsel for the petitioner has mainly argued that the petitioner had undertaken project of laying down pipeline to provide potable water to the villages surrounded to the town of Damnagar, District Amreli, with the financial help of Government of Netherland. It is further argued that the respondent was employed in the said project purely on temporary and ad-hoc

basis w.e.f.9/5/1986 as a daily wager and he was working as a Watchman on the site. It is also argued that the respondent himself stopped attending the work with effect from 28/7/1987 and later on approached the Labour Court, Rajkot by way of filing Reference (LCR) No. 1448 of 1987 praying for reinstatement in the service with full back wages. It is further argued that in the said reference, a detailed reply was filed by the petitioner before the Labour Court making it clear that it was the respondent who left the work on his own and at the relevant time no junior was continued or fresh recruitment was made. Thereafter the matter was transferred to the Labour Court at Bhavnagar on its constitution at Bhavnagar and it was re-numbered as Reference (LCG) No. 100 OF 1993. It is further argued that though necessary record relied upon by the Board was produced and exact facts were brought to the knowledge of the Labour Court, the Labour Court without considering the same, has passed the impugned Award directing the petitioner to reinstate the respondent in service with continuity and full back wages right from 28/7/1987. It is also argued that the labour court has erred in not appreciating the fact that the respondent himself had stopped to attend the work on his own and thereafter approached the labour court; the labour court has erred in not appreciating the fact that the respondent was working as a daily wager on temporary basis on a project which was started to lay down pipeline for providing potable water in the surrounding villages of Damnagar Town with the financial help of Netherland Government and hence the respondent has no right of continuity and therefore, not entitled for reinstatement with continuity and back wages; the labour court erred in not considering the fact that the respondent had left the work on his own and thereafter no new person was appointed and no junior to him was continued; the labour court failed to appreciate that the project was purely on temporary basis and it was to lay down pipelines for providing potable water as aforesaid, and the said project work was over and hence the respondent who was purely a daily wager and appointed for temporary period cannot be reinstated; the learned labour court has erred in not appreciating the evidence on record and the ratio of this Court as well as the Honourable Supreme Court that on temporary project where the workman is employed purely on temporary and daily wage basis, provisions of Industrial Disputes Act are not attracted and hence the impugned order is illegal.

4.1. Learned counsel for the petitioner has relied on the order dtd.4/2/2005 passed by this Court (Coram ; R.R. Tripathi, J.) in Civil Application No. 15925 of 2004, more particularly para 7 of the order which reads as under;-

"Taking into consideration the rival contentions of both the learned advocates, it is deemed fit that the judgment and award of the learned Judge is modified to an extent, to see that interest of justice is served. The petitioner Board will be spending the amount from the public exchequer, if it pays 50% wages to the respondent workman. Besides, it cannot be lost sight of that the respondent workman was working as a "daily wager". Therefore, there shall not be any continuity of service or grant of consequential benefits. But at the same time, the

service which he rendered, i.e. from 9/3/1985 to 5/4/1988 cannot be ignored. Therefore, the petitioner Board is directed to reinstate the respondent workman on his original post, giving him credit of his earlier service which is stated to be of three years. The petitioner Board is directed to reinstate the respondent workman within two weeks from the date of receipt of this order. Mr. Munshaw, learned advocate for the petitioner to communicate this order to the petitioner Board. This petition is allowed. Rule is made absolute to the aforesaid extent only. No order as to costs."

5. Mr. RV Desai, learned counsel for the respondent has supported the impugned Award passed by the labour court and has argued that the labour court has passed the Award considering the evidence on record and no error is committed and hence this court cannot re-appreciate the evidence as this Court has limited jurisdiction under writ petition filed by the petitioner under article 227 of the Constitution of India. He has further argued that the respondent was employed as Watchman w.e.f.9/5/1985 and his service was orally terminated on 28/7/1987 in violation of Sec. 25(F) and 25(G) of the I.D. Act. He has also drawn my attention to the definition of workman as per sec. 2(s), and argued that it includes all types of workmen, Badli, temporary, ad-hoc, probationer etc. because the definition of workman starts with "workman means any person employed in an industry." He has also drawn my attention to the definition of retrenchment as per sec. 2(oo) of the I.D. Act and argued that retrenchment includes all types of termination of services except termination of services for misconduct, known as punitive termination and the retrenchment means "termination of services of workman for any reason whatsoever otherwise than by way of punishment". He has further argued that the labour court has rightly held that sec. 25(F) is violated by the petitioner, which is mandatory. It is also argued that the petitioner has terminated the service of the respondent orally and without paying retrenchment allowance either at the time of retrenchment or before that and said fact is undisputed. He has also argued that the respondent has worked for more than 240 days as explained under sec. 25(B) of the ID Act in the preceding 12 months. It is also argued that the labour court in its award has held that juniors to the respondent were continued and therefore, there is breach of Sec. 25(G) of the ID Act. He has further argued that the petitioner has tried to develop his case by making a statement that the respondent had left the service on his own w.e.f.28/7/1987, but the Labour court has clearly held in its Award that demand notice for reinstatement dtd.17/8/1987 was served upon the petitioner, but it has not been replied and further letter dtd.26/4/1990 was also served upon the advocate of the petitioner for reinstatement, but the same was also not replied and the labour court has come to the conclusion that the respondent has reported for work on 27/8/1990 (Ex.11) but he was denied. He has also argued that no appointment order was issued and no evidence was laid by the petitioner before the Labour Court that the appointment was for project work. Consequently he has prayed to dismiss the petition as the Award passed by the Labour Court is just, legal and in consonance with the provisions of the

Act and this Court has limited powers under Articles 226 and 227 of the constitution of India and this Court cannot sit as Appellate Court and cannot re-appreciate the evidence.

5.1 He has also relied on the decision in the case of Gujarat Electricity Board Vs. Narayanbhai Kalubhai, reported in 2002 (3) GLR 2717. Head-Note (A) of the said decision reads as under:-

(A) SERVICE LAW - Constitution of India, 1950 - Arts. 226 & 227 - Industrial Disputes Act, 1947 (XIV of 1947) - Secs. 2(oo), 11 & 25(F) - Gujarat Electricity Board Service Regulation - Regulation 113 - Termination simpliciter and termination punitive - Contention of the petitioner was that the services of the respondent - workman was ordered after service of three notices to resume - Regulation 113 enables the Board to order summary termination - No departmental enquiry necessary - Held, in case of termination simpliciter sec. 25F of the I.D. Act is required to be followed which is admittedly not followed and in the case of punitive termination, principles of natural justice have to be followed."

5.2. He has also relied on the decision in the case of Chief Officer, Keshod Municipality Vs. Chandrakant Harilal Rakholiya, Head Note - A of the said decision reads as under;-

"(A) Industrial Disputes Act, 1947 (XVI of 1947) - Sec. 25F - Provisions of Sec. 25F not complied with while terminating the services of workmen - No evidence led by employer before Labour Court controverting the claim of the workmen - Nothing to show that the workmen were gainfully employed after their services were terminated Orders passed by the Labour Court reinstating the workmen with full back wages upheld - Fact that employer is a public body facing financial difficulties is not a matter of any relevance."

He has also relied on para 15 of the said judgment which reads as follows;-

"15.Apart from that, this Court is having very limited jurisdiction while exercising powers under Arts. 226 and 227 of the Constitution of India. This aspect has been recently examined by the Apex Court in the case of *Essen Deinki vs. Rajiv Kumar* 2003 SCC 13 has examined the scope of jurisdiction in a petition under Art. 226/227 of the Constitution of India. Relevant observations made by the Apex Court in the said decision are reproduced as under:-

2. Generally speaking, exercise of jurisdiction under Art. 227 of the Constitution of India is limited and restrictive in nature. It is so exercised in the normal circumstances for want of jurisdiction, error of law, perverse finding and gross violation of natural justice, to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the Courts below. The finding of fact being within the domain of the inferior tribunal, except where it is a perverse recording thereof or not based on any material whatsoever

resulting in manifest justice, interference under article is not called for.

3. The observations above, however, find affirmance in the decision of this Court in *Nibaran Chandra Bag Vs. Mahendra Nath Ghughu*. In *Nibaran* this Court has been rather categorically in recording that the jurisdiction so conferred is by no means appellate in nature for correcting errors in the decision of the subordinate Courts or Tribunal but is merely a power of superintendence to be used to keep them within the bounds of their authority. More recently, in *Mani Nariman Daruwala Vs. Phiroz N. Bhatena* this Court in a similar vein stated;

"In exercise of this jurisdiction the High Court can set aside or ignore the finding of fact of an inferior Court or Tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the Court or Tribunal who (sic.) has come or in other words it is a finding which was perverse in law. Except to the limited extent indicated above, the High Court has no jurisdiction to interfere with the finding of fact."

4. Needless to record that there is total unanimity of judicial precedents on the score that error must be that of law and patently on record committed by the inferior Tribunal so as to warrant intervention - it ought not to act as a Court of Appeal, and there is no dissension or even a contra-note being sounded at any point of time till date. Incidentally, the illegality; if there be any, in an order of an inferior Tribunal, it would however be a plain exercise of jurisdiction under the article to correct the same as otherwise the law Courts would fail to sub serve the need of the society since illegality cannot even be countenanced under any circumstances.

5. In this context reference may also be made to a still later decision of this Court in the case of *Savita Chemicals (P) Ltd. Vs. Dyes & Chemical Workers' Union* wherein this Court in Para 19 of the Report observed;

"Under Art. 227 of the Constitution of India, the High Court could not have set aside any finding reached by the lower authorities where two views were possible and unless those findings were found to be patently bad and suffering from clear error of law."

5.3. He has also relied on the decision in the case of *Khalil Ahmed Bashir Ahmed Vs. Tufelhussein Samasbhai Sarangpurwala*, Head-note (B) of the said decision reads as follows;-

"Constitution of India, Art. 227 - Powers of High Court - Trial Court taking possible and plausible view in case - High Court cannot interfere under Article 227 merely because another view is attractive."

5.4. He has also relied on the decision in the case of *Mohd. Yunus Vs. Mohd. Mustaqim and Others*, Head Note (A) of the said decision reads as under;-

"Constitution of India, Art. 227 - Supervisory Jurisdiction of High Court - Limitation - Error of law cannot be corrected."

5.5. In para 7 of the said decision the Apex Court has held as under;-

"Mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art. 227. The supervisory jurisdiction conferred on the High Court under Art. 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority" and not to correct an error apparent on the face of the record, much less an error of law. In exercising the supervisory powers under Art. 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct the errors of law in the decision.

5.6. He has also relied on the decision reported in Syed T.A. Naqshbandi and Others Vs. State of Jammu and Kashmir and Others, In para 7 and 8 of the said decision, Their Lordships observed as under;-

"Judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the materials by the courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interest of either the officers concerned or the system and institutions. Grievances must be sufficiently substantiated to have firm or concrete basis on properly established facts and further provided to be well justified in law, for being countenanced by the court in exercise of its powers of judicial review. Unless the exercise of power is shown to violate any other provision of the Constitution of India or any of the existing statutory rules, the same cannot be challenged by making it a justifiable issue before the courts."

6. Having heard the learned counsel for the respective parties and considering the evidence on record, it appears that the respondent has worked under the petitioner for more than 240 days in a year more particularly from 9/5/1986 to 28/7/1987 but the service of the respondent has been terminated by the petitioner without following mandatory procedure and without paying retrenchment allowance to the respondent. Further, it also appears from the record that the petitioner has terminated the service of the respondent keeping the junior to the respondent in service and thereby the petitioner has violated the settled principle of "last come first go". It has also been established from the record that the respondent had given a notice dtd.17/8/1987 to the petitioner requesting to reinstate him, but the petitioner has neither reinstated the respondent nor replied to the said notice. Not only that, the respondent has also served a notice dtd.26/4/1990 upon the advocate of the petitioner for reinstatement, however, neither the respondent has been reinstated nor the said notice has been replied. It also appears that that the respondent had reported for work, on 27/8/1990 but he was denied. The contention of the petitioner that the petitioner had left the service on his own, is contrary to record and appears to be after thought. Further, the petitioner has failed to establish the

appointment of the petitioner was for the particular project and for a limited work. Even the petitioner had failed to give the name of the so-called project before the Labour Court. Furthermore, as per the settled law, this Court cannot re-appreciate and re-weigh the evidence as this Court has limited jurisdiction under Article 226 and 227 of the Constitution of India. The impugned award passed by the Labour Court, in my opinion is just, legal and proper and no error is committed by the Labour Court and therefore, I am not inclined to interfere with the impugned Award passed by the Labour Court.

7. In the result, this petition is dismissed. Rule is discharged. Interim relief granted earlier stands vacated.

The petitioner is directed to comply with the impugned Award passed by the Labour Court forthwith.