

(2015) 03 GUJ CK 0035

In the Gujarat High Court

Case No : Special Civil Application No. 6351 of 2006

Indian Rayon Industries Ltd.

APPELLANT

Vs

Bamaniya Lakhabhai Bhagvanjibhai

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(oo), 2(oo) (bb), 25F, 25-F

Citation : (2015) 03 GUJ CK 0035

Hon'ble Judges : Akil Abdul Hamid Kureshi, J.

Bench : Single Bench

Advocate : Nisarg M. Desai, Advocate for Nanavati Associates, for the Appellant; T.R. Mishra and U.T. Mishra, Advocates for the Respondent

Final Decision : Allowed

Judgement

Akil Abdul Hamid Kureshi, J.—This petition is filed by Indian Rayon Industries Ltd., a company registered under the Companies Act, challenging the judgement of the Labour Court, Junagadh, dated 10.1.2006 passed in Reference (LCJ) No. 257/1999.

2. The respondent workman was engaged as temporary Draftsman initially under an appointment order dated 19.1.1995 for a fixed period of three months. Such engagement continued from time to time for nearly three and half years under separate appointment orders, when finally after completion of three months from the last order of appointment dated 10.2.1999, such engagement was not extended. He challenged such termination before the Labour Court on the ground of violation of section 25F of the Industrial Disputes Act. Before the Labour Court the employer raised the theory that workman was engaged for fixed period for the work of drafting which was specific when there was no further work available, his engagement would not be renewed. Such action would not fall within the definition of term "retrenchment" in view of section 2(oo) (bb) of the Industrial Disputes Act. The Labour Court by the impugned award held to the contrary, came to the conclusion that section 2(oo) (bb) would not apply since according

to the employer the workman was appointed for a specific power plant, however, he had worked in different departments. According to the Labour Court, there was no evidence that work of power plant was also over. Inter-alia on such grounds, the Labour Court was persuaded to hold that disengagement of the workman was retrenchment and since the same was without following procedure required under section 25F of the Industrial Disputes Act, same was also illegal. Resultantly, the Labour Court set aside the termination, directed reinstatement with 80% back-wages.

3. Counsel for the employer submitted that the appointment of workman was on fixed term basis. Each extension was covered under a specific written order of appointment. After completion of period envisaged in the order of appointment, unless there was extension, the engagement would come to an end. He relied on decision of the Supreme Court in case of M.D., Karnataka Handloom Dev. Corpn. Ltd. Vs. Sri Mahadeva Laxman Raval, , to argue that the Labour Court committed a serious error in setting aside the order of termination.

4. On the other hand, learned counsel Shri Mishra for the workman opposed the petition contending that the workman had except for artificial breaks, worked continuously nearly for three and half years. Fixed term appointment was a camouflage. Section 25F of the Industrial Disputes Act was breached. The Labour Court therefore, correctly set aside the same.

5. Few facts are not in dispute. The engagement of the workman for different spells of nearly three and half years as Draftsman is not disputed. Question of his having completed 240 days during the relevant period prior to his last engagement, is also not seriously in dispute. The fact that procedure of section 25F of the Industrial Disputes Act was not followed, is also unquestionable. Short controversy is in facts of the case, was the case of the workman covered under section 2(oo) (bb) of the Industrial disputes Act and, therefore, excluded from the purview of application of section 25F of the Industrial Disputes Act. Section 2(oo) (bb) of the Industrial Disputes Act provides for definition of term "retrenchment" as to mean termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action. Clauses (a) to (c) provide for exception to this definition. Relevant clause (oo) (bb) reads as under:

"(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

xxx

xx

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that

behalf contained therein; or"

6. Thus any termination of service of a workman as a result of non-renewal of the contract of employment on its expiry would not amount to retrenchment. In the present case, we are not concerned with the later portion of this exclusion clause which refers to termination under a stipulation in that behalf contained in the order of appointment. The short question is would the termination of service as a result of non-renewal of contract of employment on the expiry of the period of employment amount to retrenchment?

7. The fact that the initial appointment of respondent workman was on fixed term and upon completion of such initial period of three months was renewed from time to time with breaks, under written orders of appointment also on fixed terms, is not in doubt. Ordinarily, therefore, the case of the workman would therefore, fall under the exclusion clause (bb) of section 2(oo) of the Industrial Disputes Act. However, the workman's contention that the appointments were made on fixed term merely by way of camouflage, the need for employment being perennial, needs closer scrutiny.

8. The workman in his deposition did contend that the nature of work was permanent. In the cross examination, however, he admitted that he was granted order of appointment on temporary basis. When he was working, there were in all five such persons doing similar work of drawing of machinery and spare parts as they were all on regular basis. He admitted that whenever the company installed new plant or machinery, there would be need for preparing drawing. He admitted that when he was disengaged after 10.5.1999 by not extending his appointment, there was no work of installment of new plant or machinery going on in the company. In the year 1995, the company had set up a new power plant and implemented the project of new caustic soda plant for which purpose he was engaged. After this project was over, he was given work in the office.

9. Few things emerge from such evidence. Even according to the workman, there were five permanent employees doing the permanent nature of work of drawing. He was engaged at the time when new power plant and new caustic soda project was being implemented. After such work was over, he was retained in the office for sometime.

10. Under the circumstances, it cannot be stated that engagement of workman on temporary basis with fixed tenure was merely by way of camouflage. In fact, the employer company had permanent establishment of five different Draftsmen who would do continuous and perennial nature of work. Only when new plant or machinery was to be installed as in the present case of requiring of setting up new power plant and caustic soda project, the company required additional help. Admittedly such work had come to an end later on.

11. In background of such circumstances, we may refer to the decision of Supreme Court in case of Karnataka Handloom Development Corporation Ltd. v. Sri Mahadeva Laxman Raval (supra), in which it was held as under:

18. We have perused all the appointment letters dated 14.01.1991, 24.02.1992, 10.02.1993, 03.03.1993 and 30.11.1993 produced by the respondent as annexures which consistently and categorically state that the respondent's appointment with the Corporation was purely contractual for a fixed period. The respondent was engaged only under the Vishwa programme scheme which is not in existence. Now the scheme came to an end during August, 1994 the respondent was also not governed by any service rules of the Corporation. The Corporation put an end to the contract w.e.f. 31.08.1993 which, in our opinion, cannot be termed as dismissal from service. Even assuming that the respondent had worked 240 days continuously he, in our opinion, cannot claim that his services should be continued because the number of 240 days does not apply to the respondent inasmuch as his services were purely contractual. The termination of his contract, in our view, does not amount to retrenchment and, therefore, it does not attract compliance of Section 25F of the I.D. Act at all.

19. The view taken by the High Court, in our opinion, is contrary to the judgment of this Court in *Kishore Chandra Samal Vs. The Divisional Manager, Orissa State Cashew Development Corporation Ltd., Dhenkanal, (Arijit Pasayat and R.V. Raveendran, JJ)*. The above is also a case of employment for specific period/fixed term and that the workman was engaged for various spells of fixed periods from July, 1982 to August, 1986. The workman was retrenched at the end of each period. The Labour Court held that the appellant served continuously for many years covering the requisite period of continuous service in a calendar year and that the provisions of Section 25F of the I.D. Act had not been complied with, termination of his service is illegal and unjustified. On the basis of the said finding, the Labour Court directed the workman to be reinstated to his former post. The High Court accepted the stand of the respondent Corporation that the appointment of the workman was on NMR basis for a fixed period of time on the basis of payment at different rates and since the engagement was for a fixed period, the High Court held that the award of the Labour Court was to be set aside. In support of the appeal, learned counsel for the workman submitted that the High Court failed to notice that the period fixed was a camouflage to avoid regularization. Reliance was placed on a decision of this Court in *S.M. Nilajkar and Others Vs. Telecom, District Manager, Karnataka*, where it was held that mere mention about the engagement being temporary without indication of any period attracts Section 25-F of the Act if it is proved that the workman concerned had worked continuously for more than 240 days.

20. Arijit Pasayat, J. speaking for the Bench, after referring to the position of law relating to fixed appointments and the scope and ambit of Section 2(oo) (bb) of Section 25-F which were examined by this Court in several cases and also in *Morinda Co-op. Sugar Mills Ltd. Vs. Ram Krishan and others etc.*, and which view was reiterated by a three-Judge Bench of this Court in *Anil Bapurao Kanase Vs. Krishna Sahakari Sakhar Karkhana Ltd.* and another, noticed and reproduced para 3 as under:-

"3. The learned counsel for the appellant contends that the judgment of the High Court of Bombay relied on in the impugned order dated 28-3-1995 in Writ Petition No. 488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days, he is to be treated as retrenched employee and if the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947 is applied, his retrenchment is illegal. We find no force in this contention. In *Morinda Coop. Sugar Mills Ltd. v. Ram Kishan* in para 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing; in para 4 it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after the crushing season was over. Accordingly, in para 5, it was held that it is not "retrenchment" within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per sub-clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the principles of the Act have no application. However, this Court has directed that the respondent management should maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are already working, the management should not go in for fresh engagement of new workmen. It would be incumbent upon the respondent management to adopt such procedure as is enumerated above." 12. Likewise in case of *Batala Cooperative Sugar Mills Ltd. Vs. Sowaran Singh*, , the Supreme Court held as under:

"8. We find that the High Court's judgment is unsustainable on more than one count. In *Morinda Co-op. Sugar Mills Ltd. Vs. Ram Krishan and others etc.*, , it was observed as follows:

"4. It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work.

5. The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in clause (bb) of Section 2(oo) of the Act. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated hereinbefore and when the new season starts the appellant should make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exigency of work.""

9. The position was re-iterated by a three-Judge Bench of this Court in *Anil Bapurao Kanase Vs. Krishna Sahakari Sakhar Karkhana Ltd. and another*, . It was noted as follows:

"The learned counsel for the appellant contends that the judgment of the High Court of Bombay relied on in the impugned order dated 28.3.1995 in Writ Petition No. 488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days, he is to be treated as retrenched employee and if the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947 is applied, his retrenchment is illegal. We find no force in this contention. In *Morinda Coop. Sugar Mills Ltd. v. Ram Kishan*, in para 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing; in para 4 it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after the crushing season was over. Accordingly, in para 5, it was held that it is not 'retrenchment' within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the principles of the Act have no application. However, this Court has directed that the respondent management should maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are already working, the management should not go in for fresh engagement of new workmen. It would be incumbent upon the respondent management to adopt such procedure as is enumerated above. 11. The materials on record clearly establish that the engagement of the workman was for specific period and specific work.

12. In view of the position as highlighted in *Morinda Coop. Sugar Mills* and *Anil Bapurao's* cases (*supra*), the relief granted to the workman by the Labour Court and the High Court cannot be maintained."

13. Coming to the citation relied on by the counsel for the respondent, one may find that on facts, Division Bench of this Court in case of *Deputy Executive Engineer Buildings and Ports v. J.R. Vasiani* vide judgement dated 8.7.2010 passed in Letters Patent Appeal No. 850/2001 had held that the workman was appointed on 17 times under 17 different orders. It was held that it amounted to colourful exercise of power.

14. In case of *Director, Health and Family Welfare and Others Vs. Baljinder Singh and Another*, , the Punjab and Haryana High Court held that the retrenchment of a workman amounted to unfair labour practice.

15. In case of *Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Ltd.*, , also it was found that the workman rendered continuous service for six years except for artificial breaks imposed by the employer with oblique motive. It was therefore, held that termination of service amounted to retrenchment.

16. In the present case, the workman failed to establish that the nature of work was perennial, his engagement only being temporary. In fact the evidence suggested to the contrary. Additional work of draftsman being sporadic in nature depended on availability of work. Looking to the installment of new plant and

machinery, he was engaged purely on fixed term basis under specific orders of engagement. It has come on record that he was engaged at a time when the company had undertaken new project for installing of power plant and caustic soda manufacturing plant and such work was later on over. For permanent nature of work, permanent establishment was also maintained.

17. In the result, petition is allowed. Judgement of the Labour Court is reversed. Petition is disposed of. Rule made absolute to above extent.