

(2016) 06 GUJ CK 0007

In the Gujarat High Court

Case No : Special Civil Application No. 5320 of 2015

Ingersoll Rand India Ltd.

APPELLANT

Vs

Dineshbhai Kacharabhai Patel and Another

RESPONDENT

Date of Decision : 06-06-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(s)

Citation : (2016) LabLR 964 : (2016) 3 LLJ 252

Hon'ble Judges : Paresh Upadhyay, J.

Bench : Single Bench

Advocate : Mr. K.S. Nanavati, Sr. Advocate With Mr. Keyur Gandhi, Advocate for Nanavati Associates, for the Appellant; Mr. A.J. Yajnik, Advocate for Mr. Punit B. Juneja, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Paresh Upadhyay, J.—Challenge in this petition is made by the Employer to the award passed by the Labour Court, Ahmedabad in Reference (T) No. 358 of 2004 dated 29.11.2014. By the impugned award, the Labour Court has held that, (i) the respondent No.1 herein was "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and (ii) the allegations levelled against him by the Employer, in the discharge letter dated 18.12.2003, were not proved. Consequently, the Labour Court has directed that the respondent be reinstated in service, with continuity, with 40% back wages.

2. Mr. K.S. Nanavati, learned senior advocate for the petitioner Employer has submitted that, the respondent was not the workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and therefore no relief could have been granted by the Labour Court. It is submitted that this point was specifically agitated before the Labour Court as preliminary issue, the Labour Court had even framed this issue as the first issue, however, it has held that the respondent was workman within the meaning of the Act and ultimately the award is passed. It is submitted that, it was for the respondent to first prove that he

was a workman and only after he discharged his obligation to that extent, the onus could have been shifted to the petitioner to contend and prove that he was not a workman. It is submitted that though this is the settled position of law, the Labour Court has held that, it was for the petitioner Employer to prove that the respondent was not the workman and thus, the Labour Court proceeded on the wrong premise and committed error. It is submitted that the petitioner had given an application Exh. 15 that this issue be decided first, however, it was held by the Labour Court that this issue will be decided at the time of final adjudication. It is submitted that with a view to see that the proceedings are not delayed, the petitioner did not challenge it at the relevant time but that is the first issue to be gone into by this Court. It is submitted that, impugned award be quashed and set aside on this ground. Reliance is also placed on the following decisions in support of this contention.

- (i) (2005) 3 SCC 232 ? Sonapat Cooperative Sugar Mills Ltd. v. Ajit Singh,
- (ii) (2007) 7 SCC 171 ? C. Gupta v. Glaxo ? Smithkline Pharmaceuticals Ltd.,
- (iii) (2006) 7 SCC 330 - Electronics Corporation of India Ltd. v. Electronics Corporation of India Service Engineers Union,
- (iv) (2004) 8 SCC 387 ? Mukesh K. Tripathi v. Senior Divisional Manager, LIC,
- (v) (2006) III LLJ 929 (Del.) - Automobile Assoc. Upper India v. The P.O. Labour Court II,
- (vi) (2011) 1 SCC 635 ? General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon v. Bharat Lal,
- (vii) (2007) 2 GLR 1623 ? Uttar Gujarat Vij Company Ltd. v. Rathod Arunbhai Baldevbhai,
- (viii) (2003) 3 GLH 189 ? Navin Fluorine Industries v. B.M. Shah,
- (ix) (2015) 7 SCC 263 ? Chauharya Tripathi v. Life Insurance Corporation of India,
- (x) Order passed by this Court in Special Civil Application No. 6290 of 2005 dated 12.10.2015 in the case of Essar Project Ltd. v. N.D. Jagdishwara.

3. On the other hand, Mr. Yajnik, learned advocate for the respondent No.1 has submitted that :- the respondent was the workman, there was ample material on record in that regard, the Labour Court had also framed the issue in that regard and the Labour Court has rightly come to the conclusion that respondent was workman within the meaning of Section 2(s) of the Industrial Disputes Act. Reference is also made to the contents of the affidavit-in-reply filed by the respondent No.1 before this Court dated 29.07.2015 along with annexures thereto. It is submitted that, no interference be made by this Court on that count. It is submitted that, this petition be dismissed.

4. Both the learned advocates have addressed the Court at length and have taken this Court through the evidence on record and the reasons and the findings

recorded by the Labour Court. Both the learned advocates have concentrated on the first point, as to whether or not the respondent was "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, and it was for whom to prove that he was a workman or that he was not a workman. It is noted that the second point, as to whether the allegations levelled against the respondent No.1 by the petitioner Employer in the discharge letter dated 18.12.2003 were proved or not, is neither pressed into service nor is gone into by this Court.

5. Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds as under.

5.1 It is not in dispute that, at the relevant time, the respondent No.1 was drawing wages of Rs.31,261/- per month. The basic pay was Rs. 12,442/- per month.

5.2 It is also not in dispute that the respondent No.1 was initially appointed as a helper on 01.09.1977 and in due course he was promoted on the higher posts as Helper-cum-Fitter, Fitter, Technician, Senior Technician, Foreman and lastly as Senior Assistant. Further, there is evidence on record to show that, at least four persons were working under the respondent No. 1. Reference in this regard can be made to the evidence in the form of deposition of one Mr. Shailendra Kumar Purshottam Trivedi (Exh-87) which is on record. It is specifically to the effect that, in all four workmen were working under respondent No.1. They were one Fitter, two Fitter-cum-Helper and one Senior Technician.

5.3 The above facts need to be weighed vis-a-vis the definition of "workman". Section 2(s) of the Industrial Disputes Act, 1947 (as it stood at the relevant time i.e. 18.12.2003 being the date of termination) reads as under.

2(s) :- "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees [ten thousand rupees, vide amendment dated

15.09.2010] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature]."

5.4 On conjoint consideration of the above, it is evident that, the respondent No. 1, at the relevant time, was employed in a supervisory capacity and was also drawing wages, much exceeding Rs. 1600/- per month. The respondent was thus covered by the first part of the fourth exclusion of Section 2(s) of the Industrial Disputes Act, 1947 and thereby he was not a "workman". The finding recorded by the Labour Court that the respondent was "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, is not only inconsistent with but contrary to the evidence on record. The same therefore needs to be quashed and set aside.

6. This Court further finds that, the Labour Court was in error even in procedure, to come to the erroneous finding as noted above. The Labour Court in the concluding part of the reasons recorded by it, qua the first point, held that the employer has failed to prove that the respondent was working in the supervisory capacity and therefore it is concluded that the respondent was "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. The Labour Court was in error in this regard as well. It was not for the employer to prove that the respondent was not a workman. It was for the respondent to prove that he was a workman. The point at issue before the Labour Court was not as to whether the respondent was a Supervisor or not. The point as formulated by the Labour Court and rightly so was, as to whether the respondent No.1 herein was "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. The Labour Court misdirected itself and illegally shifted the burden on the employer in that regard.

7. There are additional factors which require interference in the impugned award.

7.1 The written statement and evidence on behalf of the petitioner Employer (Exh. 09 and 87 respectively) were inter alia to the effect that, at least four persons were working under the respondent. As noted in para: 5.2 above, it is not in dispute that the respondent No.1 was initially appointed as a helper on 01.09.1977 and in due course he was promoted on the higher posts as Helper-cum-Fitter, Fitter, Technician, Senior Technician, Foreman and lastly as Senior Assistant. Further, there is evidence on record to show that, at least four persons were working under the respondent No.1. The evidence was specifically to the effect that, they were :- one Fitter, two Fitter-cum-Helper and one Senior Technician. The Labour Court has recorded its satisfaction to reject this evidence by observing that, all the fitters and helpers of the company were not working under the respondent No.1. The reasoning of the Labour Court thus is to the effect that all the workmen of the company must be working under a particular supervisor, and if that is not so, then that supervisor is not a supervisor but is a workman. It is this reasoning of the Labour Court, which calls for interference by this Court.

7.2 The Labour Court has further based its judgment on the fact that the respondent was provided the canteen coupons, to have food in the canteen of the company, at concessional rates. According to the Labour Court, this could be done only qua workmen and not supervisors. The issue as to whether the respondent was a workman or not, could not have been decided on such considerations.

8. In view of above, this Court comes to the conclusion that, the Labour Court was in error on both the counts. The Labour Court was in error to shift the burden on the employer to prove that the respondent No.1 was not a "workman". Further, the finding of the Labour Court that the respondent No.1 was "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, is contrary to the evidence on record. It is held that, in the present case, the respondent No. 1 was not a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. The issue No.1 framed by the Labour Court is accordingly answered in negative. No relief therefore could have been granted to the respondent No.1 by the Labour Court. The impugned award therefore needs to be quashed and set aside.

9. For the reasons recorded above, the following order is passed.

9.1 This petition is allowed.

9.2 The impugned award passed by the Labour Court, Ahmedabad in Reference (T) No. 358 of 2004 dated 29.11.2014 is quashed and set aside.

9.3 Rule is made absolute. No order as to costs.