

(2012) 09 GUJ CK 0001

In the Gujarat High Court

Case No : Special Civil Application No. 3122 of 2003

Jehangir Textile Mills

APPELLANT

Vs

Textile Labour Association

RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2013) 137 FLR 376 : (2012) 3 GLH 897

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : Saurav Mehta for Nanavati and Nanavati, for the Appellant; D.S. Vasavada, for the Respondent

Judgement

Honourable Mr. Justice S.R. Brahmbhatt

1. Heard learned advocates appearing for the parties. The petitioner, second party Textile Mills, in Reference (IC) No. 101 of 1992 from the Industrial Court has approached this Court under Articles 226 and 227 of the Constitution of India, challenging the award dated 25.10.2002, where under the petitioner Mill - Company is directed to pay the dues to the workmen and heirs admissible to them from 1982 to December, 1994, as if they were permanent regular employees and not "Badli".

2. The facts in brief leading to filing this petition, as could be gathered from the petition and accompanying documents, deserve to be set out as under.

3. The Textile Labour Association - (respondent hereinabove was given a Notice of Change on 16/18-01-1992 demanding that the Badli employee named there under working in the third shift of Throstle (Spinning Department) since 1982, be given permanent passes and be paid their dues on that basis. There were four workmen who have been figuring in the said notice. The Notice of Change in form of "L" is produced at Annexure-B to the petition. As there was no settlement during the conciliation proceeding, the reference was made to the

Court being Reference (IC) No. 101 of 1992. The statement of claim was submitted on 20.10.1992. The written statement was submitted on 02.05.1997. The respondent Union examined one Shri Laxamnabhai Keshavbhai that is one of the workman in whose favour the notice was issued at exhibit-9 on 28.04.1997. The cross examination was conducted on 30.07.1997 and 03.10.1997. No witnesses were examined on behalf of the petitioner Company. The list of documents were produced at exhibit 16 on behalf of the Company which inter alia contained the agreement undertaken between the petitioner Company and respondent Union in respect of permanent strength to be maintained in the Spinning Department inclusive of five doubling machine. This agreement is said to have been executed on 28.10.1993. The Industrial Court came to the conclusion that the workmen established their cases for being treated as permanent employee, as the Badli was merely a convenient name, but the work taken from them since 1982 till the decision of the reference or till 1994, was permanently done and the Badli could not be shown to have been in true sense Badli, as if they were engaged to work for somebody else's leave vacancy. The Industrial Court, therefore, while allowing the reference directed in the award, as it is stated hereinabove on 25.10.2002. Being aggrieved and dissatisfied with this award, the present petition is preferred on the grounds mentioned in the petition under Articles 226 and 227 of the Constitution of India.

4. Learned advocate Shri Saurav Mehta for Nanavati and Nanavati Advocate for the petitioner Company invited this Court's attention to the agreement and the findings recorded by the Court and submitted that the agreement, as such, would indicate that there was in fact no work in third shift and even in the first and second shift also there was restriction mutually agreed upon by the Union and Management qua maintaining the strength of the permanent workmen. In such a situation when a specific plea for Company's deteriorating economic health was pressed into service there would have been no question of saddling the Company with additional economic burden, as it is done by the Court under the impugned order. Therefore, the order deserve to be quashed and set aside and the petition be allowed.

5. Learned advocate for the petitioner relying upon Apex Court decision in case of Prakash Cotton Mills Pvt. Ltd. Vs. Rashtriya Mills Mazdoor Sangh, , contended that the workmen who are engaged as Badli have no rights whatsoever to seek compensation or benefit of permanency. The observation made in paragraph no. 15 were sought to be relied upon substantiating the aforesaid proposition which learned advocate for the petitioner canvassed. Thus, it was submitted that the Badli workmen whose case was espoused by the Union did not have justifiable right to be treated as permanent workmen so as to render the Company liable to pay the monetary difference and/or retiral dues till 1994, the date on which the Company could not continue its operations and productions.

6. Learned advocate for the petitioner thereafter relied upon the decision of this Court in case of Abad Dairy Vs. Manjibhai Dhanjibhai reported in 2000 (3) G.L.H.

409 and after reading in detail the observations of the Court made in paragraph no. 19, contended that, when the Industrial Unit is declared sick and is under the process of being given a scheme of rehabilitation before the Sick Industrial Companies forum, the Badli workmen cannot be regularized and made permanent or given any benefits similar to that and in light of that ratio the present order impugned in this petition may be viewed and accordingly the same also may be quashed and set aside.

7. Learned advocate for the petitioner, therefore, submitted that the impugned order be quashed and set aside. In answer to the contention raised by the learned advocate for the respondent Union that the written statement or the evidence before the Court did not indicate anywhere that Company ever took such a contention on the basis of B.I.F.R. proceedings and the ratio in case of *Abad Dairy Vs. Manjibhai Dhanjibhai* (supra), though the judgment was available and hence the same cannot be permitted to be taken as it amounts to permitting party to take out a new ground based upon the facts. Learned advocate for the petitioner submitted that this is a question of law and, therefore, it could be agitated at any time.

8. Learned advocate for the Union contended that last submission of the pendency of sick Industrial Companies proceeding to be dealt with, first would indicate that the ratio laid down by the Court cannot be said the ratio is applicable to the facts and circumstances of the present case, as in that case where facts were rather similar to the case of the facts of the present case. The Apex Court held that pendency of SICA proceeding would not be considered and as a part to conduct the proceeding of such nature and issue direction. Relying upon the observation and ratio in the case of *Chairman-cum-Managing Director, National Textiles Corporation Ltd. And Others Vs. N.T.C. (WBAB & O) Ltd. Employees Union and Others*, reported in 2003-III-LLJ 1102, learned advocate for the Union contended that the question with regard to adjudicating and acknowledging of the workmen's entitlement to the admissible dues on account of discriminate treatment was held to be a liability to be discharged by the State authorities i.e. Central Government even dehors the same of B.I.F.R. When such is the ratio in such a case, then the impugned order in which the Court has merely declared that the workmen who have been working since 1982 till the Companies stopped its operation in 1994 are entitled to be treated as permanent employee cannot be said to be so greater burden as to call for any interference under Articles 226 and 227 of the Constitution of India and all the more so, as the ground of such a nature has not been taken as there is no whisper qua SICA proceeding before the Court. Had there been such a ground taken the various facts with regard to the actual reference or scheme etc. same would have been required to be gone into, as it is not taken, it can be said that the fact and the question have not been raised and, therefore, this Court in exercise of the jurisdiction under Articles 226 and 227 of the Constitution of India would naturally not go into these facts and the order may be upheld.

9. Learned advocate for the Union submitted that the fact recorded by the Industrial Court is very clear that the agreement which is pressed into service in the year 1983 is not proved and, therefore, when such a finding of fact is available on record, this Court in exercise of the power under Articles 226 and 227 of the Constitution of India may not be interfered with the same.

10. This Court has heard learned advocates appearing for the parties and perused the documents of the present case. The facts remain to be noted that the notice in form of "L" was clear enough to indicate that the engagement of the workmen mentioned there under were in fact on a regular basis, though, they were named as "Badli" and, therefore, the discrimination was arising, was required to be redressed by way of notice.

11. The Court has clearly recorded that the evidence in form of oral evidence came from the workmen side and in the cross examination also the workmen appears to have stated the version which was not controverted in any manner by the management. The management side did not lead any evidence except following list of documents containing the agreement of 1983, which the Court has observed not proved. Now, in this backdrop question arises as to whether the findings recorded by the Court qua workmen actually rendering all dues and work as if they were regular employees, but were deprived of the benefit attached to the permanency be said to be an order requiring any interference. The answer would be "no". The fact remains to be noted that on the part of the management an attempt was made to indicate that on account of the economic condition of the Company, the losses were incurred and the losses compelled the management to enter into an agreement with the very Union, which was espousing the cause of the workmen that in what manner and how the permanent strength of the workmen would be maintained in shifts. But that agreement unfortunately has not been proved, therefore, reliance upon that agreement at this stage would not be of any avail to the petitioner for challenging the award impugned in this petition.

12. Bereft of the factum of agreement, there exists no other evidence in any manner which would be said to be an evidence contrary to the version of the workmen qua their rights to be treated as permanent employee. The nomenclature "Badli" is in fact appears to have been used as to avoid the liability arising out of the permanency of the workmen. This being preciously contrary to the declared principle of fair play on the part of the employer the same would not have been countenanced in any manner by the Court. In such a situation when the award is passed and when the award is absolutely silent qua any proceedings in respect of B.I.F.R provision arising from the provision of SICA cannot be permitted to be assailed on the plea on such basis taken for the first time before this Court. The Court is unable to agree that the submission canvassed on behalf of the petitioner that this plea of pendency of SICA proceeding is a plea of law. In fact the suggestion of SICA proceeding and initiation of SICA proceeding at the bar, if any, u/s 22, all these questions cannot be classified to be questions of

law. They are essentially question of facts which needed special assertion and establishment thereof. Unfortunately, for the petitioner the entire written statement is silent qua any aspect arising from SICA as sought to be made out before this Court in the writ petition. Without diluting in any manner, the aforesaid observation of this Court and conclusion of SICA submission for the sake of examining the plea qua the status of the workmen and observation of the Division Bench, in case of Badli workmen's entitlement or not entitlement to be treated as such when the B.I.F.R. proceedings are pending, this Court is of the considered view that the judgment cited at the bar would be of no avail as though the Court has specifically said that B.I.F.R. proceedings and the Court's lacking its power to saddle the unit which is otherwise sick with more liability in cases of Badli workmen would at the first blush appears to be relevant. But even one looks at the ratio of the decision cited at the bar on behalf of the workmen in case of Chairman-cum-Managing Director, National Textiles Corporation Ltd. And Others Vs. N.T.C. (WBAB & O) Ltd. Employees Union and Others (supra) one would have no difficulty in safely holding that the judgment cited by the workmen is much more akin to the facts of the present case, as in that case the workmen were discriminately treated and the discrimination was sought to be removed irrespective of the scheme of rehabilitation as the entitlement of the workmen was found to be justified. So is the case in the present facts when the workmen have established beyond doubt before the Industrial Court that the workmen were in fact doing the work which was done by the permanent employee in all respects namely the working hours, the working condition, the out put and other incidental factors, then merely giving them nomenclature or calling them "Badli" itself should not have been deprived them of their right to receive the benefits which were otherwise admissible to them. In other words one can say that the Court has been considerate in considering the plea of the employer that the Mill stopped its operation from 1994 and, therefore, the benefits or monetary benefits are ordered to be paid only till 1994, which would in submission of Shri Vasavada, workmen amount to in fact granting them the benefit which would have otherwise granted a person who have retired as a permanent employee. This may result into little more burden, but that burden cannot be classified to be a so great burden as to vitiate the order, as the dues required to be paid at the time of severing the relationship or retirement are the dues for the period for which the workmen worked in fact, and not for the future or not for the present, or the day on which the dues are paid. Therefore, in the instant case, the workmen who put their toil and efforts in discharging their duties were made entitled to receive the benefits of the work, which they rendered when they were wrongfully nomenclatured as Badli so as to deprive them with the benefit of permanency. If that is the angle adopted, then the facts of this case would fall under this ratio laid down by the Apex Court in case of Chairman-cum-Managing Director, National Textiles Corporation Ltd. And Others Vs. N.T.C. (WBAB & O) Ltd. Employees Union and Others (supra).

13. The Court, therefore, is of the view that the order impugned need not be

interfered especially when the plea of B.I.F.R. proceedings were not even taken and no opportunity was available to anyone to examine the entire matter from that angle. The petitioner, if permitted to raise this point at this stage, then it would in fact result into miscarriage of justice which would not be permissible under Articles 226 and 227 of the Constitution of India. The fact remains to be noted that this petition in fact cannot be treated as a petition filed under Article 226 of the Constitution of India at all as though it is styled as one having been filed under Article 226 of the Constitution of India. The non joinder of the Tribunal in terms of the ratio laid down by the full bench of this Court in case of The Bhagyodaya Co-operative Bank Limited Vs. Natvarlal K. Patel and Anr., reported in 2011 (3) GLH (FB) 89, also would indicate that this cannot be said to have been filed under Article 226 of the Constitution of India. The prayers, though contain writ of certiorari, but the averments or the grounds capable of bringing the challenge within the parameter of Article 226 of the Constitution of India are conspicuously absent and hence on that count also it can be said that this is one filed under Article 227, which all the more require to be borne in mind while examining the challenge to the impugned award and on that ground also the Court is of the view that no interference is called for, so far as award impugned is concerned. The petition being bereft of merits, deserves rejection and is accordingly rejected. However, there shall be no order as to costs. Rule is discharged. Interim relief granted earlier shall stand vacated.