
(2011) 06 GUJ CK 0099

In the Gujarat High Court

Case No : Special Civil Application No. 12143 of 2003 with Special Civil Application No. 12082 of 2003

Junagadh Agricultural University

APPELLANT

Vs

Hirabhai Mansurbhai

RESPONDENT

Date of Decision : 30-06-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Industrial Disputes Act, 1947 — Section 17B, 25F

Citation : (2011) 06 GUJ CK 0099

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : D.G. Chauhan, for the Appellant; J.T. Trivedi, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice D.H. Waghela

1. Both the petitions are preferred by the Agricultural University to challenge common award of Labour Court, Junagadh, in Reference (LCJ) No. 1475 of 1990 and Reference (LCJ) No. 1476 of 1990, whereby the respondents herein were ordered to be reinstated in service with continuity of service and 30% backwages by order dated 18.10.2002. The impugned award is passed on the finding of fact that the respondents appeared to have worked as labourers for more than 240 days under the petitioner and that there was violation of Section 25-F of the Industrial Disputes Act, 1947 (I.D.Act) in termination of their services in August, 1988. Both the findings have been called into question by the petitioner with the submission that the question of violation of Section 25-F did not arise in the facts of the case in the face of overwhelming evidence of abandonment of service by the respondents. The impugned award also relied upon the fact that no departmental inquiry was conducted even if, as a matter of fact, the respondents had started remaining absent on duty. Thus, the moot question required to be decided was as to how the service of the respondents under the petitioner had

come to an end.

2. Before addressing the central issue raised in the petition, it may be pertinent to note that the respondent workman in Special Civil Application No. 12143 of 2003 has admittedly crossed the age of superannuation and that both the employees were, by virtue of interim order dated 16.12.2003 herein, ordered to be paid full current wages during pendency of the petition upon an undertaking being filed that they will refund the amount paid in excess of the amounts due under the provisions of Section 17-B, in case the petitions were allowed. Under the circumstances, it was fairly submitted that the question of reinstating the respondent in Special Civil Application No. 12143 of 2003, namely Hirabhai Mansurbhai did not arise and it may not be possible now to recover any amount from him, even if the petitions were to be allowed.

3. Addressing the central issue, as aforesaid, it was clear from the record and proved by documentary evidence, Exh. 36 to 50, that the respondents were served with various notices calling them to join their duties. Even after the workman concerned serving notice of demand dated 15.12.1988, the petitioner had written letter dated 22.12.1988 clearly stating that the respondents were not discharged from service but had stopped reporting. During the course of conciliation proceeding before the Assistant Commissioner of Labour, Porbandar, representative of the petitioner had attended the proceeding but the respondents had not attended. The letters dated 03.12.1988 and 12.12.1988 were written by the petitioner but the respondents had not reported for duty and only left a report on 09.12.1988 at the head office of the petitioner. As against such record and documentary evidence, the respondents had examined themselves in evidence and only stated on oath before the Court that they had reported for duty after the alleged date of termination and repeated notices of the petitioner but there was no evidence to substantiate that. They appear to have deposed before the labour court as late as in the year 1999 and never offered to report for duty in the meantime. Thus, the finding of fact recorded in the impugned award to the effect that services of the respondents were terminated by the petitioner is found to be clearly perverse. In fact, the labour court has, without recording a clear finding about termination of service by the petitioner or abandonment of service by the respondents, went on to discuss the legal contention as to why the petitioner did not hold an inquiry if the respondents had ceased to report for duty. In view of the admitted fact that the respondents were employed as daily wage employees and in view of the documentary evidence about the respondents being called to report for duty and in absence of any worthwhile evidence suggesting that the respondents had reported for duty, the inescapable finding of fact would have been that the respondents had abandoned the job and continued the litigation.

4. Learned counsel, Mr. J.T.Trivedi, appearing for the respondents relied upon judgement of the Apex Court in G. T. Lad and Others Vs. Chemical and Fibres of India Ltd., to submit that abandonment, when used in relation to an office, must

be total and it should clearly indicate an absolute relinquishment. He argued that the very fact that the respondents pursued their case before the Labour Court indicated that the respondents had no intention of finally relinquishing their job and there was no reason why they should not have reported for duty, if they were permitted to do so. Learned counsel also relied upon the observations made in *Lakshmi Precision Screws Ltd. Vs. Ram Bahagat*, to submit that in absence of any service rules or standing orders, the petitioner could not have taken any action on the basis of alleged continued absence of the respondents. He further submitted that Article 21 clubs life with liberty and dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence; and principles of natural justice are conclusively held to be part of Article 14 of the Constitution.

5. Having regard to the facts and contentions, as aforesaid, and basic premise accepted in the impugned award having been found to be perverse and in view of retirement of one of the employees, an order for appropriate relief has to be made in the peculiar facts and circumstances of the case. It was stated at the bar that pursuant to the interim order, as aforesaid, the respondents have already been paid either full wages at the current rate during the pendency of the petitions or one of the respondent has been allowed to perform duty in terms of the impugned award. Thus, in short, one of the respondents has already completed his years of service with full salary during the pendency of the petition and the other respondent has practically continued in service by receipt of full wages, with or without rendering any service. In case the impugned award is set aside, the respondents may be required to refund the amount paid to them in excess of the amount due u/s 17-B, which may be practically impossible on account of the respondents having been employed as the lowest-paid unskilled labourers. On the other hand, in view of the nature of respondents' service as daily wage labourers, unduly prolonged pendency for 12 years of the reference cases before the labour court and the payment of full wages thereafter, it would be appropriate and in the interest of justice that the petitions are partly allowed with modified consequential reliefs. Accordingly, the petitions are partly allowed and rule is made absolute with the direction that the respondent in Special Civil Application No. 12143 of 2003 shall not be required to refund any amount to the petitioner, nor shall the respondent workman claim any further amount on the basis of services rendered by him under the petitioner. As for the respondent workman in Special Civil Application No. 12082 of 2003, even as the impugned award is set aside, she will not be required to refund or repay any amount to the petitioner nor shall she claim continuity of service or any rights on that basis. However, if she has been re-employed and continues to be employed at present on account of the aforesaid order of interim relief, her service shall not be terminated only on account of the impugned award being set aside. In other words, if her service can be continued and she is willing to continue to work under the petitioner, she may be continued in her service as a daily-wage labourer at current rate of wages as long as her services are required. Subject to

the above directions, petitions are allowed and the impugned common award is set aside with no order as to costs.