
(2010) 10 GUJ CK 0051
In the Gujarat High Court

Case No : Special Civil Application No's. 8814 and 8825 of 2004

Junagadh Agricultural University

APPELLANT

Vs

Mansukhbhai Laxmanbhai Makwana

RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 33A

Citation : (2010) 10 GUJ CK 0051

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : D.G. Chauhan, for the Appellant;

Final Decision : Allowed

Judgement

M.R. Shah, J.—Special Civil Application No. 8814 of 2004 is preferred by the Petitioner under Article 227 of the Constitution of India for an appropriate writ, direction and order quashing and setting aside the impugned judgment and award dated 30.9.2003 passed by the Industrial Tribunal, No. 2, Rajkot passed in Reference (IT) No. 296 of 1988, by which the Industrial Tribunal has directed the Petitioner to treat the concerned Respondent-workman as employee w.e.f. 1.1.1983 i.e. on completion of 240 days as a daily wager and to put him into a pay scale of permanent employee on notional basis up to 1.1.1990 and to give 40% of consequential benefits of permanent employee w.e.f. 1.1.1990.

1.1. Special Civil Application No, 8825 of 2004 is also preferred by the Petitioner-Junagadh Agriculture University, Junagadh under Article 227 of the Constitution of India for an appropriate writ, direction and order quashing and setting aside the impugned judgment and award dated 30.9.2003 passed by the Industrial Tribunal, No. 2, Rajkot in Complaint (IT) No. 18 of 1999 in Reference (IT) No. 296 of 1988 directing the Petitioner to reinstate the Respondent workman with 50% back wages and with continuity of service and with all consequential benefits.

2. Shri Chauhan, learned advocate has appeared on behalf of the Petitioner-Agriculture University and Shri Pankaj Desai, learned advocate has appeared on behalf of Respondent workman. Shri Chauhan, learned advocate for the Petitioner has submitted that so far as Special Civil Application No. 8814 of 2004 is concerned, the Industrial Tribunal has material erred in directing the Petitioner to regularize the services of the Respondent and to make him permanent on and from 1.1.1983 i.e. on completion of 240 days as daily wager. It is submitted that as such the controversy in the petition is squarely covered by the decisions of the Hon"ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, as well as in the case of Official Liquidator Vs. Dayanand and Others, as well as the recent decision of this Court dated 07.10.2010 in Special Civil Application No. 18007/2003 and other allied matters. Therefore, it is requested to allow the Special Civil Application No. 8814 of 2004.

3. Shri Desai, learned advocate for the Respondent is not in a position to satisfy the Court with respect to legality and validity of the impugned judgment and award passed by the Industrial Tribunal and is also not in a position to show any contrary decision to the decisions cited at the bar on behalf of the Petitioner.

4. In view of the fact that Respondent was appointed and worked as a daily wager only. In view of the above decisions of the Hon"ble Supreme Court in the case of Umadevi (Supra) as well as in the case of Dayanand (Supra), the judgment and award passed by the Industrial Tribunal regularizing the services of the Respondent-workman and to make him permanent w.e.f. 1.1.1983 i.e. on completion of 240 days cannot be sustained and the same deserves to be quashed and set aside. Under the circumstances, the impugned judgment and award passed by the Industrial Tribunal, Rajkot dated 30.9.2003 passed in Reference (IT) No. 296 of 1988 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No. costs.

5. Now, so far as Special Civil Application No. 8825 of 2004 to quash and set aside the impugned order passed by the Industrial Tribunal dated 30.9.2003 passed in Complaint (IT) No. 18 of 1999 in Reference (IT) No. 296 of 1988 in an application u/s 33A of the Industrial Disputes Act is concerned, it is reported that concerned workman is already reinstated in service w.e.f. 12.8.2004 and, therefore, it is requested to modify the impugned order / award passed by the Industrial Tribunal in so far as awarding 50% back wages and other consequential benefits are concerned. Shri Desai, learned advocate for the Respondent has submitted that he does not invite any further reasoned order of reinstatement has passed by the Industrial Tribunal is sustained with continuity of service. It is submitted that impugned judgment and award passed by the Industrial Tribunal be suitably modified accordingly.

6. In view of the broad consensus between the learned advocates for the respective parties under the instructions from their respective clients. Special Civil Application No. 8825 of 2004 is hereby partly allowed and the impugned judgment and award dated 30.9.2003 passed by the Industrial Tribunal, No. 2,

Rajkot in Complaint (IT) No. 18 of 1999 in Reference (IT) No. 296 of 1988 is hereby modified and is quashed and set aside so far as awarding of 50% of back wages with all other consequential benefits is concerned. Meaning thereby the order passed by the Industrial Tribunal of reinstatement with continuity of service is confirmed / sustained. Rule is made absolute to the aforesaid extent only. No. costs.