

(2016) 04 GUJ CK 0123
In the Gujarat High Court

Case No : Letters Patent Appeal No. 878 of 2011 in Special Civil Application No. 10143 of 2010.

Kachchh District Panchayat Thro. Dy Executive Engineer and
another

APPELLANT

Vs

Rambhai Meghraj Gadhvi

RESPONDENT

Date of Decision : 25-04-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 2(oo)(bb), 25F

Citation : (2016) 2 CLR 456 : (2016) 150 FLR 278 : (2016) 3 GLR 2234 :
(2016) 3 GujLH 225 : (2016) LabLR 918 : (2016) 3 LLJ 494 : (2017) 1 SCT 20

Hon'ble Judges : Anant S. Dave;A.S. Supehia, JJ.

Bench : Division Bench

Advocate : H.S. Munshaw, Advocate, for the Appellant; Premal S. Rachh,
Advocate, for the Respondent

Final Decision : Disposed off

Judgement

A.S. Supehia, J. (Oral) - Present appeal is directed against the order dated 27.08.2010 passed by learned Single Judge in Special Civil Application No.10143 of 2010 whereby learned Single Judge has, for the reasons recorded therein, dismissed the petition.

2. The Appellant Kutch District Panchayat had challenged the Award dated 20.11.2009, passed by the Labour Court, Bhuj Kutch in Reference (LCB) No.27 of 2004, reinstating the Opponent Workman with continuity of service without back wages.

3. Before the Labour Court, it was contended by the Workman that he was serving as a Driver since 01.07.1993 under the Panchayat and was paid Rs. 2500.00 per month as wages, and on 05.01.2004 he was retrenched from service without any reason or notice. The Authorities negated the contention of the workman that he was in continuous service. It was the case of the Institution that the workman was employed for a fixed period as and when the work was

needed, and on completion of the work he was relieved. It was further argued before the Labour Court that the employee's case did not fall under Section 25B of the Industrial Disputes Act, 1947 (the I.D. Act) and therefore no benefit under the said provision was available to him. The Labour Court specifically framed the issue that whether the workman was appointed for a specific period on fixed terms as defined under Section 2(oo)(bb) of the I.D. Act.

4. After an exhaustive exercise undertaken by the Labour Court on the aforesaid issue, it was held that the workman was appointed on a regular post of driver sanctioned by the State Government in the regular setup of the establishment of the Institution Employer. It was further observed that the said post still continued as such on the date of retrenchment of the workman. The Institution Employer was unable to show that the post was sanctioned by the State Government for a specific term for a scheme. The fact of continuation of the post was admitted by the Institution before the Labour Court. After examining the entire record and keeping in mind the provisions of Section 2(oo)(bb) of the I.D. Act, the Labour Court concluded that with a view to deprive the Workman from the status and privilege of the permanent workman, he was given orders of fixed terms for a long time of about five years, which was an Unfair Labour Practise. The Labour Court also held that Section 25G of the I.D. Act was also violated since the Workman was retrenched while retaining the juniors.

5. Learned Counsel Shri Munshaw, as usual, has vehemently opposed the Order of the Learned Single judge and the Award passed by the Labour Court. Specific contentions are raised by him that the case of the Opponent Workman was squarely covered under Section 2(oo)(bb), and provisions of Section 25(f),(g) and (h) of the I.D. Act were not applicable as he was employed for a fixed period on contractual basis. He has also drawn the attention of the Court to various orders passed between 01.5.1999 to 07.10.2003 appointing the Workman on contractual basis and the contract entered by both the parties. No other contention was raised by him.

6. At this stage, it will be appropriate to observe that during the pendency of the present Appeal, the Appellant has passed an Order dated 28.10.2015, whereby the Opponent Workman is reinstated in service as a Daily wager Driver w.e.f 04.01.2004 with continuity of service. A further order dated 17.12.2015 fixing his pay at Rs. 3050.00 in the pay scale of Rs. 3050-75-3950-80-4590 w.e.f 01.04.2004 is also passed.

The aforesaid orders are passed in view of the Contempt proceedings initiated by the Workman for compliance of the Award. The Order dated 28.10.2015 bears the condition that fresh order will be passed after the decision of the Supreme Court in S.L.P Nos. 66856686/2015. By the Order dated 09.02.2016, the Supreme Court remitted the matter to the High Court. Earlier the present Appeal was dismissed by the Division Bench vide Order dated 03.09.2014 as not maintainable in view of Full Bench decision in the case of Gujarat State Road Transport Corporation v. Firoze M. Mogal and Ors. reported in 2014(1) GLH 1.

7. Mr.Premal S. Rachh, learned Counsel for the Opponent workman, has stated, on instructions from his client that he is ready and willing to accept the benefits conferred to him by the Labour Court from the date of the Award i.e. from 20.11.2009. The above statement is made with a view to get all benefits of regular employee and pay scale w.e.f. 20.11.2009.

8. After giving thoughtful consideration to the entire controversy and the subsequent development, we come to the conclusion that the Labour Court, has rightly held that retrenchment of the Workman was not covered under the provisions of Section 2(oo)(bb) of the I.D. Act. The Appellants before the Labour Court were unable to dislodge the fact that the post of Driver, on which the Opponent Workman was employed, was a sanctioned and permanent post. The Opponent Workman was working as a Driver since 1993 on monthly wages of Rs. 2500.00. In such circumstances, there was no need for the Institution to go on employing him on contractual basis since 1999 on sanctioned post giving a false hope that he will be subsequently regularised on the said post. As rightly held by the Labour Court, the same will amount to Unfair Labour Practise. The Labour Court has concluded that the Workman had worked continuously with the Appellants for more than one year, as defined under Section 25B(1) of the I.D. Act. The said finding of the Labour Court is neither controverted in the petition nor in the present Appeal. Hence, we uphold that the retrenchment of the Workman was in violation of Section 25F of the I.D. Act. One more aspect needs to be noticed that the Order dated 17.12.2015 passed by the Institution, fixing the pay of the Opponent Workman refers to the Resolution dated 17.10.1988 which states that after completion of 10 years of service as Rojamdard/Daily wagger, the concerned workman is to put placed in regular pay scale. Accordingly his pay is also fixed.

9. As recorded earlier, the Opponent Workman has shown his willingness to accept the benefits conferred to him by the Labour Court from the date of the Award i.e. from 20.11.2009 and to place him in regular pay scale and establishment. In fitness of things and with a view to put an end to the controversy, we direct that the Appellants shall place the Opponent Workman in the pay scale of Rs. 3050-75-3950-80-4590, and his pay shall be fixed at Rs. 3050.00 w.e.f 01.12.2009 and shall confer all benefits flowing from the award. It is further clarified that the benefits which are granted earlier to the Opponent-Workman shall not be recovered or adjusted. To the extent as above, the award of Labour Court is interfered with.

10. Appeal stands disposed of accordingly.