
(1985) 08 GUJ CK 0007
In the Gujarat High Court

Kantilal Jasamatbhai Bhut

APPELLANT

Vs

General Manager, Jilla Udyog Kendra and Another

RESPONDENT

Date of Decision : 13-08-1985

Acts Referred:

Constitution of India, 1950 — Article 226, 26
Industrial Disputes Act, 1947 — Section 25F, 25F

Citation : (1986) 1 GLR 317

Hon'ble Judges : P.R. Gokulakrishnan, C.J.; S.B. Majmudar, J

Bench : Division Bench

Judgement

P.R. Gokulakrishnan, C.J.—The petitioner has come forward with the present writ petition for issue of a writ of mandamus or any other appropriate writ, order or direction in a prohibitory form directing the respondent or its officers from discharging the petitioner from service till the final disposal of the suit. The petitioner's services were terminated on the ground that he was only a temporary employee. This was questioned by the petitioner by filing Regular Civil Suit No. 577 of 1983 on the file of the Civil Judge (Senior Division), Junagadh. According to the petitioner, there was artificial termination by employing the petitioner for 29-days in a month even though he has served for more than 11/2 years under the respondent herein. The petitioner was able to get interim injunction restraining the respondent from terminating his service in Regular Civil Suit No. 577 of 1983. He has enjoyed the benefit of injunction for over two years. After the dismissal of the injunction petition by the Civil Court (S.D.), Junagadh, the petitioner took it by way of an appeal to the District Court and the District Court has also dismissed the injunction petition filed by the petitioner herein. Subsequent to the same, the petitioner has come forward with the present Special Civil Application contending that his termination would amount to retrenchment u/s 25-F of the Industrial Disputes Act, 1947, and as such, the termination is bad.

2. The abovesaid facts clearly reveal that the petitioner has filed a suit questioning the termination and the same is pending. Since he was unable to get

the injunction in his favour, both from the trial Court and the District Court, he wants to invoke the jurisdiction of this Court under Article 226 of the Constitution questioning the termination order. The relief sought for by the petitioner through the Civil Court, in our opinion, is effective and efficacious and he can get the relief which he wants by agitating the matter before the Civil Court. Further, the suit is of the year 1983 and the same can be expedited for the purpose of getting the final result in the suit.

3. M.D. Rana, the learned Counsel appearing for the petitioner, cited the decision in the case of *Amarsing Ratansing v. Union of India and Anr.* reported in 1983 Gujarat Law Herald 343 wherein a Bench of our High Court had occasion to consider whether a writ can be issued when especially the petitioner therein had availed the facility of filing a suit in respect of the very same relief. The Bench of our High Court after observing that the Court may not exercise discretionary jurisdiction as a matter of self-imposed discipline and that in that case there were special circumstances for not refusing to exercise the jurisdiction, exercised the jurisdiction under Article 226 of the Constitution. In that case, it is seen from the facts of that case that the suit filed by the petitioner therein was withdrawn and the matter therein had chequered history. Taking these aspects into consideration as special circumstances, the Bench of our High Court has entertained the Special Civil Application under Article 226 of the Constitution.

As far as the present case is concerned, the petitioner has come forward with the suit being Regular Civil Suit No. 577 of 1983 on the file of the Civil Judge (S.D.), Junagadh, immediately after his termination and got the injunction also in his favour. Hence there is no question of any special circumstances as such involved in this case nor any chequered career as it was in the case reported in 1983. Gujarat Law Herald, page 343.

4. Hence, we are of the opinion that when especially the petitioner has opted for an efficacious remedy before the Civil Court and has effective alternative remedy therein, the present petition under Article 226 of the Constitution cannot be entertained. We direct the Civil Judge (S.D.), Junagadh to expedite the hearing of Regular Civil Suit No. 577 of 1983 and dispose of the same on or before 31st October 1985. With this direction, the Special Civil Application is dismissed.