

(2021) 01 GUJ CK 0006

In the Gujarat High Court

Case No : R/Special Civil Application No. 4951, 5050, 5052, 5053, 5054, 5056, 5057, 5058, 5059, 5059 Of 2020

Kotadiya Rajeshbhai Kalabhai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 27-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Industrial Disputes (Central) Rules, 1957 — Rule 81
Industrial Disputes Act, 1947 — Section 25(F), 25(G), 25(H)

Citation : (2021) 01 GUJ CK 0006

Hon'ble Judges : Nirzar S. Desai, J

Bench : Single Bench

Advocate : Bhavin H Anadkat, Yogen N Pandya, Asmita Patel

Final Decision : Dismissed

Judgement

Nirzar S. Desai, J

1. By way of this group of petitions, the petitioner in each of the petitions has challenged the order dated 29/06/2019 passed by the learned Presiding

Officer, Labour Court No.1, Rajkot in Reference (LCR) Case No.81 of 2016 and allied matters whereby the Presiding Officer, Labour Court No.1,

Rajkot rejected the reference cases preferred by the petitioner workman.

2. Since the facts of each of the petitions are almost similar and date of order in each of the petitions is 29/06/2019 and reasoning given by the

Presiding Officer, Labour Court No.1, Rajkot while dismissing the reference of each of the workmen are almost same, all these petitions are taken up

together by consent of learned advocates appearing for the petitioner and respondent " State and accordingly this common order is passed.

3. Considering the fact that facts in each matter is similar as well as legal issue being the same, the facts of Special Civil Application no.4951 of 2020

being the lead matter is taken up for adjudication.

4. Facts of the case can be summarized as under:

4.1. It is the case of the petitioner workman that the petitioner workman was serving as labourer under the respondents and he was paid minimum

wages of Rs.2700/- per month. He served under the respondents from 01/01/1999 to 31/12/2008. He served for more than 240 days and he was not

given any appointment order, salary slip or attendance card. Presence of workmen were marked in the muster which was maintained by the

respondents. Sometimes the petitioner workman was given work on hand receipt as well. The respondents terminated services of the petitioner

workman with effect from 31/12/2008 without assigning any reason and without paying any notice, notice pay or retrenchment compensation and

thereby committed breach of Section 25(F) of the Industrial Disputes Act, 1947. While terminating services of the petitioner, the respondents not only

retained the persons who were junior to the petitioner but also recruited new labourers and thereby also committed breach of Section 25(G) and (H) of

the Industrial Disputes Act, 1947 and, therefore, the petitioner preferred reference before the Labour Court, Rajkot in the year 2016. i.e. after a delay

of about eight years and in the reference the petitioner workman did not produce any oral or documentary evidence whereas respondent-State

produced oral as well as documentary evidence and, therefore, considering the evidence on record, learned Presiding Officer, Labour Court came to

the conclusion that the petitioners could not prove that they were even working under the respondents and, therefore, learned Presiding Officer

rejected the claim of each of the petitioners vide order dated 29/06/2019.

5. Heard Mr. Yogen Pandya, learned advocate appearing for the petitioner in each petition and Ms.Asmita Patel, learned Assistant Government

Pleader for respondent no.1-State.

6. Mr. Yogen Pandya, learned advocate for the petitioner submitted that impugned order passed by learned Labour Court, Rajkot is unjust and

improper and contrary to the provisions of law. He further submitted that the learned Presiding Officer overlooked the evidence that each of the

petitioners have worked for a period from year 1999 to year 2008 and has

completed 240 days. He further submitted that the learned Labour Court, Rajkot has rejected the reference of the petitioners only on the ground that there was no documentary evidence produced. He further submitted that learned Labour Court has not appreciated material fact that the respondents committed breach of Section 25(F), (G) and (H) of the Industrial Disputes Act, 1947. Mr. Pandya submitted that burden of proof to prove that the petitioners have not completed 240 days is on the employer and the respondent-State being the employer could not prove the same and the said fact has not been considered by the learned Presiding Officer, Labour Court, Rajkot. Mr. Pandya relied upon decision of the Hon'ble Supreme Court in the case of Rashtasant Tukdoji Maharaj Technical Education Sanstha, Nagpur vs. Prashant Manekrav dated 03/04/2017 reported in 2018 (12) SCC 294 and submitted that learned Presiding Officer, Labour Court, Rajkot ought to have considered the case of the petitioner at least for lump-sum compensation considering the length of services rendered by the petitioner. Mr. Pandya further relied upon the judgment of the Hon'ble Supreme Court in the case of Deputy Executive Engineer vs. Kuberbhai Kanjibhai dated 07/01/2019 reported in 2019 (4) SCC 307 and reiterated that in light of above judgment also, some lump-sum compensation was required to be awarded to each of the petitioners. By not considering the case of the petitioners for even lump-sum compensation, learned Presiding Officer has not considered the case and accordingly the petitioners have filed these petitions.

7. As against the same, Ms. Asmita Patel, learned Assistant Government Pleader submitted that order passed by learned Presiding Officer, Labour Court, Rajkot is absolutely just, proper and legal and the same has been passed after appreciating the evidence on record and after hearing learned advocate appearing for the petitioners. She further submitted that order is passed on the material on record as can be seen from the order that no documentary or oral evidence is ever been produced by the petitioner and as against that, the respondents not only produced oral but numerous documentary evidence which were on record which have rightly been considered by the learned Presiding Officer and learned Presiding Officer has recorded the reasons while dismissing the reference filed by the petitioners. She further submitted that reference was preferred after delay of almost

eight years by each of the petitioners. She further submitted that considering the ratio laid down by the Hon'ble Supreme Court in the case of

Prabhakar vs. Joint Director, Sericulture Department and another reported in (2015) 15 SCC 1 and other judgments, learned Presiding Officer has

rightly held that reference of the petitioners suffers from the vice of delay. She further submitted that in respect of issue framed by learned Labour

Court that whether termination of the petitioner on 31/12/2008 was in violation of Section 25(F), (G), (H) read with Rule 81 of the Industrial Disputes

Act, said issue was decided in favour of the respondent-State. She further submitted on appreciation of evidence, learned Presiding Officer observed

that in respect of most of the claims of workmen, workmen did not led any evidence to substantiate their claim. She submitted that even during the

cross examination, nothing was found in favour of the workmen. Considering the fact that it is the case where there were no evidence to the effect

that the petitioners had actually served under the respondent-State, order passed by learned Presiding Officer is absolutely just, legal and proper and

does not call for any interference by this Court while exercising writ jurisdiction under Article 226 and 227 of the Constitution of India.

8. After having heard learned advocates for the respective parties and on perusal of the material on record, this Court is of the view that the petitioner

workman could not produce any evidence either documentary or oral in his favour before the learned Presiding Officer, Labour Court, Rajkot. Though

the petitioner had taken contention before learned Labour Court, Rajkot that as per order passed on application for production of documents and

though the workman had gone for inspection of those documents, he was not permitted to inspect those documents, however, during the cross

examination, it was found that there is a signature of the workman on documents inspection report. Moreover, the petitioner workman could not

produce any evidence to show that he was serving under the respondents on 01/01/1999 and he was terminated on 31/12/2008. As per admission of

the petitioner workman that he was paid a sum of Rs.2700/- per month by way of salary and that amount was paid through kachha slip but even that

slip was not produced before the Labour Court. The petitioner did not produce any evidence show that he has worked for 240 days in a year. As

regards claim of the petitioner that persons who were juniors to him were retained in the services, the petitioner could not produce any evidence. The

learned Presiding Officer considered examination in chief of the respondents herein and according to the same, name of the petitioner is not there in the muster.

As stated in examination in chief, as per circular issued by the Gujarat Water Resources and Water Supply Board, payment of daily wagers are done

directly into their bank accounts since July 2005 and no persons are paid through any receipt or in cash. Since the petitioners' name was not there in

any evidence produced on record to show that they were paid any amount by the respondents herein towards salary as claimed by the petitioners by

depositing the same in the bank accounts, there was no evidence worth name to show that the petitioners had ever worked under the respondents and,

therefore, learned Presiding Officer, Labour Court, Rajkot has rightly observed that though when it is found that termination is wrongful, in such cases

the workmen should be reinstated generally but in the instant case the workmen could not even prove that they were working under the respondents,

and, therefore, question of termination does not arise. Learned Presiding Officer further observed that the petitioners failed to prove that there is a

breach of Section 25(F), (G) and (H) read with Rule 81 of the Industrial Disputes Act and, therefore, also they have not entitled to get any relief.

9. As far as the authorities cited by the Mr. Pandya, learned advocate for the petitioner is concerned, in both the cases, the Hon'ble Supreme Court

had held that considering the short span of time that the workman had worked in those cases, some lump sum compensation in lieu of reinstatement

would serve the end of justice. In the instant case, as discussed herein above since the workman could not even establish that he was working under

the respondent, there is no question of reinstatement and, hence, question of some lump sum compensation also would not arise and, therefore, both

those judgments cited by Mr. Pandya, learned advocate would not help the petitioner in the facts of the present case.

10. In view of aforesaid observations, I am in complete agreement with the view taken by the learned Presiding Officer, Labour Court, Rajkot vide

order dated 29/06/2019 in reference filed by each of the petitioners as the same is absolutely just, legal and proper and does not call any interference

by this Court.

11. As regards submission of Mr. Pandya, learned advocate that each of the

petitioners are required to be paid some compensation in lieu of reinstatement also cannot be considered simply for the reason that when there is a specific finding by the Labour Court, Rajkot that the petitioner workman has failed to prove that they were even working under the respondents and when it was specifically held by the Labour Court, Rajkot that there is no evidence to the effect that the petitioners were working under the respondents, there is no question of awarding any lump-sum compensation to the petitioners in lieu of reinstatement and, therefore, even the request for lump-sum compensation also cannot be considered.

12. In view of the aforesaid, petitions are without any merit and deserve to be dismissed and accordingly the same are dismissed. No order as to costs.