

(2011) 02 GUJ CK 0053

In the Gujarat High Court

Case No : Special Civil Application No. 18590 of 2007

Kutch District Panchayat

APPELLANT

Vs

Kishor Devsinh Varu

RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 02 GUJ CK 0053

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : H.S. Munshaw, for the Appellant; Navaladan R. Langa, for the Respondent

Final Decision : Allowed

Judgement

S.R. Brahmbhatt, J.—Heard learned Advocate for the parties. The Petitioner opponent in Recovery Application No. 2 of 2002 of the Labour Court, Gandhidham, Kutch has approached this Court under Articles 226 and 227 of the Constitution of India, challenging the order passed by Presiding Officer, Labour Court, Bhuj-Kutch in Recovery Application No. 2 of 2000 on 24.4.2007 allowing Recovery Application and ordering that workman be paid Rs. 79,243/- within 30 days from the date of the order and in case, if it is not paid then from 1.4.2007 12% interest shall be accrued thereon and Rs. 2,000/- as costs.

2. The facts in brief leading to the filing of the present petition are set out as under.

3. The workman who is Respondent hereinabove, was constrained to raise industrial dispute as despite he was serving with the Petitioner for a period of 18 months in the year 1982 his services came to be terminated without following any procedure of law and the provisions contained in Industrial Disputes Act, 1947 (hereinafter for the sake of brevity referred to as the "I.D. Act"). The dispute was referred to the competent Court wherein it was marked as Reference

LCR No. 262 of 1991 which came to be renumbered as new Reference LCG No. 273 of 1996. The workman in that reference contended that despite his services were of 18 months and/or three quarters, were put to an end unceremoniously. The workman services were terminated on 16.12.1992. The workman was receiving daily wage of Rs. 11/- per day. It is required to be noted at this stage that the workman though was aggrieved by the order of termination dated 16.12.1992 for the reasons best known to him could not raise industrial dispute and ultimately the dispute came to be raised in the year 1991. The Court framed issues and answered them accordingly and ultimately passed an order and award dated 26.11.1997 partly allowing reference and directing the present Petitioner to reinstate the workman on his original post or place with continuity of service but without back wages. As per the say of the workman as per the award, the competent authority issued order reinstating the workman but the sub-office working under the competent authority did not obey the order in its true spirit and though he was posted as "Mukadam" he was not paid the wages which were admissible to the person on the post of "Mukadam". Being aggrieved and dissatisfied with this treatment the Petitioner workman had to prefer Recovery Application being Recovery Application No. 2 of 2000 inter alia praying that the workman was entitled to receive wages in the scale of "Mukadam" as it is pointed out from the Recovery Application Memo his deduction was Rs. 15,311/- as evident from page No. 16 of the Recovery Application Memo. The Recovery Court came to the conclusion that there exists a post of "Mukadam" he deserved to be given appropriate relief and hence, allowed the Recovery Application ordering payment of Rs. 79,243/- to the workman to be paid to him by stipulated period failing which the interest was ordered to be paid @ 12% p.a. from 1.4.2007. This order of Recovery Application made on 24.4.2007 is the subject matter of scrutiny and challenge in the present petition under Articles 226 and 227 of the Constitution of India.

4. The learned Advocate Mr. Munshaw, appearing for the Petitioner contended that the workman when approached the labour Court or labour machinery under the I.D. Act claimed only reinstatement challenging his unceremonious termination. The workman was working on daily wage and as such it could be seen from the statement of claim filed by the workman, the workman claimed his reinstatement as he challenged his termination from services as such. The Labour Court therefore taking into consideration the time gap between the date of termination to the date of raising industrial dispute and the testimony of the workman wherein he stated that he was earning something did not grant back wages and ordered only reinstatement on his original post with continuity of service, therefore, the workman could not have claimed any scale admissible to the post of "Mukadam".

5. Mr. Munshaw further submitted that there is no post of "Mukadam" as such but if we assume that there exists a separate post of "Mukadam" then it can well be said from the record that the workman had never been working as regular Mukadam but the vast difference between the Mukadam and Daily Wager who

was receiving Rs. 11/- per day ought to have appreciated by the Court while passing the order on Recovery Application. Mr. Munshaw submits that in case the workman has been reinstated and he is receiving the benefits with continuity of service and thereafter all other benefits arising therefrom and today in the year 2011 when the workman is on the verge of the retirement should not have agitated this issue. He submits that even if this petition is accepted the workman is not now going to be worsen of the position from which he is enjoying today.

6. Mr. M.R. Langa, learned Advocate appearing for the workman contended that the workman had been working as Mukadam prior to his termination of services and therefore, rightly the Head Office while issuing order of reinstatement pursuant to the award dated 26.11.1997 also ordered his reinstatement on the post of Mukadam only and as such the workman did not work and performed his duties as Mukadam. The grievance was required to be made as the workman did not receive the wage in the scale of Mukadam. The Recovery Application had been filed for receiving the payscale of Mukadam as the Labour Court had accepted the contention of the workman that the workman was wrongly terminated and therefore he deserved to be reinstated and there was order made on the record accordingly.

7. Mr. Langa invited attention of this Court to the admission made by the present Petitioner in reply to the Recovery Application, wherein it was said that there is a statutory post of Mukadam existing in the establishment. In view of this admission on the part of the Petitioner, the Petitioner employer at this stage, would not be justified in resisting the implementation of the order made in the Recovery Application. He submits that therefore the present petition deserved to be dismissed and order made on Recovery Application be restored.

8. Mr. Langa, learned Advocate appearing for the workman further contended that the workman had never worked as anything else but "Mukadam" or "Shuddha Mistri". The post of "Mukadam" and "Shuddha Mistri" is interchangeable and therefore when it was incumbent upon the Petitioner authorities to implement this order in its totality, they should not have shut from the responsibility from paying wages from the post of "Workman" and "Mukadam". The workman in all earnestness has taken out his remedy available to him under law and even the superior officer viz. Head Office did issue order appointing workman as "Mukadam" unfortunately the sub-office disobeyed the same, therefore, the workman is put to monetary loss. He submits that the petition deserves to be rejected.

9. Mr. Langa, learned Advocate further submitted that the labour Court while making order on Recovery Application had taken into consideration the evidence in form of Muster Roll which indicated that the workman was working as Supervisor Mistri and at some places it was showing workman working as Mukadam. Thus, it was interchangeable post.

10. The Court has heard both the parties and perused the order dated

26.11.1997 as well as order on recovery made in this petition dated 24.4.2007. The following undisputed aspects emerged from the reading deserved to be set out as under:

(a) The entire reading of original award dated 26.11.1997 go to show that the terms of reference were revolving around the workman challenge to his unlawful termination only.

(b) The workman did not raise any industrial dispute claiming his right to be treated as regular employees or an employee entitled to receive regular pay scale after his reinstatement.

(c) The workman prior to the date of his termination had put in only 18 months of service so to say one year and/or three quarters and that too as per his own say he was receiving wages @ Rs. 11/- per day.

(d) This conclusively go to show that the workman did not enjoy any status of permanent employee nor was he in receipt of any regular pay scale when his services were illegally terminated.

(e) The workman while raising dispute also did not claim that he had any right to be treated as regular employee, after the termination is set aside.

(f) The terms of Reference as on today culled out from the award which also goes to show that the workman raised dispute only for his illegal termination. The workman therefore did not raise any dispute without getting any regular treatment or treatment as regular employee.

(g) The Court at the first instance, therefore, while passing the order and award in Reference has ordered reinstatement only. The award dated 26.11.1997 passed in the Reference does not confer any further relief so as to compel the Petitioner when he treat the workman as regular permanent employee.

(h) The award and the direction contained therein are to be looked into as it is by the Court hearing the Recovery Application. The Court hearing the Recovery Application should not have gone beyond the direction issued in substantive award.

11. Against the aforesaid indisputable aspects, backdrop and facts, this Court is enable to accept the submission made by Mr. Langa for the workman. As the workman was all along prior to his termination working as daily wager employee only. The daily wager employee who was receiving daily wages of Rs. 11/- per day was not getting any regular pay scale could not have been reinstated as if he was given benefit of permanent employment. The term of reference shall govern the reference as the Labour Court's jurisdiction springs from the term of the reference and therefore when the workman did not raise any dispute with regard to he being treated as permanent employee could not have read into ultimate direction in the award. The workman, in my view, therefore, is not entitled to receive any wages at the regular scale of Mukadam. The Recovery Application

therefore, in my view, was required to be rejected outright. The Labour Court by entertaining his Recovery Application and passing order has exceeded its jurisdiction and therefore, the same deserves to be quashed and set aside on this ground also. The order of the Labour Court made in Recovery Application on 24.4.2007 is therefore, not tenable in the eye of law as the Labour Court granted something which in the original Court under the substantive reference and substantive award also did not grant to the workman viz. benefit of regular scale. The impugned award and order therefore required to be quashed and set aside and is hereby quashed and set aside. At this stage, the Court constrained to observe that if the workman is receiving any benefits after putting this long years of services then those benefits will remain as it is and they will not be in any way adversely affect because of acceptance of this petition. The Court has quashed and set aside only the order made by the Labour Court on Recovery Application dated 24.4.2007. The benefits otherwise which have been given to the workman and which have been enjoyed by the workman shall stand confirmed and shall have no adverse impact because of acceptance of this petition.. With this observation, the petition is allowed. Rule made absolute accordingly. However, there shall be no order as to costs.