

(2003) 04 GUJ CK 0009

In the Gujarat High Court

Case No : Special Civil Application No. 592 of 2003

Manager Ahmedabad District Co-operative Bank Ltd.

APPELLANT

Vs

Jasvantbhai Vitthalbhai Valand

RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 27

Industrial Disputes Act, 1947 — Section 2, 25B(1), 25B(2), 25F

Citation : (2003) 04 GUJ CK 0009

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Devang Vyas, for Tushar Mehta, for the Appellant; J.V. Japee, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned advocate Mr.Devang Vyas for learned advocate Mr.Tushar Mehta on behalf of the petitioner - Bank and learned advocate Mr.J.V.Japee for respondent workman appearing on caveat.

Rule. Learned advocate Mr.J.V.Japee appears and waives service of rule on behalf of the respondent workman. With the consent of the learned advocates for the parties, this matter is taken up for final hearing today.

2. In the present petition, the petitioner Bank has challenged the order passed by the Labour Court, Ahmedabad in Application No.52 of 1989 dated 7th December, 2000 wherein the labour court has granted reinstatement with continuity of service and 50 % back wages of the interim period. This order challenged by the petitioner Bank in Appeal before the Industrial Court in Appeal [TC] No. 6/ 2001, wherein also the Industrial Court, Ahmedabad has dismissed the appeal filed by the petitioner Bank on 14th October, 2002.

3. Learned advocate Mr.Devang Vyas for the petitioner Bank has submitted that the application which was submitted by the respondent workman under the

provisions of the Bombay Industrial Relations Act itself was not maintainable and present respondent workman was not covered under the definition of the employee and it was also barred by limitation and it was not admitted by the Bank that the workman was appointed on 5th February, 1985. In fact, the respondent workman was appointed in May, 1985 and had worked periodical and not regularly and continuously and as and when the work was available, the workman was called by the petitioner bank and thus, the workman had not worked continuously with the petitioner bank for a period of one year and ultimately, on 28th August, 1988 since no work was available with the petitioner bank, no work was assigned to the respondent workman by the petitioner bank and therefore, no further appointment was given to the respondent workman. It is also submitted that as and when the workman inquired with the petitioner as to availability of work, it was replied by the bank that there was no work available. It is also submitted that thereafter the petitioner bank has not appointed any new employee in place of the respondent workman and therefore, the labour court has committed gross error in not considering all these aspects and the contentions raised by the petitioner. It is also submitted that similar and patent error committed while rejecting the appeal and hence this petition.

4. Learned advocate Mr.J.V.Japee for the respondent workman has submitted that the labour court has rightly decided the matter under the provisions of the Bombay Industrial Relations Act and the labour court has given cogent reason in para-13 that the workman has completed continuous service of one year and the labour court has appreciated the evidence which was on record and this Court having limited powers for depreciating the evidence examined by the lower courts. He also submitted that the entire order passed by the labour court is based upon the fact finding and therefore, no interference of this Court is called for. He also submitted that the appellate Court has also rightly examined the validity and legality of the order passed by the labour court and the Industrial Court has also rightly dismissed the appeal filed by the petitioner Bank.

5. I have considered submissions of the learned advocates appearing for respective parties. I have perused the order passed by the labour court as well as Industrial Court. The labour court in para-19 while relying on documentary evidence produced at Exh.18 to 70 which are the vouchers for the payment made to the workman during the period from 1985 - 1988 and the working days are calculated accordingly, meaning thereby, the workman remained in service from the year 1985-88 and worked continuously and completed 240 days continues service and therefore, the labour court has relied upon the decision of this Court in case of Moti Ceramic Industries Vs. Jivuben Rupabhai, . The contention which was raised by the petitioner bank that the respondent workman was a daily wager and therefore, Section 2[oo][bb] was applicable in the case of the respondent workman. This aspect has been examined by the labour court in its discussion made in para-23 and come to the conclusion that provisions of Section 2[oo][bb] are not applicable to the daily wager and therefore, Section 25-F is applicable in the case of the workman. In short, the labour court has

considered total length of service rendered by the workman though the workman had not completed 240 days continuous service in any of the year but ultimately fact remains that the workman remained in service continuously for a period of more than one year and this fact clearly established and found from the record and therefore, the labour court, taking into consideration the judgment rendered by this Court, has come to the conclusion that once it is established that workman remained in continuous service, said workman entitled to benefits under Section-25-F of the I.D.Act. This Court in the decision referred above interpreted Section 25-F read with Secs. 25-B[1] and [2] and u/s 25[B][1] of the I.D.Act. It makes clear that in each and every case of retrenchment, it is not necessary for the workmen to prove before the Labour Court that he has completed 240 days of continuous service within 12 calendar months preceding the date with reference to which the calculation is to be made. If the workman is able to satisfy that he remained in continuous service with the employer for more than one year and his service is not interrupted by the employer during this period and his service has been interrupted only because of the cessation of the work which is not due to the fault on the part of the workman and other causes as mentioned under Sub-sec.[1] of Sec. 25-B, then he is required to be considered to have remained in continuous service and such consideration of his being "in continuous service" would entitle such workman to have the protection as provided u/s 25-F of the I.D.Act. This aspect has been discussed and appreciated by the labor court concerned taking into consideration the decision of this Court and the labor court come to the conclusion that the workman is entitled to benefits u/s 25-F of the I.D.Act, which was, undisputedly not considered and not complied with by the petitioner Bank and that is how the order of termination held to be invalid and ab initio void. This aspect also considered by the Industrial Court in para-5 at page-25 of this petition to the effect that decision of our own High Court is binding to this Court and the judicial discipline also commands to abide by the decision of our own High Court and therefore, the Industrial Court has also endorsed the view taken by the learned Labour Court in so far as it related to the continuous service of the employee. Thus, the Industrial Court being the appellate authority has also relied upon the decision of this Court in case of MOTI CERAMIC INDUSTRIES V. VIVUBEN RUPABHAI referred to above and having considered all the aspects of the matter, ultimately came to the conclusion that the lower court has not committed any error and accordingly dismissed the appeal preferred by the petitioner herein.

This Court has given thoughtful considerations to the orders impugned before this Court and also perused the observations of the decision referred to above. The relevant observations made by this Court in para-13 in case of Moti Ceramic Industries Vs. Jivuben Rupabhai, are reproduced under :

"13. Sub-section [1] and [2] of Sec. 25-B of the Act introduced a deeming fiction as to in what circumstances, the workman can be said to be in continuous service for the purpose of Chapter V-A. Sub-Section [1] provides a deeming fiction that where a workman is in service for certain period, he shall be deemed

to be in continuous service for that period even if his service is interrupted on account of sickness or authorised leave or accident or a strike which is not declared illegal or lock out or cessation of work which is not due to any fault on the part of the workman. The situations such as sickness, authorised leave and accident, strike which is not declared illegal, lock out or cessation of work ipso-facto interrupt the service. These interruptions have to be ignored to treat the workman in uninterrupted service and such service interrupted on account of the aforementioned causes which could be deemed to be uninterrupted would be continuous service for the period for which the workman has been in service. Sub-section [2] incorporates another deeming provision for entirely a different situation. It comprehends a situation where a workman is not in continuous service within the meaning of sub-section [1] of Section 25-B of the Act for a period of one year or six months, he shall be deemed to be in continuous service under the employer for a period of one year or six months as the case may be, if the workman during the period of 12 calendar months which is preceding the date with reference to which the calculations is to be made has actually worked under that employer for not less than 240 days. Sub section [2] specifically comprehends the situations where the workman is not in continuous service as per the deeming fiction indicated under sub-clause [1] of Sec. 25-B for a period of one year or six months. In such cases, he is deemed to be in continuous service for a period of one year if the workman satisfies the conditions in sub-clause [1] of sub-section [2] of Section 25-B and, therefore, Sec. 25-B[1] of the Act says that the workman shall be said to be in continuous service for a period if he has, for that period, put in uninterrupted service including the service which may be interrupted by aforementioned causes. u/s 25-B[2] where a workman is not in continuous service within the meaning of clause [1] for a period of one year, he shall be deemed to be in continuous service for one year or if the workman during the period of 12 calendar months preceding the date with reference to which the calculation is to be made has actually worked under the employer for not less than 240 days. Once the workman is in service of an employer, the employee continuous to be in service until he is dismissed or discharged from service. Where a workman takes part in illegal strike, the workman is in service of the employer and the fact that he has taken part in illegal strike will not put an end or cause break in his service. Said proposition has been considered by the High Court of Bombay in case of Jayaram Sonu Shogale v. New India Rayon Mills Ltd. reported in [1958 I LLJ 28] [Bom] and it has been held that at pp.30-31.

"Taking part in illegal strike amounts to misconduct on the part of the employee and for the misconduct an employee invites an order of dismissal but unless the employee is dismissed from service for such misconduct, it is difficult to say how there could be any discontinuity of service so far as the employee is concerned. It would not be correct to contend that when a workman takes part in an illegal strike, continuity of his service comes to an end and he must be deemed to be re-employed after the period of illegal strike for the purpose of determining the quantum of retrenchment compensation."

Combined reading of Secs. 25-B and 25-F would make it clear that if a workman establishes that he has put in continuous service for not less than one year, he would forthwith be entitled to claim retrenchment compensation for every completed year of service and this would be so notwithstanding the fact that in any particular calendar year, he has worked for less than 240 days."

6. In view of above observations referred to above and considering the facts on record which clearly reflects that the workman who remained in continuous service for more than one year, entitled to protection and benefits u/s 25-F of the I.D.Act and when there is clear finding of fact that after termination of the respondent workman, new employees have been recruited by the petitioner Bank, the labour court held that there is clear violation of Section 25-H of the I.D.Act on the part of the petitioner Bank and therefore, according to my opinion, while passing such orders passed by the labour court and the Industrial Court, as such, there seems no error committed by the Courts below. It also transpires that no procedural irregularity committed by either of the Court and even in case when two views are possible, this Court cannot interfere with the order passed by the lower court. Learned advocate Mr.Vyas fails to point out any other infirmity in the orders impugned in this petition. Therefore, according to my opinion, there is no apparent error committed by any of the Court below and hence, no interference of this Court is warranted while exercising the powers under Article 226 and 227 of the Constitution of India. Moreover, this Court having very limited jurisdiction while exercising the powers under Article 226 and 27 of the Constitution.

7. Recently, the Apex Court has examined this question in reported decision in the case of *ESSEN DEINKI V. RAJIV KUMAR* 2003 SC L & S 13. Relevant paragraphs are as under:

2. Generally speaking, exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature. It is so exercised in the normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice, to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the courts below. The finding of fact being within the domain of the inferior tribunal, except where it is a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under the article is not called for.

3. The observations above, however, find affirmance in the decision of this Court in *Nibaran Chandra Bag V. Mahendra Nath Ghughu*. In *Nibaran* this Court has been rather categorical in recording that the jurisdiction so conferred is by no means appellate in nature for correcting errors in the decision of the subordinate courts or tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority. More recently, in *Mani Nariman Daruwala Vs. Phiroz N.Bhatena* this Court in a similar vein stated: (SCC pp. 149-50, para 18)

"In the exercise of this jurisdiction the High Court can set aside or ignore the findings of fact of an inferior court or tribunal if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the court or tribunal who (sic) has come or in other words it is a finding which was perverse in law. Except to the limited extent indicated above the High Court has no jurisdiction to interfere with the findings of fact."

4. Needless to record that there is total unanimity of judicial precedents on the score that error must be that of law and patently on record committed by the interior tribunal so as to warrant intervention - it ought not to act as a court of appeal and there is no dissension or even a contra-note being sounded at any point of time till date. Incidentally, the illegality, if there be any, in an order of an inferior tribunal, it would however be a plain exercise of jurisdiction under the article to correct the same as otherwise the law courts would fail to sub serve the needs of the society since illegality cannot even be countenanced under any circumstances.

5. In this context reference may also be made to a still later decision of this Court in the case of Savita Chemicals (P) Ltd. Vs. Dyes & chemical Workers" Union wherein this Court in para 19 of the Report observed: (SCC p. 166)

"Under Article 227 of the Constitution of India, the High Court could not have set aside any finding reached by the lower authorities where two views were possible and unless those findings were found to be patently bad and suffering from clear errors of law."

8. In view of above discussion, there is no error apparently found on the face of the record and as such, there is no substance in the present petition which does not deserve to be entertained and therefore, the same is rejected at the threshold.

No order as to costs.