

(2016) 03 GUJ CK 0128

In the Gujarat High Court

Case No : Special Civil Application No. 14543 of 2003

Mendarda Gram Panchayat

APPELLANT

Vs

Bhayabhai Amrabhai Vala and Others

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1), Section 17(B), Section 17-B, Section 25F, Section 25G

Citation : (2016) 150 FLR 556 : (2016) 2 LLJ 708

Hon'ble Judges : K.M. Thaker, J.

Bench : Single Bench

Advocate : Dipal R. Ravaiya, Advocate, for the Appellant; Hriday Buch, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

K.M. Thaker, J.—1. When the petition is called out and taken up for hearing, learned advocate for the petitioner is not present. Mr. U.M. Kharadi, learned advocate, for Mr. Buch, learned advocate for the respondent No. 1, is present.

2. Mr. Kharadi, learned advocate, for Mr. Buch, learned advocate for the respondent No. 1, submitted that the said respondent No. 1 is reinstated since 2004 and he is serving with the petitioner panchayat and to that extent the award is complied, however, the award with regard to backwages is not complied.

3. From the record, it appears that while admitting the petition, the Court passed below quoted order on 13.10.2003. The said order reads thus:--

"Heard the learned advocates.

Apparently, the workman has raised the industrial dispute after a long and unexplained delay of 11 years.

In view of the judgment of the Hon'ble Supreme Court in the matter of the Nedungadi Bank Limited v. K.P Madavankutty & Ors. [, JT 2000 (1) SC 388], a

Reference under Section 10 (1) of the Industrial Disputes Act, 1947 itself would not be maintainable.

Rule. Learned advocate Mr. Buch waives service of rule.

Notice as to interim relief returnable on 3rd December, 2003. Pending this petition, there shall be ad-interim stay in terms of paragraph 12 [D]."

4. In view of the fact that the petition is pending since 2003, the Court considers it appropriate to decide the petition on merits (instead of dismissing the petition on the ground of non-prosecution) though learned advocate for the petitioner is not present.

5. In present petition, the petitioner panchayat has challenged the award dated 21.3.2003 passed by learned Labour Court, Junagadh in Reference (LCJ) No. 195 of 1998 whereby the learned Labour Court partly allowed the reference and directed the petitioner panchayat to reinstate the claimant - workman in service on his original post with continuity of service and 25% backwages.

Feeling aggrieved by the award, the petitioner has filed this petition.

6. As mentioned at the outset, learned advocate for the respondent stated and declared that since 2004, the respondent is reinstated in part compliance of the award. Under the circumstances, the decision and direction by the learned Labour Court with regard to the obligation to reinstate the workman is not required to be deliberated, examined and decided. This would leave behind the issue with regard to the award for backwages.

6.1 For the said purpose, it is necessary to take into account the factual background in light of which the petition is preferred.

The respondent workman raised an industrial dispute on the allegation that the panchayat terminated his service illegally and arbitrarily w.e.f. 1.4.1986.

The claimant workman raised dispute against the alleged termination after delay of almost 12 years i.e. in 1998.

The appropriate government referred the dispute for adjudication vide order of reference dated 10.3.1998. The said reference culminated into Reference (LCJ) No. 195 of 1998.

6.2 In his statement of claim before the learned Labour Court, the claimant alleged that he was engaged by the panchayat as Guard-cum-Clerk and was working with the petitioner panchayat since last five years at salary of Rs. 700 and his service came to be abruptly terminated without following any procedure prescribed by law. He alleged that he was terminated on and from 1.4.1986. The respondent workman raised all contentions which are ordinarily raised by the workman upon termination from service, inasmuch as in this case also, the workman alleged that the petitioner had committed breach of Section 25F and 25G of the Act and also violated principles of natural justice. On such allegations,

the respondent workman claimed that he should be reinstated with consequential benefits.

6.3 The reference was opposed by the petitioner panchayat. It was claimed that the reference proceedings are initiated with ulterior intention of extracting money from the petitioner panchayat. It was also claimed that the respondent was never employed by the petitioner panchayat after following procedure prescribed for selection and recruitment. It was also claimed that the petitioner panchayat is obliged to follow the prescribed procedure for selection and recruitment and cannot appoint any person without following such procedure. The petitioner panchayat also claimed that there was no sanctioned post of Guard-cum-Clerk and in any case, there was no vacancy in respect of any sanctioned permanent post and that therefore, even if it is assumed that the respondent was appointed by the petitioner, his appointment was illegal.

6.4 After the pleadings were completed, the learned Labour Court recorded evidence and accepted on record oral as well as documentary evidence. The respondent workman placed on record demand notice dated 23.12.1997 and certain other documents. His deposition was recorded at Exh. 17. The petitioner panchayat did not place any document on record, however, the petitioner panchayat examined one witness whose deposition was recorded at Exh. 34. The petitioner panchayat filed written arguments which were taken on record at Exh. 38.

6.5 During his deposition, the respondent mentioned names of two persons i.e. Mr. Pravin Bhand and Mr. Manoj Agani and alleged that the said persons were engaged after the workman was appointed and the said persons continued in employment while his service was terminated.

6.6 It is pertinent to note that the claimant workman had admitted during his deposition that after he was allegedly terminated in 1986 until 23.12.1997 he had never approached the petitioner panchayat with a request to be reinstated and had not taken any steps or actions either for challenging the action of his service or to request the panchayat to reinstate him.

6.7 The witness of the petitioner panchayat claimed that the respondent was engaged without following procedure and that there is no sanctioned post much less any vacancy on the sanctioned post where the respondent could have been recruited or where he could now be appointed. The panchayat's witness also denied the claim that the respondent worked from April - 1981 to April - 1986. He also claimed that the respondent workman had not worked for 240 days.

6.8 After considering the material and evidence on record, the learned Labour Court reached to the findings that the service of the respondent was terminated in violation of Section 25F.

On examination of the award, it comes out that the learned Labour Court has not dealt with the contention that the respondent was engaged without following

procedure prescribed for selection and recruitment.

The learned Labour Court has also not recorded any findings about the total numbers of days for which the respondent had worked, however, the learned Labour Court has recorded findings of fact that the respondent workman established that he had worked from April 1981 to April 1986 and that he worked as daily wager. One of the findings recorded by the learned Labour Court is to the effect that the claimant workman had placed on record a copy of the communication/order which, according to learned Labour Court, established that the respondent was engaged as Guard-cum-Clerk and he was assigned the work of Guard-cum-Clerk. The learned Labour Court also recorded that the claimant workman established that persons junior to him were continued in service. Having reached such conclusion, the learned Labour Court directed the petitioner panchayat to reinstate the respondent with 25% backwages.

From the entire material on record, including the award, it becomes clear that the workman did not offer any explanation with regard to the inordinate delay of 12 years which he caused in raising industrial dispute.

7. In this factual background, the sarpanch of the petitioner Gram Panchayat filed an affidavit dated 10.12.2003 and asserted that:--

"2. I say that the respondent has not stated the true and complete facts about his financial condition. The respondent has also not disclosed as to what he was doing from 1981 to 1986 and from 1986 to 2003 in his affidavit. Further, he has vaguely stated that he was not able to get any regular appointment after termination of his services in the year 1981. He has further stated in his deposition that he was doing labour work and had not disclosed that he is an agriculturist.

3. I say that so far as our information goes, the respondent is residing at Village Sobha Vadla where he has got his own agricultural land and is also doing some business of his own at the adjoining village and the respondent must be called upon to state clearly as to what he was doing and what he is doing now.

4. I say that as can be seen from paragraphs 3 and 4 of his affidavit, the said respondent is only interested in idle wages and is not interested in any kind of reinstatement in service. Even otherwise, the petitioner Panchayat has no post of guard-cum-clerk on its sanctioned set up. There was no such post even in the past also as stated in the petition. Further, the Gram Panchayat is prohibited from creating any post or from filling up any post without prior permission, by various Government orders. I say accordingly, the Affidavit being incomplete, cannot be said to be a sufficient compliance of sec.17-B of the Industrial Disputes Act."

7.1 On the other hand, the respondent workman filed an affidavit and claimed that:--

"2. In response to para 2 and 3 of the said Affidavit-in-reply, I say and submit

that during the period of reference, I was doing labour work in agriculture field and hence I was working as agricultural labourer. The said work was available only for a couple of months in a year and for some time, I have worked in a shop as a casual worker. However, I have never worked continuously and I have never been gainfully employed during the period of reference. Further more, the contentions raised in para 3 of the affidavit-in-reply, I say and submit that I did not do any business on my own and the averments made in that regard are absolutely false and baseless. I further say that I have never done any business of my own even during the period of reference of thereafter. As stated in the earlier affidavit, I am not gainfully employed any where and I am not able to earn my livelihood. I further submit that the averments made in para 3 that there is an agricultural land in village Shobha Vadala is also false and baseless and the same is hereby denied and not admitted. It is submitted that father of the petitioner was agriculturist and there is an agriculture land purchased by my father. However, my father passed away in the year 1978 and thereafter the land is cultivated by other three brothers and their families are dependent on the income of the said agriculture lands. Only my name is mutated in village form No. VI of the said land. However, the same is cultivated by brothers.

Under the circumstances, the answering respondent is entitled either for reinstatement as awarded by the Labour Court or for idle wages as prescribed under Sec. 17(B) of the Industrial Disputes Act, 1947."

7.2 Subsequently, the Talati cum Mantri filed affidavit dated 10.2.1996 and asserted that:--

"1. I say that as the Panchayat was unable to pay idle wages, it passed a resolution on 29th November 2004, to comply with the order of reinstatement of the respondent as a daily wager and, therefore, necessary order was issued on 6th December 2004 calling upon the respondent to work as a daily wager in Water supply work....

2. I say that the respondent reported for duty on 9.12.2004. On that date, he made a show of joining as a daily wager and has not reported for work from the next day and in fact expressed to the Sarpanch his inability to work as a daily wager presumably because he was carrying on agricultural work in his land and was not interest in any kind of employment. Accordingly, the respondent is absent from that date and no application demand of any kind is made by him to the Panchayat since he was only interested in idle wages, if plaid, to him by the Panchayat as is evident from his conduct as stated in the petition and the statements made by him in his earlier application/affidavit filed before this Hon. Court."

8. When the above mentioned facts are taken into account coupled with the fact that the respondent raised industrial dispute after inordinate delay of 12 years and in light of the decision by Hon"ble Apex Court in case of Nedungadi Bank Limited v. K.P. Madhavankutty [Judgment Today , 2000 (1) SC 388], it comes out

clearly that the direction by learned Labour Court obliging the petitioner panchayat to pay 25% backwages cannot be sustained. The said direction deserves to be set aside and is, accordingly, set aside.

9. So far as the order directing the petitioner panchayat to reinstate the respondent is concerned, it is relevant to recall and mention that learned advocate for the respondent submitted and declared that the workman is reinstated since 2004. The learned advocate for the petitioner also confirmed that the respondent is reinstated.

In this view of the matter, the issue related to the direction to reinstate the respondent is not required to be deliberated and/or any order is not required to be passed on that count. Besides this, in view of the fact that the learned Labour Court, in light of the evidence by the respondent workman that persons junior to him (Mr. Pravin Bhand and Mr. Manoj Agani) were continued in employment while his service (though he was senior to the said two persons) was terminated, held that the action of the petitioner panchayat was contrary to and in violation of Section 25G of the Act. The petitioner has not placed any evidence on record to counter or contradict the said evidence of the workman and/or the conclusion by the learned Labour Court. When there is no material on record to convince this Court to hold that the said conclusion by the learned Labour Court is incorrect or contrary to evidence on record or perverse, there is no justification to interfere with the said contention.

In this view of the matter also, the order directing the petitioner to reinstate the respondent does not warrant interference.

10. In this view of the matter and for the foregoing reasons, the petition is partly allowed. The direction to pay backwages is set aside. The award impugned in present petition is modified to the said extent. Any order with regard to direction to reinstate the workman is not required to be passed in light of the statement by learned advocate for the respondent workman.

Accordingly, the petition stands disposed of. Rule is made absolute to the aforesaid extent.