
(1985) 03 GUJ CK 0002
In the Gujarat High Court

M.P. Ramanandi

APPELLANT

Vs

Gujarat State Warehousing Corporation

RESPONDENT

Date of Decision : 28-03-1985

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25F, 25F

Citation : (1985) 2 GLR 1040

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

Bench : Division Bench

Judgement

P.R. Gokulakrishnan, C.J.—The petitioner in this Special Civil Application has come forward with "this Special Application under Articles 226 and 227 of the Constitution of India for quashing and setting aside the Award and order of the Labour Court at Ahmedabad passed on 28/29 June, 1984, in reference LCA No. 810 of 1977 to the extent that it does not award reinstatement with full backwages and all consequential benefits to the petitioner and also for issuing a writ of mandamus to reinstate the petitioner on his original post with full backwages and with all the consequential benefits as if he has continued in service throughout.

2. The short facts of this case are that the petitioner is a workman with the Gujarat State Warehousing Corporation. He was discharged from his service by the respondent as early as 9-3-1977 following Regulation 10 of the Gujarat State Warehousing Corporation Staff Regulations, 1971. The Labour Court which went into this question held that the termination order is quite legal and proper, but directed the respondent to pay retrenchment compensation to the workman - The respondent has, inter alia, contended that the petitioner absented "himself for number of months in spite of the fact his leave was refused by the respondent. Finally he was informed by the notice dated 13-1-1977 stating that if he did not report for duty and continued disobeying the instruction of the Corporation, it will be presumed that he is absent intentionally from duty. It is seen from the facts of the case that the respondent-corporation had issued final

show cause notice as per Regulation 10 of the Gujarat State Warehousing Corporation Staff Regulations, 1971 calling upon the petitioner herein to explain why his services should not be terminated as he had remained absent intentionally by disobeying the instructions of the Corporation. No doubt a reply was received from the petitioner to this final show cause notice stating that he was not able to report to duty as appointed and that he requires further leave to be sanctioned. The respondent, by its termination order which is marked as Ex. 30, terminated the services of the petitioner after following the procedure set up in Regulation 10 referred above. The respondent, in its reply affidavit filed in this Special Civil Application, has stated that the management was constrained to pass an order of discharge simpliciter against the petitioner herein since the petitioner has voluntarily abandoned, the services of the Corporation by not joining at the place of duty in spite of several letters, telegrams, telephones and reminders to him. Without much adverting to the further facts of the case, it is clear from the case put forth by the respondent as well as the case put forth by the petitioner herein that the procedure followed by the respondent in terminating the service of the petitioner was under Regulation 10 of the Gujarat State Warehousing Corporation Staff Regulations, 1971 and it is a discharge simpliciter and not dismissal of the petitioner herein. Even the Labour Court in its order, which is impugned in this Special Civil Application, has stated that the order is only a termination order passed by the respondent herein under Ex. 30 and that it is a retrenchment coming under the purview of Section 25F of the Industrial Disputes Act. The Labour Court has also stated that the petitioner is entitled to get the retrenchment compensation and that is why the Labour Court has directed the respondent to pay retrenchment compensation to the workman. Mr. Cr. M. Joshi, the Learned Counsel appearing for the petitioner citing "decisions reported in Mohan Lal Vs. Management of Bharat Electronics Ltd., and Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another, , submitted that the order passed under Ex. 30 is a retrenchment order simpliciter and such an order, without following the other condition mentioned u/s 25F of the Act, is ab initio void. Hence, according to the Learned Counsel, the petitioner has to be reinstated in service with backwages and all benefits. Mr. M. A. Trivedi, the Learned Counsel appearing for the respondent, contended that the petitioner is not a workman since he is getting a salary of more than Rs. 500 and his designation is "Warehouseman Class I", that the petitioner is not entitled to get the benefits under the Industrial Disputes Act since he is not a workman, that the benefits contemplated u/s 25F cannot be availed of by the petitioner herein since it does not satisfy the definition of "retrenchment" occurring u/s 2(oo) of the Act and that this Court cannot interfere with the order passed by the Labour Court under Article 227 of the Constitution of India. As regards the contention of the Learned Counsel for the respondent that he is not a workman we have to straightaway reject that argument since the "respondent approached the Labour Court and has also put forth its contentions before the Labour Court treating the petitioner as a "workman". Nowhere before the Labour Court, either in its statement or in its

argument, was it contended that the petitioner was not a workman. In the absence of such a contention before the authority below, we are of the view that such a contention cannot be allowed to be raised at this stage since it is a mixed question of fact and law. Section 25F reads as follows:

25F. No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until:

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice: Provided that no such notice shall be necessary, if the retrenchment is under an agreement which specifies a date for the termination of service; (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government under notification in the Official Gazette.

3. The marginal note of Section 25F clearly states "Conditions precedent to retrenchment of workmen". Admittedly those conditions have not been followed before the discharge was effected in this case. We have already held that this is a case of retrenchment and that position is accepted by the Labour Court. The respondent has to concede this position since the action initiated against the petitioner is under Regulation 10 of the Regulations referred above. In *Mohan Lal Vs. Management of Bharat Electronics Ltd.*, the Supreme Court has specifically held that where pre-requisite for valid retrenchment as laid down in Section 25F has not been complied with, retrenchment bringing about termination of service is *ab initio* void. Continuing the Supreme Court has held in paragraph 16 of its judgment:

16. Appellant has thus satisfied both the eligibility qualifications prescribed in Section 25F for claiming retrenchment compensation. He has satisfactorily established that his case is not covered by any of the excepted or excluded categories and he has rendered continuous service for one year. Therefore, termination of his service would constitute retrenchment. As pre-condition for a valid retrenchment has not been satisfied the termination of service is *ab initio* void, invalid and inoperative. He must, therefore, be deemed to be in continuous service.

4. In yet another judgment of the Supreme Court reported in *Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another*, the Supreme Court had occasion to consider the retrenchment of a probationer. In that case also the Supreme Court has held:

13. Once the conclusion is reached that retrenchment as defined in Section 2(oo)

of the Disputes Act covers every case of termination of service except those which have been embodied in the definition, discharge from employment or termination of service of a probationer would also amount to retrenchment. Admittedly the requirements of Section 25F of the Disputes Act had not been complied with in these cases. Counsel. for the appellant did not very appropriately dispute before us that the necessary consequence of non-compliance of Section 25F of the Disputes Act in a case where it applied made the order of termination void. The High Court, in our opinion, has, therefore, rightly come to the conclusion that in these cases the order of retrenchment was bad and consequently it upheld the Award of the Labour Court which set aside those orders and gave appropriate relief. These appeals are dismissed. There would be one set of costs. Consolidated hearing fee is assessed at Rs. 5,000/-.

Thus from the abovesaid judgments it is clear that if the pre-condition for a valid retrenchment has not been satisfied, the termination of service is ab initio void, invalid and inoperative and that the persons whose services have been terminated, must be deemed to be in continuous service.

5. Inasmuch as we have already held that the respondent has not followed the condition requisite for terminating the service of the petitioner herein, the order of termination Ex. 30 is ab initio void and hence the Labour Court is completely in error when it accepted the order of termination and directed the payment of retrenchment compensation as the only relief the petitioner is entitled to have. Such an order of the Labour Court, in our opinion, is without jurisdiction and contrary to the law laid down by the Industrial Disputes Act and hence this Court has ample jurisdiction to interfere with such patently erroneous and illegal order for the purpose of giving relief to the petitioner herein. Mr. Trivedi submitted that the matter may be remanded to the Labour Court for the purpose of determining the amount payable as backwages. We do not think that this argument can be countenanced inasmuch as no contention has been taken in the written statement that he was actually engaged in some other job during this period and inasmuch as the order passed under Ex. 30 is ab initio void.

6. For all these reasons the rule is made absolute and the Award is set aside. We hold that the termination of the service of the petitioner is ab initio void and inoperative and a declaration is made that he continues to be in service with all consequential benefits, namely, backwages and other benefits, if any. However, as the Award is to be made by the Labour Court, we remit the case back to the Labour Court to make an appropriate Award in the light of the findings of this Court. There will be no order as to costs.