

(2000) 04 GUJ CK 0065

In the Gujarat High Court

Case No : Special Civil Application No. 11023 of 1998

Mukeshbhai Rasikbhai Shah

APPELLANT

Vs

Gujarat Technocasting Pvt. Ltd.

RESPONDENT

Date of Decision : 20-04-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 2

Citation : (2000) 87 FLR 119

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

Bench : Single Bench

Advocate : B.V. Lakhia, for the Appellant; Pradyuman B. Bhatt and Anant S. Dave, for the Respondent

Judgement

H.K. Rathod J.

1. Learned Advocate Mr. B. V. Lakhia appearing on behalf of petitioner. Learned A.G.P. Mr. Gharaniya appearing on behalf of Respondent no. 2. Learned Advocate Mr. Nagesh Sudh appearing on behalf of Respondent no 1. In the present petition the rule made returnable on 5th October, 1999 by order dated 24th August, 1999. Heard the learned advocates. In the present petition the petitioner is challenging the order passed by Respondent no. 2 dated 13th November, 1998 at Annexure A to the petition wherein, the Respondent no. 2 has come to conclusion that petitioner is not a workman u/s 2(s) of the Industrial Disputes Act, 1947 and therefore, it is not a fit case for reference. The petitioner had filed individual complaint u/s 2(a) of the Industrial Disputes Act on 3rd August, 1998. The said complaint is filed by the petitioner challenging the termination order dated 1st August, 1998. According to the petitioner he was appointed initially as a wireman by order dated 15th April, 1993 and was required to do work of maintenance of E/C panel and electrical maintenance of furnace. He was required to come in general shift. The factory was run in three shifts and the petitioner was required to come to the factory for any maintenance work except general shift. The company was paying him overtime at a single rate. Just to avoid over

time payment to the petitioner the Respondent no. 1 has promoted the petitioner to the post of Manager Maintenance but, nature of work and responsibility remained the same. The petitioner was working as a technical person not having any supervisory or managerial powers except to perform technical work. The service of the petitioner was terminated by the company in respect to having some difficulty about payment of over time on 1st August, 1998. Therefore, the petitioner had challenged the said termination order under the machinery of Industrial Disputes Act. The company has filed reply before the Respondent no. 2 and pointed out that petitioner is not a workman and relying upon judgment of Bombay High Court in Writ Petition No. 596 of 1994. Against that petitioner had pointed out that merely designation of Maintenance Manager and salary is not relative factor in coming to the conclusion whether petitioner is not a workman. It was further pointed out by the petitioner that he was doing a special technical type of duties. After considering rival submissions by the Respondent no. 2 has decided that petitioner is not a workman u/s 2(s) of Industrial Disputes Act and therefore, it is not a fit case for reference. The said order is under challenge.

2. The Learned Advocate Mr. Lakhia has relied upon the decision of Apex Court reported in case of Telco Convoy Drivers Mazdoor Sangh and Anr. v. State of Bihar and Ors. reported in 1989 II CLR 699. Sri Lakhia submitted that Respondent no. 2 has decided as if Respondent no. 2 is acting as a adjudicate authority. For that Respondent no. 2 have no power u/s 10 of Industrial Disputes Act. He also pointed out that Respondent company and Respondent no. 2 has not filed any affidavit against the petition. He also pointed out that Respondent no. 2 has not given any reason in support of its conclusion. He simply passed a non-speaking order. He considered the rival submissions but, without going into the details simply passed an order contrary to the provisions of Section 10 of Industrial Disputes Act. He submitted that Respondent no. 2 cannot have power to adjudicate the issue and to decide the merits of industrial dispute while exercising the powers u/s 10 of Industrial Disputes Act. Mr. Lakhia pointed out that it is the duty of Respondent no. 2 to pass a speaking order by giving reason in support of his conclusion and what material has been considered in coming to such conclusion same shall have to discuss and required to be disclosed. Therefore, apparently Respondent no. 2 has committed error which is apparent on the face of the record.

3. At this juncture the view taken by Apex Court in similar case of Telco referred as above. The relevant observation of the above decision is paragraph nos. 11 and 13 are as under :

"It is true that in considering the question of making a reference u/s 10(1), the Government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended", as urged by Mr. Shanti Bhusan. The formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. In the instant case, as already stated, the dispute is as to whether the convoy drivers are employees

or workmen of TELCO and the convoy drivers. In considering the question whether a reference should be made or not, the Deputy Labour Commissioner and/or the Government have held that the convoy drivers are not workmen and, accordingly, no reference can be made. Thus, the dispute has been decided by the Government which is, undoubtedly not permissible.

Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power u/s 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10 of the Act. See *Ram Avtar Sharma and Others Vs. State of Haryana and Another*, ; *Shambu Nath Goyal Vs. Bank of Baroda*, ."

4. Recently the Apex Court in case of *The Secretary Indian Tea Association Vs. Ajit Kumar Barat and Others*, has held that taking a decision for the purpose of making a reference as to whether the dismissed employee was a workman or not factors relevant for being taken into consideration the nature of work performed at the time of dismissal, salary, allowances are required to be considered and it is also necessary to pass speaking order by appropriate Government. I have considered both the decisions of the Apex Court no doubt that in recent decision in case of *Secretary Indian Tea Association* referred as above, the decision of TELCO case has not been considered by the Apex Court. But, in recent decision of *Secretary Indian Tea Association*, the order was passed by appropriate Government as referred in para 8 of that decision wherein, the appropriate Government has considered in detail and examining the matter in detail and passed a speaking order by the appropriate Government. Therefore, considering both the decisions according to my opinion, in present case after rival submissions of respective parties the Respondent no. 2 has not passed any speaking order and not given any reason in support of each conclusion. Merely mentioning the fact that I have heard the parties and considering the written as well as oral submissions is not a proper decision in absence of reasoning by the Respondent no. 2. In the present case the petitioner has disputed the contention of the employer and pointed out that designation is not enough or it was not decisive factor for such conclusion. It was also a case of petitioner that he was mainly doing special technical work and therefore, he is a workman. In view of these facts and circumstances, the appropriate Government cannot adjudicate dispute between the parties while exercising powers u/s 10 of the Industrial Disputes Act. Therefore, according to my opinion, the Respondent no. 2 has acted beyond his jurisdiction and considering non-speaking order of rejecting the complaint of petitioner for referring the dispute, the said order of Respondent no 2 dated 13th November, 1998 is required to be quashed and set aside and therefore is hereby quashed and set aside and I am directing to Respondent no. 2 to refer the said industrial dispute raised by the petitioner in complaint No. 586

of 1998 dated 3rd August, 1998 for adjudication to the appropriate Labour Court within a period of one month from the date of receiving the writ of this Court. Office is directed to send immediately writ of this order to the Respondent no. 2. Petition is allowed. Rule made absolute. No order as to costs.