

(2014) 12 GUJ CK 0040

In the Gujarat High Court

Case No : Special Civil Application No. 1257 of 2006

Pravin Ramjibhai Makwana

APPELLANT

Vs

Mahila Samakhya Soccity

RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2015) 145 FLR 1067 : (2015) 1 GLR 854 : (2015) LabIC 1121 : (2015) 2 LLJ 329

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : Kishor M. Paul, Advocate for the Appellant

Judgement

Mukesh R. Shah, J.—By way of this petition under Article 227 of the Constitution of India, the petitioner workman has prayed for appropriate writ, direction and order to quash and set aside the impugned judgment and award passed by the learned Presiding Officer, Labour Court, Rajkot dated 21.10.2004 passed in Reference (LCR) No. 426 of 1993, by which, the learned Labour Court has dismissed/rejected the said reference solely on the ground that respondent herein cannot be said to be an "industry" within the meaning of Section 2(J) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "I.D. Act").

2. That the petitioner herein raised the industrial dispute by approaching the Assistant Labour Commissioner, Rajkot challenging his termination and for reinstatement in service. It was the case on behalf of the petitioner workman that he was working with the respondent as a Driver w.e.f. 11.6.1991 and his services terminated without following any due procedure of law and his services terminated illegally and therefore, it was prayed to direct the respondent to reinstate in service. That the dispute was referred to Labour Court, Rajkot which was numbered as Reference (LCR) No. 426 of 1993. That thereafter, the petitioner herein-workman submitted statement of claim, to which, respondent also submitted reply to the statement of claim/written statement. That

thereafter, by impugned judgment and award, the learned Labour Court has dismissed/rejected the said Reference by observing that respondent cannot be said to be an "Industry" within the definition of Section 2(J) of the I.D. Act.

2.1. Feeling aggrieved and dissatisfied with the impugned judgment and award passed by the learned Labour Court, the petitioner herein-workman has preferred present Special Civil Application under Article 227 of the Constitution of India.

3. Shri Kishor Paul, learned advocate for the petitioner has vehemently submitted that learned Labour Court has materially erred in rejecting the Reference on the ground that respondent cannot be said to be an "Industry" within the meaning of Section 2(J) of the I.D. Act.

3.1. It is further submitted by Shri Paul, learned advocate for the petitioner that as such no such contention was raised by the respondent in the written statement/reply to the statement of claim that respondent cannot be said to be an "Industry" within the meaning of Section 2(J) of the I.D. Act. It is submitted that the aforesaid plea/defence was taken for the first time during the argument/making submission. It is submitted that therefore, as such, no opportunity was given to the petitioner to consider the aforesaid objection and/or to lead the evidence whether the respondent can be said to be an "Industry" within the definition of Section 2(J) of the I.D. Act or not.

3.2. It is further submitted by Shri Paul, learned advocate for the petitioner-workman that not only the above, even no such question was asked to the petitioner workman in the cross examination and even it was not the case on behalf of the respondent in the examination in chief and the witness who came to be examined on behalf of the respondent. It is submitted that therefore, in absence of the aforesaid, solely on the basis of oral submission, learned Judge ought not to have rejected/dismissed the Reference on the ground that the respondent cannot be said to be an "Industry" within the meaning of Section 2(J) of the I.D. Act.

3.3. It is submitted that even the issues were framed simultaneously at the time of detection of the judgment and award as per the consistent practice of the Labour Court and no issues were framed prior in time and therefore, the petitioner-workman was not given an adequate opportunity to make submission on the issue No. 2 i.e. whether the respondent can be said to be an "Industry" within the meaning of Section 2(J) of the I.D. Act or not. It is submitted that if the issues would have been framed earlier in that case, the petitioner would have got the opportunity to make the submission on that and/or even to lead the evidence or not. It is submitted that even the issue No. 2 was framed on the basis of oral submission and not on the basis of pleading. It is submitted that as such the issues are required to be framed on the basis of oral submission and/or considering the pleadings on record and not on the basis of oral submission. Making above submission, it is requested to remand the matter to the Labour

Court to decide the issue with respect to whether respondent can be said to be an "Industry" within the meaning of Section 2(J) of the I.D. Act or not and after giving adequate opportunity to the parties to lead the evidence on the same.

4. Though, fresh notice of Rule has been served upon the respondent, nobody has appeared on behalf of the respondent. Under the circumstances, this Court has no other alternative but to proceed further with the hearing of the present petition ex-parte so far as respondent is concerned.

5. Heard Shri Paul, learned advocate for the petitioner and considered the impugned judgment and award passed by the learned Labour Court. This Court has considered the statement of claim submitted by the petitioner as well as written statement/reply to the statement of claim filed by the respondent. This Court also gone through the oral evidence on record i.e. oral evidence of the petitioner as well as deposition of the witness examined on behalf of the respondent.

6. At the outset, it is required to be noted that the learned Presiding Officer has dismissed/rejected the Reference of the petitioner solely on the ground that the respondent cannot be said to be an "Industry" within the meaning of Section 2(J) of the I.D. Act. However, it is required to be noted that neither in the reply to the statement of claim and/or in the written statement nor even in the deposition of the witness examined on behalf of the respondent it was the case on behalf of the respondent that respondent cannot be said to be an "Industry" within the meaning of Section 2(J) of the I.D. Act. It appears that no such defence was ever taken by the respondent. No such pleadings were made on behalf of respondent that respondent cannot be said to be an "Industry" within the meaning of Section 2(J) of the I.D. Act. Even in the cross examination of the petitioner ? workman, no such question was asked that the respondent is not an "Industry" within the meaning of Section 2(J) of the I.D. Act. Even in the examination of chief of the witness examined on behalf of the respondent it was never the case on behalf of the management that it is not the "Industry" within the meaning of Section 2(J) of the I.D. Act. Under the circumstances and in view of the above, as such it was not open for the learned Presiding Officer to dismiss the Reference on the ground that the respondent is not an "Industry" within the meaning of Section 2(J) of the Industrial Dispute Act. Even otherwise, an adequate opportunity was required to be given to the petitioner workman on the issue whether the respondent can be said to be an "Industry" within the meaning of Section 2(J) of the I.D. Act or not, more particularly, when it was never the case on behalf of the respondent either in the written statement or even in the deposition that the respondent is not workman within the meaning of Section 2(J) of the I.D. Act. Under the circumstances, solely on the basis of oral submission and without giving any further opportunity to the petitioner workman, the learned Labour Court has materially erred in dismissing/rejecting the Reference on the ground that respondent is not workman within the meaning of Section 2(J) of the I.D. Act.

7. When a pointed question was asked to Shri Paul, learned advocate for the

petitioner that when the learned Judge had framed the issue No. 2 whether the respondent can be said to be an "Industry" within the meaning of Section 2(J) of the I.D. Act or not can it not be said to be given sufficient opportunity to the workman to make submission on the same and/or to give the opportunity to lead the evidence on the said issue, Shri Paul, learned advocate for the petitioner has stated that it is consistent practice in the Labour Courts that issues are not framed in advance and issues are framed only at the time of dictation of judgment. If, that be so, the aforesaid practice is contrary to the provision of the Act, more particularly, the procedural law. It is required to be noted and it cannot be disputed that as per the provision of Code of Civil Procedure and even Evidence Act, the issues are required to be framed by the concerned Court on the basis of pleadings on statement of claim and written statement and considering the dispute between the parties and that too in advance and during the course of adjudication but prior to parties lead the evidence so that the parties can lead the evidence on the issue/issues framed. If the issues are framed simultaneously while dictating the judgment and not prior to parties lead the evidence, it can be said that the concerned parties are not given adequate opportunity to lead the evidence on the issues and/or even submissions made. Under the circumstances, as such, such a practice of framing issue at the time of dictation of the judgment is required to be deprecated and such practice is required to be stopped. As observed herein above, the Court is required to frame the issue/issues on the basis of pleadings i.e. statement of claim and the written statement and prior to parties lead the evidence.

8. In view of the above and for the reasons stated above, when it is found that no adequate opportunity was given to the petitioner workman on the issues whether the respondent can be said to be an "Industry" within the meaning of Section 2(J) of the I.D. Act, the impugned judgment and award passed by the learned Labour Court cannot be sustained and the same deserves to be quashed and set aside and the matter is required to be remanded to the learned Labour Court to decide the Reference afresh after giving an opportunity to the parties to lead the evidence, more particularly, on the issues whether respondent can be said to be an "Industry" within the meaning of Section 2(J) of the I.D. Act.

9. In view of the above and for the reasons stated above, present petition succeeds. The impugned judgment and award passed by the learned Presiding Officer, Labour Court, Rajkot rejecting the Reference on the ground that the respondent is not an "Industry" within the meaning of Section 2(J) of I.D. Act is hereby quashed and set aside and the matter matter is remanded to the learned Labour Court to decide the Reference afresh in accordance with law and on merits and after giving an opportunity to both the parties to lead the evidence on the issues whether the respondent can be said to be an "Industry" within the meaning of Section 2(J) of the I.D. Act. Considering the fact that dispute is of the year 1993, on remand the learned Labour Court is directed to decide and dispose of the Reference at the earliest and preferably on or before 31.12.2015. Rule is made absolute to the aforesaid extent. No costs. Registry is directed to send the

writ of this order to the learned Labour Court forthwith.