
(2015) 07 GUJ CK 0008
In the Gujarat High Court
Case No : SCA No. 8176/2015

Rajesh Bhagwatilal Gandhi

APPELLANT

Vs

Manager/Employer and Others

RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2016) 1 LLN 654 : (2015) LLR 1251

Hon'ble Judges : S.R. Brahmbhatt, J.

Bench : Single Bench

Advocate : P.C. Chaudhari, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.—Leave to Amend. Draft amendment is granted. The same shall be carried out. Heard learned advocate for the petitioner.

2. The petitioner, who happened to be Second Party in Reference T. No. 548 of 2001 in Labour Court, Bharuch, has approached this Court by way of this petition invoking Articles 226 and 227 of the Constitution of India, challenging the award and order dated 7.11.2014, whereunder, the Court rejected the Reference only on the ground that present petitioner was not workman so as to entitle to invoke provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the I.D. Act" for short).

3. The facts in brief, as could be culled out from the memo of petition as well as award impugned deserves to be set out as under:

4. The petitioner constrained to take out industrial dispute as his services came to be terminated with effect from 17.6.1999 on account of he being involved in defalcation and misappropriation of company's fund. There was criminal case filed against him, in which the petitioner has to obtain bail and there was a civil suit filed against the petitioner for recovery of amount of Rs. 70 lacs and odd and it was claimed by the employer that this was the amount which was

misappropriated by the petitioner misusing the office of Senior Executive Accounts. The dispute was referred to the Court, whereunder, statement of claim filed, in which, unfortunately, the petitioner did not claim to be a workman nor did he make any averments to this effect. The employer took up a specific plea qua the petitioner not being workman so as to invoke the provisions of I.D. Act. The Court after recording its findings elaborately on this issue, came to the conclusion that the petitioner cannot be said to be the workman as the evidences produced indicate otherwise and therefore on this ground alone, Reference came to be rejected vide order dated 7.11.2014, which is subject matter of challenge in this petition.

5. Learned advocate appearing for the petitioner invited this Court's attention to the award as well as the documents annexed to the draft amendment and submitted that the evidences on record have not been appreciated by the Court in a proper manner so as to come to proper conclusion. The petitioner was not a person falling under the managerial cadre so as to prevent him from the provisions of I.D. Act. Learned advocate for the petitioner further contended that the testimony of the management witness namely Shri Parshottambhai D. Patel also would indicate that nowhere, it has come out therefrom that the petitioner was acting in a managerial capacity. The cross-examination of that witness contained mere negation which would not to be classified company proved its case positively qua petitioner being managerial functionary so as to deny him entitlement to invoke provisions of I.D. Act.

6. Learned advocate for the petitioner invited this Court's attention to the plaint of Civil Suit and rejection of cancellation of bail application and contended that the two documents would indicate that in fact there was no case in favour of the Company and it was used as tool for removing the petitioner unceremoniously.

7. Learned advocate for the petitioner further contended that the person, if he is supervising the work of his fallow workmen and having no other powers over the persons working under him, cannot be treated as Manager or Supervisor so as to deny him rights under I.D. Act. The said person cannot be treated as person of supervisory category or managerial category. The two persons named in the affidavit of management witness were in fact not working under the petitioner but they were actually working as his subordinates but he was only to supervise their work and this fine distinction was not appreciated by the Court and to that extent, the decision is vitiated and is required to be quashed and set aside.

8. Learned advocate for the petitioner further contended that the management has not produced any documentary evidence to indicate that the petitioner was working in a supervisory or managerial category, therefore, on this ground also the judgment and award impugned deserve to be quashed and set aside.

9. This Court has perused the memo of petition and award impugned and heard the learned advocate for the petitioner at length. The Court is of the considered view that the petition is required to be dismissed in limine for the following

reasons.

10. The close perusal of the statement of claim and testimony of management witness and its cross-examination, would indicate that the fact the petitioner was working as Senior Executive Accounts cannot be denied. The petitioner has clearly admitted that he joined services as Assistant Accounts Officer on 1.10.1988. Thereafter, he was promoted to the post of Accounts Officer on 1.10.1990 and thereafter, it was further promoted to the post of Senior Executive Accounts from 1.9.1995. These facts have been admitted by the petitioner. It has been reported by the Court that the Company had separate set of wages, salary and incentives schemes for the staffs classified to be supervisory and managerial capacity. The petitioner was falling under supervisory category. The staff members were given promotion, whereunder, there own self appraisal report was signed by the petitioner. It has also come on record that the petitioner was authorized to pass bills and payment vouchers, documentary evidences, which have been placed on record from Exhs. 74 to 104, would indicate that the requisite documentary evidences were very much on the record. As against these, the lack of relevant suggestion even in the cross-examination to management witness would militate against the claim of petitioner to be a workman.

11. This petition is though typed also to have been filed under Article 226 of the Constitution of India, but in absence of any requisite pleadings indicating any scope for the same being treated under Article-226 of the Constitution of India, it is required to be treated as having filed only under Article 227 of the Constitution of India. Article 226 of the Constitution of India has thus, wrongly been invoked and therefore, this Court needs to determine that the petition is essentially one filed under Article 227 of the Constitution of India only and bearing in mind the inherent limited scope of challenge under Article 227 of the Constitution of India, if the order is examined, then the reasoning adopted by the Court appears to be just and proper, as there was no miscarriage of justice much less any perversity and this Court is persuaded not to interfere with the award impugned, as the same is not perverse nor, as such is to result into miscarriage of justice. In that view of the matter, the petition being merits less, deserves rejection and is accordingly rejected. However, there shall be no order as to costs.