

(2009) 02 GUJ CK 0007

In the Gujarat High Court

Case No : Special Civil Application No. 6385 of 2008

Rambhai Ranabhai Savdharia

APPELLANT

Vs

Range Forest Officer

RESPONDENT

Date of Decision : 03-02-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F, 25G

Citation : (2009) 122 FLR 626

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

Bench : Single Bench

Advocate : M.M. Parmar and P.H. Pathak, for the Appellant; D.S. AFF, Not filed (N) and P.S. Patel, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Thaker, J.—The petitioner has brought under challenge award dated 1.12.2007 passed by the learned Labour Court, Rajkot in Reference (LCR) No. 232 of 1994 whereby the learned Labour Court has rejected the reference and declined to grant any relief as prayed for by the present petitioner-workman.

By order dated 21.4.2008, notice was issued. Thereafter, the petition has been adjourned from time to time.

2. Today, in the first sitting when the matter was called out, a request for pass over was made. Accordingly, the hearing of the matter was differed until second sitting. In the second sitting when the matter is called out, Mr. Parmar on behalf of Mr. Pathak made request for adjournment. The same is declined Mr Parmar for Mr. Pathak submitted that though he has read the, papers and is aware about the facts and is in position to make submissions he would not do so as he does not have any instructions to make submissions.

3. The petitioner herein raised an industrial dispute against the alleged termination w.e.f. 19.12.1992. Upon failure of conciliation proceeding, the said dispute culminated into the aforesaid reference proceeding. In the reference

proceeding, the petitioner herein filed his statement of claim alleging inter alia that his service was terminated illegally and without following any procedure prescribed by law. The respondent also alleged in the statement of claim that while terminating his service, the principle of "last come first go" was not adhered to and though requests for reinstatement and consequential benefits was made by him vide his communication dated 2.3.1993 and 5.7.1993, the same were not accepted. On such averments, the petitioner claimed for relief for reinstatement and other consequential benefits.

4. The reference was contested by present respondent by filing written statement. The respondent submitted before the learned Labour Court that the petitioner was being engaged from time to time on need basis and that he had not completed work of 240 days in the preceding 12 months. It was also claimed that the establishment of respondent is not covered within the definition and meaning of the term "industry as defined in section 2(j) of the Act. In the backdrop of such facts, the respondent claimed that the reference was not maintainable and the petitioner was not entitled for the relief prayed for.

5. The petitioner herein claimed before the learned Labour Court that he was appointed in August, 1991 as a labourer on the establishment of the respondent and he was required to work in the canteen and was also required to do other miscellaneous work. He also claimed that he was being paid Rs. 1200/- towards his salary and that his service was terminated by oral order dated 19.12.1992. He claimed that he had worked for more than 240 days and that before terminating his service, no procedure was followed. In light of his evidence, he prayed for the relief of reinstatement and other consequential benefits.

6. It was claimed that from 1.1.1992 to 31.12.1992, the petitioner had worked for 233 days and if the weekly offs and other public holidays were included in the actual working of the petitioner, then, it would make total of more than 240 days" and that therefore, the petitioner was entitled for the protection under sections 25-F and 25-G of the Act.

7. As against the said submission of the "petitioner, the learned Labour Court has taken into consideration that every time when the petitioner was engaged, he was engaged for different types of work and upon completion of such work, he was being relieved. This would mean that the learned Labour Court has taken into consideration that for the purpose of calculating 240 days working, the duties performed by the petitioner on different types of works from time to time cannot be clubbed together Further, the finding by the Court to the effect that the petitioner was engaged on different jobs from time to time, is a finding of fact by the learned Trial Court and no cogent material, from the record of the Trial Court, is brought to the notice of this Court from which it can be even inferred, leave aside concluded, that the said finding is incorrect or contrary to evidence. Even otherwise, this Court cannot undertake exercise of reappreciation of evidence. In absence of any cogent material, I am not persuaded to hold otherwise.

8. In view of this Court, the said view of the learned Labour Court is not erroneous. There is no evidence to successfully assail the finding recorded by the learned Labour Court that at different points of time, the petitioner was engaged for different types of works. Even in this petition, the petitioner has failed to assail the said finding. Any cogent evidence is not made available on the record of present petition to dispute and controvert the said finding. Hence, I am not inclined to hold that the finding and view of the learned Labour Court that for the purpose of calculating working of 240 days, the work executed on different jobs cannot be clubbed together, more particularly, when he was being engaged for different works/jobs, from time to time. In a large and widespread department of Government e.g. in Forest Department it would be easy and very much possible for a person to get himself engaged at some other place by other in-charge officer for some work immediately after being relieved from one place by the first in-charge officer. In such circumstances, it would be hazardous and risky and even contrary to the scope of section 25-F to hold that for calculating 240 days' working such ad-hoc and temporary appointments for different jobs at different points of time should be clubbed together.

In this context, at this stage, reference can be made to the judgment of the Hon"ble Apex Court, as under:--

(i) D.G.M., Oil & Natural Gas Corporation Ltd. and another v. Ilias Abdulrehman 2005 (105) FLR 300 (SC), wherein the Hon"ble Apex Court held that:--

7. However the learned Single Judge considered the question of the nature of work done by the respondent-workman in the appellant organisation and came to the conclusion that even though the respondent-workman worked in different independent Departments of the appellant Corporation like Geophysical party No. 18 and Department of Chemistry at different periods and at different places like Baroda and Mehsana, still for the purpose of computing 240 days of continuous work for the purpose of section 25-F of the Act, the said employment should be construed as an employment under the appellant-Corporation. This finding of the learned Single Judge was by overruling the finding given by the Industrial Tribunal which followed a judgment of this Court in the case of Indian Cable Co. Ltd. (supra).

8. A perusal of the evidence adduced by the workman himself shows that he went in search of employment to different places and whenever there was a temporary employment available in different Departments of the appellant-Corporation; be it the field work or the work in the Chemistry Department, he accepted the employment and worked in these Departments not in one place alone but at different places like Baroda and Mehsana. It has come on record that the Management did try to accommodate the appellant in a permanent job but could not do so 1. 2005 (104) FLR 300 (SC). because of lack of qualification. In such circumstances we think the Industrial Tribunal was justified in coming to the conclusion that the number of days of work put in by the respondent in broken periods, cannot be taken as a continuous employment for the purpose of

section 25-F of the Act, as has been held by this Court in the case of Indian Cable Co. Ltd. (supra). We are aware that the judgment of this Court in Indian Cable Co. Ltd (supra) was rendered in the context of section 25-G of the Act, still we are of the opinion that the law for the purpose of counting the days of work in different Departments controlled by an apex Corporation will be governed by the principles laid down in the judgment of Indian Cable Co Ltd (supra), and the Industrial Tribunal was justified in dismissing the Reference.

Union of India and others v. Jammasha Diwan 2006 (11) FLR 895 (SC), wherein the Hon"ble Supreme Court has held that:--

8. His name might not have appeared in the seniority list of the casual labourers which was being maintained but the question, as to whether he had been in continuous service in all the departments he had served, was a disputed one. There are several establishments of the Railway Administration. If a workman voluntarily gives up his job in one of the establishments and joins another, the same would not amount to his being in continuous service. When a casual employee is employed in different establishments, may be under the same employer e.g. the Railway Administration of India as a whole, having different administrative set-ups, different requirements and different projects, the concept of continuous service cannot be applied and it cannot be said that even in such a situation he would be entitled to a higher status being in continuous service. It is not in dispute that the establishment of appellant 3 herein had started a project. His recruitment in the said establishment would, therefore, constitute a fresh employment. In a case of this nature, the respondent would not be entitled to his seniority. If the project came to a close, the requirements of section 25-N of the Act were not required to be complied with.

9. The learned Labour Court has also made reference of Exh. 30 and 32 and on the basis of said documents, the learned Labour Court has come to the conclusion that the petitioner was being relieved on completion of the work and then on need basis he was re-engaged from time to time. Considering the said material and the provision of section 2(oo)(bb) as well as provision u/s 25-F, the learned Labour Court has come to the conclusion that the petitioner failed to establish breach of section 25-F. The learned Labour Court has also recorded finding of fact that the petitioner failed to prove breach of section 25-G and/or 25-H also. The learned Labour Court has also taken notice of the fact that after relieving the petitioner on and from 19.10.1992, he was again called for work on 19.12.1992. In light of the said finding, the learned Labour Court has come to the conclusion that the petitioner failed to establish breach of section 25- G also.

10. In absence of any cogent evidence which may demonstrate and convince this Court that such material evidence, though on record, has been ignored or that the finding are so contrary to the evidence that the same cannot be reached to in law and thus they are untenable. I am not inclined to hold that the learned Labour Court has committed any error. The observations and findings of the learned Court are based on evidence on record and it is not possible to held that

they are incorrect or perverse or arbitrary. The petition, therefore, fails and the same is rejected. Notice discharged.