

(2015) 01 GUJ CK 0058

In the Gujarat High Court

Case No : Special Civil Application No. 6043 of 2006

Range Forest Officer and Others

APPELLANT

Vs

Chandubhai Govindbhai Chauhan

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 18
Constitution of India, 1950 — Article 227
Forest Act, 1927 — Section 4, 5, 8
Industrial Disputes Act, 1947 — Section 2(j)

Citation : (2015) 144 FLR 889 : (2015) 1 LLJ 716

Hon'ble Judges : Abdullah Gulamahmed Uraizee, J.

Bench : Single Bench

Advocate : Rakesh R. Patel, A.G.P., for the Appellant; J.S. Brahmbhatt, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Abdullah Gulamahmed Uraizee, J.—The petitioners have questioned the legality and validity of judgment and award dated 13.12.2004 passed by learned Presiding Officer, Labour Court, Junagadh in Reference (L.C.J.) No. 230 of 1995, whereby the reference is partly allowed and the respondent-workman is directed to be reinstated with 25% back-wages on his original post within 30 days from the date of publication of the award. The brief facts giving rise to the present petition are that the Assistant Labour Commissioner vide order dated 28.8.1995 referred to the reference to the learned Labour Court, Junagadh to determine whether the respondent was required to be reinstated to its original post with back-wages or not. The reference was registered as Reference (L.C.J.) No. 230 of 1995. Upon the reference being made, respondent in his statement of claim had stated that he had worked as daily wager since last four years and his service came to be terminated on 2.3.1995 without any notice or any notice pay and retrenchment compensation. According to respondent he made several requests to the petitioners for reinstatement but no avail, hence he was constrained to

issue registered legal notice to the petitioners which was also neither replied nor complied with and his juniors were continued as workmen. The petitioners resisted the reference by filing written statement wherein inter alia it was contended that the petitioners are not an industry within the meaning of section 2(j) the Industrial Disputes Act ("the Act" for short) and that the respondent had alternative efficacious remedy of approaching before the Gujarat Service Tribunal where he could have and that notice under section 18 of Code of Civil Procedure not given. Learned Presiding Officer, Labour Court, Junagadh after recording the oral and documentary evidence of the parties pronounced the impugned award whereby, the petitioners was directed to reinstate the respondent with 25% back-wages. Therefore, this petition.

2. Heard learned Assistant Government Pleader, Mr. Rakesh R. Patel for the petitioners and learned advocate, Mr. J.S. Brahmbhatt for the respondent-workman.

3. At the outset, it needs to be noted that by virtue of order dated 24.4.2006, the respondent-workman is reinstated in service on 7.6.2006. Since then he has been continuously working with the petitioners.

4. Learned AGP, Mr. Patel has vehemently contended that the Forest Department is not an industry within the purview of section 2(j) the Industrial Disputes Act. In support of his contention he has relied upon Full Bench decision of this Court in the case of Gujarat Forest Producers, Gatherers and Forest Workers Union Vs. State of Gujarat, . It is his further contention that the learned Labour Court has committed a serious error in concluding that the respondent-workman has put in 240 days of service in the preceding 12 months, and therefore, according to his submission the impugned award is required to be quashed and set aside.

5. On the other hand, learned advocate, Mr. Brahmbhatt for the respondent-workman has supported the impugned award. He submits that the learned Labour Court has not committed any error in concluding that the respondent-workman had worked for 240 days in the preceding 12 months. It is his further contention that the oral evidence laid by the petitioners as well as the respondent-workman was very clear that the petitioners were engaged in selling woodlog and grass, and therefore, the activities of the petitioners would come within the sweep of industry as contemplated under the Industrial Disputes Act, and therefore, he urged that the petition may be dismissed.

6. The contention of learned AGP, Mr. Patel that the activities of the petitioners would not bring the petitioners within the ambit of industry is concerned, we have to examine the proposition of law laid down by this Court in the case of Gujarat Forest Producers Gatherers and Forest Workers Union (supra), wherein this Court held and observed in paragraph Nos. 26/1, 26/2 and 26/3 as under:--

"26.1 Every activity of the Government in the Forest and Environment Department must necessarily fall in one or the other of the above subjects allocated to the department or be ancillary thereto. The subjects by themselves

do not fully convey the nature of functions to be exercised by the said executive department of the Government. All executive actions on any of these subjects will however have to conform to the constitutional provisions, the laws relating to these subjects and the administrative policies and guidelines laid down for the exercise of such functions. To brand the entire Forest and Environment Department which will have multifarious administrative functions under various laws on the subjects allocated to it as industry, merely on the basis of an isolated activity that may properly be industrial in nature due to its purpose being production and/or distribution of some goods or services for the consumers, will amount to dwarfing a gigantic governmental organization into a mere unit of economic activity. Therefore, it is essential to identify the nature of activity in which the employees are engaged in relation to the subjects allocated under the Rules of Business and only if it is found that the activity is undertaken by the Government, in the unit of the employees concerned, for production and/or distribution of goods and/or services for satisfying wants of the consumers, such unit alone and not the whole Department can be described as industry.

26.2 To illustrate the above proposition, we may try to briefly undertake the exercise in the context of the subject of "Forest" at Srl. No. 1. The Indian Forests Act, 1927 is the law relating to the forests, the transit of forest produce and the duty leviable on timber and other forest produce. Chapter II of that Act relates to reserved forests and empowers the State Government to constitute reserve forests in the manner provided thereunder. Section 4 provides for issuance of notification constituting reserved forest, section 5 provides for ban on accrual of forest rights after the issue of notification and provides that no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with the rules. The powers of Settlement Officer are under section 8 who is authorized to survey, demarcate and make a map. In all these activities, staff has to be engaged; but, can it be said that these activities would, by any stretch of imagination, constitute an undertaking of the forest department for production or distribution of goods or services to the consumers. There would be innumerable such activities, which are in no sense economic activities aimed at production or distribution of goods or services. Labelling of the entire department which has seventeen such subjects allocated to it and most of the activities in relation to which may have nothing to do with any production or distribution of goods and services for the consumers - the third ingredient which is the very heart of definition of industry - is totally unwarranted in the very nature of the governmental functioning by establishment of various departments as per the constitutional provisions, and the allocation of business to them for investing executive powers, which correspond to the legislative powers, in order to discharge myriad administrative functions. Once the constitutional scheme of allocation of business and the actual subjects allocated do not, in the context of laws existing on such subjects or the executive instructions issued thereon, warrant a sweeping approach of treating the entire department as an industry, necessarily an exercise has to be undertaken to find out the nature of the activity

and relate it to the subject allotted and find out whether the unit is for production or distribution of such goods and services. If a unit of the department, be it forest or any other, undertakes the activity of production or distribution of goods and services, and if such work is undertaken under any scheme or project, the provisions thereof will throw light on the nature of work to be done thereunder. Thus, if in the forest department, a unit or entity is set up e.g. for making furniture for satisfying the consumer wants or a unit for sale of forest produce, or a unit solely concerned with rearing of plants in nurseries for supply to the consumers, then notwithstanding that the government itself may also be one of the consumers of such goods and services, production and distribution of which is undertaken by its own unit, such separate entities will, prima facie, be "industry" notwithstanding the fact that the whole Department of Forest and Environment is not an industry by itself and has various other functions, distinct from industrial, which may be sovereign functions that are primary and inalienable constitutional functions or even socio-economic and welfare activities which are not undertaken for production or distribution of goods and services, besides other bare administrative functions.

26.3 We, therefore, hold that the entire Forest Department of the State Government, having regard to the subjects allotted to it, under the Rules of Business of Government of Gujarat, as now existing, is not "industry" under section 2(j) of the Act. Whether any activity undertaken by the forest department or by any unit or undertaking thereof is "industry" or not, is required to be examined on the basis of the nature of work done by such unit or undertaking and only if the work undertaken amounts to an activity for production or distribution of goods and service for satisfying wants and desires of the consumers, in the sense in which the concepts are understood in the field of industrial economy, satisfying the third ingredient of the triple test propounded by the Supreme Court in Bangalore Water supply case (supra) that such unit or undertaking can be called industry and its workmen will be covered by the Industrial Disputes Act, 1947. As held by the Supreme Court in Prathamsingh Parmar (supra), in absence of indicating the nature of duty discharged by the employee as well as the job i.e. the nature of work of the establishment in which he is recruited, the forest department could not be held to be industry. The decision in Chief Conservator of Forests v. Jagannath Maruti Kondhara was considered and distinguished by the Supreme Court on the above ground and when that has been done by the Supreme Court, there was no warrant for the manner in which the Question No. 1 is framed in Special Civil Application No. 8259 of 1996 and 2566 of 1997 by the learned Single Judge. Even if it may have appeared to the learned Single Judge that there was a conflict between the two judgments of the Supreme Court, the question for the High Court to consider is not which decision lays down the correct law, as has been framed in the reference, but, the real question would be, which of the two decisions should be treated as binding on the basis of the well known principles of law governing precedents. When, however, the Supreme Court has itself considered its earlier

judgment in Jaggannath case and distinguished it in Prathamsinh Parmar case, then there can arise no question of conflict between the two and the earlier judgment has to be read in the manner found distinguishable by the Supreme Court in the later judgment which has considered it."

7. Thus to bring the activities of the petitioners within a sweep of industry, it was incumbent upon the respondent-workman to prove and establish by cogent evidence that the department of the petitioner's was engaged in the activity for production or distribution of goods. In this regard, oral evidence was adduced by the petitioners as well as the respondent-workman. The perusal of the impugned award, on this point reveals that the evidence adduced by both the sides seems to be hazy in as much as neither given any details in their respective, the nature of activities being undertaken by the department in which the respondent-workman was working. In view of such hazy evidence, it would not be possible to record any definite findings as to whether, the activities of the department in which the respondent-workman was working would come within the definition of industry as contemplated under section 2(j) the Industrial Disputes Act. Since, the present petition essentially under Article 227 of the Constitution of India it would not be appropriate for this Court to undertake an independent inquiry to find out whether the activities of the petitioners would fall under the definition of the industry or not for substituting the findings of the learned Labour Court.

8. The crucial issue that requires determination is whether the respondent-workman had worked for 240 days in the preceding 12 months or not it transpires from the impugned award that the petitioners had produced the certified copy of muster roll 41/1 from which it reveals that the respondent-workman had worked for 278 days in the preceding 12 months prior to his termination. The contention of learned AGP, Mr. Patel is that in view of the decision of the Hon"ble Supreme Court in the case of Krishna Bhagya Jala Nigam Ltd. Vs. Mohammed Rafi, , and Ranip Nagar Palika Vs. Babuji Gabhaji Thakore and Others, , burden to prove as to completion of 240 days of work in the year is on the arguments and respondent-workman has to fail to prove that he had continuously worked for 240 days in the preceding 12 months. The proposition of law as expounded by the Hon"ble Supreme Court in the above cited decision is very well known. But, in the present case, the petitioners themselves had vide mark upon 41/1 produced the certificate of the muster roll from which it transpires that the respondent-workman had worked for more than 240 days in the preceding 12 months prior to his termination.

9. In my opinion, the learned Labour Court has rightly recorded the finding that the petitioners had worked for more than 240 days in preceding 12 months before his termination since the respondent has been reinstated by virtue of interim relief passed by this Court on 24.4.2006 and since then he continuously and uninterrupted worked and in my opinion that it could not be in the interest of justice to unsettle the settled position, and therefore, to that extent I do not find any substance in this petition.

10. The respondent-workman is directed to be reinstated in service with 25% back-wages. In my opinion there was no justifiable reason for the learned Labour Court to direct back-wages in as much as respondent-workman had not adduced any evidence to the effect that after his termination he was rendered jobless and was not doing any work to maintain himself, and therefore, to that extent the impugned award of the learned Labour Court requires interference in this petition. For the reasons aforesaid, the petition succeeds in part. The award of the learned Labour Court, Junagadh dated 13.12.2004 passed in Reference (L.C.J.) No. 230 of 1995 is hereby modified and petitioners are directed to reinstate respondent-workman on his original post with continuity of service without back-wages. Rule made absolute to the aforesaid extent. No Costs.