
(1985) 11 GUJ CK 0013
In the Gujarat High Court
Case No : Civil Application No. 4251/85

R.G. Makwana

APPELLANT

Vs

Gujarat State Road Transport Corporation and Another

RESPONDENT

Date of Decision : 19-11-1985

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 4

Citation : (1986) 1 GLR 392 : (1987) 1 LLJ 172

Hon'ble Judges : P.R. Gokulakrishnan, C.J.; S.B. Majmudar, J

Bench : Division Bench

Judgement

P.R. Gokulakrishnan, C.J.—This Special Civil Application is to quash and set aside Award dated 6th February, 1985 given by the Presiding Officer, Labour Court, Rajkot in Reference LCR No. 347 of 1982. The petitioner further prays that he must be declared as a "workman" within the meaning of section 2(s) of the Industrial Disputes Act, 1947. Before the Labour Court, Rajkot, before which a dispute was raised as to whether the petitioner who is the Junior Engineer must be reinstated to his original post with full backwages, a preliminary objection was raised to the effect that the petitioner is not a workman since he is drawing a pay of more than Rs. 1000/- and was also discharging supervisory duties. The Labour Court addressed itself to the fact as to whether the petitioner is a workman as defined u/s 2(s) of the Industrial Disputes Act in as much as he draws a salary of more than Rs. 1000/- per month. It is an admitted fact that the salary of the petitioner was Rs. 1500/- per month and according to section 2(s)(iv) if a person draws wages exceeding Rs. 1,600/- per month, he cannot be said to be a "workman" but this figure of Rs. 1,600/- was inserted in section 2(2)(iv) only by the amended Act 46 of 1982. Prior to this amendment, the figure was Rs. 1,000/- and such of those who are receiving the wages exceeding Rs. 1,000/- will not come under the definition of "workman". The State of Gujarat, by amending Act 22 of 1981 which was published in the Gujarat Government Gazette of 25th June, 1981, amended certain provisions of the Industrial Disputes Act and while doing so, it also inserted section 4 in that amending Act

which reads as follows :

"4. In the Industrial Disputes Act, 1947 in its application to the State of Gujarat (hereinafter referred to as "the Central Act") in section 2, in clause (s) in sub-clause (iv) for the words "five hundred" the words "one thousand six hundred" shall be substituted."

This Act received the assent of the President on 21st June, 1981 and it further states that this Act will come into force on such date as the State Government may, by notification in the Official Gazette, appoint. It is seen from the Official Gazette that this amendment was given effect to with effect from 1st August, 1981. Thus it is clear that on the date when the reference was made, the amended Act, 22 of 1981 was in force. This has been overlooked by the Labour Court. Presumably the Labour Court has taken into consideration the amendment carried out by the Central Government in respect of section 2(s) by its Act 46 of 1982 which came into effect as and from 21st August, 1982. As far as the State of Gujarat is concerned, as we have noticed already, such an amendment came as early as 25th June, 1981 and came into effect as and from 1st August, 1981. If that be so, the Labour Court is wrong in rejecting the reference on the preliminary ground as if the petitioner is not a "workman" as defined u/s 2(s) of the Industrial Disputes Act.

2. Mr. Raval, the learned counsel for the respondent, alternatively contended that even if it is held that on the date of the reference, the amended provision had already come into force with effect from 1st August, 1981, even then, no valid reference could have been made in the present case as on the date on which the dispute arose, viz. when the petitioner's services were terminated on 30th June, 1981, the amended provision was not applicable and, therefore, the petitioner was not a "workman" at least on the date on which his services were terminated. This submission of Mr. Raval cannot be accepted for the simple reason that as per the definition of the "workman" u/s 2(s), any person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute is also included within the connotation of the work "workman". What is important and relevant is the date of reference. As on that date, the requisite conditions of the definition of the term "workman" as per section 2(s) have to be satisfied. Even this question is no longer *res integra*. In the case of *The Workmen Vs. Greaves Cotton and Co. Ltd. and Others*, , the Supreme Court made the following pertinent observations in paragraph 13 of the report :

"There is no gain saying the fact that once a Tribunal is vested with the jurisdiction to entertain the dispute which is validly referred, it does not cease to continue that jurisdiction merely because the claim made goes beyond the wage which takes workmen out of that category and make them non-workmen. What has to be seen is whether on the date of the reference there was any dispute in respect of the workmen which could be referred under the Act to the Tribunal."

Thus, on the facts of the present case also, what is to be seen is whether on the

date of the reference the dispute was such as could be validly referred for industrial adjudication. Admittedly, on that date, the petitioner satisfied all the requirements of the definition as found in section 2(s). He was a dismissed workman and his salary on the date of reference was clearly covered by the main definition of the term "workman" and he did not fall within the excepted category of clause (iv) as amended with effect from 1st August, 1981. The contention of Mr. Raval, learned advocate for respondents is, therefore, repelled.

3. We may at this stage mention one submission put forward by Mr. Padival, learned advocate for the petitioner for our consideration. He submitted that even if the definition of the term "workman" might not have been amended from 1st August, 1981 and if it would have been amended pending the reference, even then the petitioner could have legitimately submitted that he satisfied the requirements of the definition as amended pending the reference. We do not express any opinion on this contention as, in our view, on the facts of this case, it would be sufficient to hold that the reference was validly made, as on the date of the reference, the petitioner did satisfy the requirements of the definition of "workman" and did not fall within the excepted category (iv) as amended and operative on date.

4. Mr. Raval finally submitted that, in any case, when these proceedings are being remanded to the trial Court, we may permit the respondent to urge that the petitioner was employed mainly in a managerial or administrative capacity and, therefore, he was not a "workman" on account of the third exception to the definition of "workman" as contemplated by section 2(s). This submission of Mr. Raval cannot be accepted for the simple reason that the preliminary objection was raised by the respondent before the Tribunal only to the limited extent that the petitioner was not a "workman" on account of the fourth exception as envisaged by the definition of the word "workman" u/s 2(s). In the written statement itself, it was made clear by the respondent that the petitioner was employed in a supervisory capacity but as he was drawing wages exceeding Rs. 1,000/- on the day he was dismissed, he was not a workman within the definition of the term as envisaged by section 2(s). When the respondent itself pleaded that the petitioner was employed in a supervisory capacity and raised the preliminary objection on the limited ground that his salary was more than Rs. 1,000/-, it is obviously not open to the respondent now to make a somersault and take a plea that the petitioner was employed in a managerial capacity. Such a plea was never put forward in the written statement nor was it canvassed in the alternative in support of the preliminary objection before the respondent to urge that such a plea would be kept open as it would amount to entirely making out a new case which would fly in the face of the original written statement. It is, therefore, not open for the respondent to take up such a contention at this stage. The proceedings will, therefore, have to be remanded to the trial Court for disposal on merits. Preliminary objection that the petitioner was not a workman at the relevant time shall stand overruled.

5. Since the Labour Court has not decided on merits, the matter has to be remanded to the Labour Court for deciding the issue referred to it on merits. In these circumstances, the rule is made absolute, the order passed by the Labour Court to decide the dispute on merits after permitting the parties to let in evidence in respect of the same. There will be no order as to costs.

6. The Labour Court is directed to dispose of the matter on or before 30th April, 1986.

7. (Petition allowed : Matter remanded)