
(1989) 02 GUJ CK 0014

In the Gujarat High Court

Case No : Special Civil Application No. 2238 of 1987

Sanghvi and Company

APPELLANT

Vs

Bipinchandra Bhallal Doshi

RESPONDENT

Date of Decision : 15-02-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(2), 12(1), 22, 2A

Citation : (1989) 1 GLR 533 : (1994) 3 LLJ 179

Hon'ble Judges : S.B. Majmudar, J; J.P. Desai, J

Bench : Division Bench

Advocate : B.K. Damani, for the Appellant; Jayant M. Panchal, for the Respondent

Final Decision : Dismissed

Judgement

Majmudar, J.—In this petition under Article 227 of the Constitution, the petitioner-firm has brought in challenge the award of reinstatement

and back wages passed by the Presiding Officer of the Labour Court, Rajkot on 21-7-1986, Annexure "A". The respondent-workman had raised

an industrial dispute to the effect that he was illegally terminated from service by the petitioner-Company. He, therefore claimed reinstatement with

full back wages and continuity of service. It is not in dispute that the respondent-workman was working as a Clerk with the petitioner-Transport

Company in Surendranagar at the relevant time. In March 1981 his services were dispensed with. His contention was that the petitioner-employer

had not followed the provisions of Section 25-F of the Industrial Disputes Act and, therefore, the retrenchment was illegal. The workman raised

this dispute and went to the Conciliator. The conciliation proceedings failed and, therefore, the appropriate Government made a reference of the

dispute u/s 10(1) of the Act to the appropriate Court. This is how the Labour Court was seized of this reference. After hearing both the sides and looking to whatever evidence was offered by them, the Labour Court came to the conclusion that the termination of the respondent-workman amounted to retrenchment and as retrenchment compensation was not paid to the respondent-workman, Section 25-F was violated and hence the retrenchment was null and void. Accordingly, he was ordered to be reinstated in service with full back wages. However, it was found on evidence that Rs. 2400/- were earned by the workman during the period of his unemployment and that amount was deducted from the full back wages awarded to the respondent-workman. He was also granted continuity of service. It is this award which has been brought in challenge in the present petition.

2. Mr. Damani, learned Counsel for the petitioner raised the following contentions in support of the petition:

(1) That reference by individual workman was not contemplated by the provisions of the Act and hence the reference was null and void.

(2) That the Labour Court had committed a patent error of law in holding that Section 25-F of the Industrial Disputes Act was violated by the

petitioner Company as according to the learned Counsel, this was not a case of retrenchment but it was a case of closure of the undertaking and

consequently, at the highest the respondent was entitled to closure compensation and nothing more, but the termination of his service could not be said to be retrenchment.

(3) That the workman had earned substantial amount during the period of his unemployment and, therefore, the Labour Court was not justified in

awarding full back wages to the workman, minus, of course, Rs. 2400/- as directed by the Labour Court.

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So far as the first contention is concerned, it is true that earlier, dispute could be raised by Unions in the nature of collective dispute and individual

disputes were not contemplated and that was the settled legal position as discernible from the decision of the Supreme Court in the case of The

Bombay Union of Journalists and Ors. v. The Hindu (1961) 11 Lab LJ 436. In that case a Division Bench of the Supreme Court consisting of

K.N. Wanchoo and J.C. Shah, JJ. interpreted Section 2(k) of the Industrial Disputes Act defining "industrial dispute" and laid down as follows:

A dispute between the employer and a single employee cannot per se be an industrial dispute, but it may become one if it is taken up by the Union

or a number of workmen. The persons who seek to support the cause of a workman must themselves be directly and substantially interested in the

dispute and this would depend on the facts and circumstances of each case.

It is on account of the aforesaid decision of the Supreme Court that the Parliament intervened and introduced Section 2A in the Industrial Disputes

Act by Act No. 35 of 1965 with effect from 1-12-1965. The said Section 2A reads as under:

2A. Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or

difference between the workman and his employer connected with, or arising out of; such discharge, dismissal, retrenchment or termination shall be

deemed to be an industrial dispute notwithstanding that no other workman nor any Union of workmen is a party to the dispute.

In view of the aforesaid amendment to the Industrial Disputes Act, it becomes clear that from 1-12-1965 even individual disputes pertaining to

discharge, dismissal, retrenchment or otherwise termination of service, etc. of individual workman will also be deemed to be industrial disputes.

Mr. Damani, however, submitted that even assuming that an individual workman's dispute would be an industrial dispute, the procedure u/s 10(2)

has to be followed and that would indicate that it is only the Union which can raise the dispute even for an individual workman. It is not possible to

agree with this contention for the simple reason that Section 10(2) existed on the Statute-Book from the very beginning and in those days, Unions

used to sponsor individual disputes and, therefore, the procedure u/s 10(2) was laid down. The said provision reads as under:

10(2) Where the parties to an industrial dispute apply in the prescribed manner, I whether jointly or separately, for a reference of the dispute to a

Board, Court, Labour Court, Tribunal or National Tribunal, the appropriate Government if satisfied that the persons applying represent the

majority of each party, shall make the reference accordingly.

In view of the introduction of Section 2A on the Statute-Book, therefore, the

procedure u/s 10(2) cannot be pressed in service for agitating individual disputes. Section 10(2) will have to be read harmoniously with Section 2A introduced in 1965 as stated above. Therefore, if an individual workman whose services are terminated raises an industrial dispute, it will be treated as an industrial dispute which can be referred for adjudication under Sec, 10(1) by the appropriate Government. Section 10(1) provides that where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing, refer the dispute for adjudication. Reading Section 10(1) with Section 2A, therefore, it must be held that in case of individual dispute of workman, contemplated by Section 2A, the appropriate Government can be approached for referring such dispute for adjudication and in case of such dispute, the procedure laid down in Section 10(2) can obviously not be applicable.

6. We may also in this connection refer to Section 12 of the Act which lays down the duties of conciliation officers. Sub-section 1) thereof provides that where any industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice u/s 22 has been given shall, hold conciliation proceedings in the prescribed manner. It is, therefore, obvious that even an individual workman raising an industrial dispute as contemplated by Section 2A can approach the conciliation officer for resolution of that dispute and if those proceedings fail, on the submission of failure report by the concerned conciliation officer, the appropriate Government can make a reference u/s 10(1) and that is precisely what has been done in the present case. It is not in dispute before us that the respondent-workman raising his dispute u/s 2A had approached the concerned conciliation officer who tried to resolve the dispute, by bringing both the sides before him and when that resolution failed, he gave failure report which resulted in the present reference. Consequently, the first contention of Mr. Damani is found to be devoid of any substance and is rejected.

[Rest of the Judgment is not material for the Reports].