
(1984) 01 GUJ CK 0006
In the Gujarat High Court
Case No : Spl. C.A. No. 374 of 1984

Sarabhai Chemicals

APPELLANT

Vs

Subhas N. Pandya

RESPONDENT

Date of Decision : 31-01-1984

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25B, 25C, 25F
Payment of Gratuity Act, 1972 — Section 2, 4

Citation : (1984) 49 FLR 244 : (1984) GLH 713 : (1984) 1 GLR 329 : (1984) 2 LLJ 75

Hon'ble Judges : P. Subramanian Poti, C.J.; S.B. Majmudar, J

Bench : Division Bench

Judgement

P.S. Poti, C.J.—The challenge in this application is to the award passed by the Labour Court of Baroda holding that the opponent company, who is the applicant before us, was acting illegally in retrenching the worker who is the respondent here. The Labour Court set aside the order and directed reinstatement of the worker in his original post with full back wages within 30 days of the publication of the award. The ground of challenge is that the worker concerned was only a badli worker that therefore, there was no relationship of employer and employee and retrenchment of such a worker will not attract the provisions of S. 25F of the Industrial Disputes Act, 1947. The further contention is that even assuming that the retrenchment was illegal, the direction to reinstate the workman with back wages was not called for.

2. By a very well considered judgment, the Labour Court has rightly found that there was retrenchment and that was in contravention of S. 25F. That being so, it found the retrenchment illegal.

3. The statement filed as Annexure "B" along with the Special Civil Application shows that the badli worker concerned was in the list of badli workers even since 1972 till the date of discharge on 15th November, 1979. In fact it is seen that even as early as in 1973 he had worked for 251 days in the year which would be

sufficient to bring him within the scope of S. 25F of the Industrial Disputes Act read with S. 25B of the Act. That being so, retrenchment of such a worker without complying with S. 25F - it is admitted that there is no such compliance - would be illegal and liable to be set aside by the Court. That is what was done.

4. Reliance is placed by the learned Counsel for the petitioner on a decision of the Supreme Court in *Lalappa Lingappa and Others Vs. Laxmi Vishnu Textile Mills Ltd.*, , and it is submitted on the strength of this decision that the Supreme Court in that case has taken a view on the scope of coverage under the Payment of Gratuity Act, 1972, which would be relevant for the purpose of the case before us. That was a case where the question to Supreme Court was called upon to consider was to entitlement to the payment of gratuity under the Payment of Gratuity Act, 1972. Section 4 of the Payment of Gratuity Act was referred to in that context to indicate that there should be continuous service for not less than five years in order to entitle a person to the gratuity on any of the specified events, and "continuous services" was defined in S. 2(c). What the term "badli workers" meant was considered in that case in paragraph 19 which may particularly be referred to :

"19. The Report of the Badli Labour Enquiry Committee, Cotton Textile Industry, 1967, no doubt shows that the badli employees are an integral part of the textile industry and that they enjoy most of the benefits of the permanent employees; but there may not be any continuity of services as observed by this Court in the *Kanbi Nanji Virji and Others Vs. The State of Gujarat*, . The badli employees are nothing but substitutes. They are like "spare men" who are not "employed" while waiting for a job : *Conlon v. Glasgow* 36 SLR 652, *Vallabhdas Kanji (P) Ltd. v. Esmail Koya* 1978 Lab IC 809 taking the view to the contrary, does not appear to lay down a good law. Accordingly, we uphold the view that the badli employees are not covered by the substantive part of the definition of "continuous service" in S. 2(c), but came within Explanation I and, therefore, are not entitled to payment of gratuity for the badli period, i.e. in respect of the years in which there was no work allotted to them due to their failure to report to duty."

It is in the context of the Payment of Gratuity Act that the Court held the view that the badli employees are not covered by the substantive part of the definition of "continuous service" in S. 2(c) but came within Explanation I and, therefore, not entitled to payment of gratuity for the badli period, i.e. in respect of the years in which there was no work allotted to them due to their failure to report for duty. It is not as if the Supreme Court took the view that the badli workers would never fall within the definition of workmen and, in fact, reference in paragraph 15 to the badli workers being covered by Explanation I would be sufficient to indicate that they are persons who fell within the class "employees".

5. We have noticed that the scheme of the Payment of Gratuity Act is not identical to the scheme of the Industrial Disputes Act. Naturally so. For the purpose of the Industrial Disputes Act, the rights of a workman would be as defined in that statute and a badli workman is not treated as a workman entitled

to the benefits of all the sections of the Act even under the Industrial Disputes Act. The definition of "workman" is to be found in S. 2(s). Section 25B provides for determination of continuous services. It provides that "a workman shall be said to be in continuous services for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman." Sub-section 2 of S. 25B provides that :

"where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer :

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than :

(i)

(ii) two hundred and forty days, in any other case,"

Section 25C, it may be noted, deals with the right of workmen to lay-off compensation. That section excludes badli workers and casual workers. Such a scheme is not to be found in S. 25F, which facts has significance. Where the statute wanted to exclude badli workmen or casual workmen, that has expressly been done, as in S. 25C and that would be indicative of the fact that they will be workmen otherwise. Explanation to S. 25C defines "badli workman" as a workman employed in an industrial establishment in the place of another workman whose name is borne on the muster roll of the establishment; there is further provision that, he shall cease to be regarded as such for the purposes of S. 25C if he had completed one year of continuous service in the establishment.

6. Whether, therefore, badli workman with whom we are concerned in this case will be entitled even to the benefit of S. 25C is a matter on which we need not express one way or the other nor are we called upon to do so. But he is a workman falling within S. 25F. We would not have seriously considered the contention in this detail but for the fact that considerable reliance has been placed on the decision in *Lalappa Lingappa and Others Vs. Laxmi Vishnu Textile Mills Ltd.*, , as if that decision made be a change in the law as understood till then. We find no reason to hold that the retrenchment of a badli worker who has been in continuous service from 1972, without complying with the terms of S. 25F will not fall within the scope of S. 25F. It does fall.

7. The contention that the relief granted is not justified does not appeal to us. What the Labour Court has done is to direct restoration of the position of the workman as it stood prior to the retrenchment. Naturally there should also be recompense by way of restoring to him back wages which he is entitled to and that has been done. As to the quantum of back wages, no evidence is adduced

as to what it should have been and therefore, the Court was not in a position to determine wages as other than what would have been normally due as back wages on reinstatement. The application fails and is dismissed.

8. The applicant's Counsel Shri Nanavati submits that the workman will be reinstated in 2 or 3 days" time. But he prays that ten days may be granted to pay the back wages. We give three days" time for reinstatement and ten days" time for payment of back wages.