

(2022) 06 GUJ CK 0112
In the Gujarat High Court

Case No : R/Special Civil Application No. 8361 Of 2018

State Of Guajrat		APPELLANT
	Vs	
Vashrambhai Hirabhai & 2 Other(S)		RESPONDENT

Date of Decision : 16-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 06 GUJ CK 0112

Hon'ble Judges : A.Y. Kogje, J

Bench : Single Bench

Advocate : Dhvani Tripathi, Khushbu D Chhaya

Final Decision : Allowed

Judgement

A.Y. Kogje, J

1. RULE. Learned Advocate Ms. Khushbu Chhaya waives service of rule on behalf of the respondent Nos.1 and 2.
2. This petition under Article-226 of the Constitution of India is filed against the Judgment and Award passed in Reference (LCD) No.17 of 1999 dated 08-02-2016 by the Presiding Officer, Labour Court, Rajkot.
3. The contention of the State Government to challenge the Award is that the Labour Court has relied upon the previous Reference being LCR No.1263 of 1984, 1264 of 1984 and 1265 of 1984, wherein the Award contended by the Workmen before the Labour Court was passed on 05-04-1985 and hence, based on such averments of previous References and the Award of the Labour Court, the Labour Court in the impugned order has proceeded to grant continuity of service by treating them to be in service and the period covered under the previous Reference is to be treated as continuing service.
4. It is submitted that there is no reference to such Award during the proceedings before the Labour Court neither such Award is on the record of the

Labour Court, still relying upon it, prayer has been granted for regularization.

5. Learned AGP submitted that the procedure for regularization has been prescribed under the Government Resolution dated 17-10-1988 and when the State Government has formulated the Policy for regularization, the regularization ought to have been granted in conformity with such policy and not by the Award.

6. Learned Advocate appearing for the respondent-workmen submitted that in view of the previous Reference, the Award which was not subjected to challenge by the State Government, deemed to have been accepted by the State Government and therefore, the Workmen were entitled to the benefit upon the Reference Award. It is submitted that as per the Award, the workmen were held to be in service since January, 1978 and therefore, period of 20 years of continuous service was to be treated from January, 1998 and therefore, no error is committed.

7. Having considered the rival submissions of the parties and having perused the documents on record, from the record it appears that for considering the respondent- workmen to be in service from 1978, the only basis was Reference made by the Labour Court in the impugned Award to LCR No.1263 of 1984, 1264 of 1984 and 1265 of 1984, wherein the Award has been passed on 05-04-1985. It is pertinent to observe that the Reference to such Award is made only in the Demand Notice of the workmen. Thereafter, there is nothing on record including the Award, which was placed for consideration before the Labour Court. The stand of the Government in their reply to the statement of claim would clearly indicate that the stand of the workmen of being in service since January, 1978 was denied and that range had come into existence in the year 1981 and therefore, submission of the workmen of being in service since 1978 cannot be accepted.

8. In the opinion of the Court, when such rival stand is taken, it was the duty of the Labour Court to bring on record the previous Award in LCR No.1263 of 1984, 1264 of 1984 and 1265 of 1984 to arrive at conclusion that it was on the basis of such Award that the workmen have been reinstated in absence of the Award on record and any other documents on record, it was not open for the Labour Court to presume the existence of the Award and reinstatement of the workmen with effect from 1978, when range itself has come into existence specifically on 01-04-1981.

9. At this stage, the Court has called upon the parties to place on record the Award in LCR No.1263 of 1984, 1264 of 1984 and 1265 of 1984. However, none of the parties have been able to place such Award on record, as the Court thought it fit to examine the same due to passage of long period.

10. In view of the aforesaid, it will not open for the Labour Court to presume the reinstatement with effect from the year 1978 and grant continuity in service. Having said so and having perused the documents on record, it appears that the stand of the State even before the Labour Court has been that the respondent-

workmen had entered into service of Jasdan range with effect from 28-10-1987. Having accepted this, therefore, it would be necessary to modify the Award.

11. In view of the aforesaid reasoning, it would be appropriate to modify the Award to read that the respondent-workmen be entitled to the benefit of the Government Resolution dated 17-10-1988 by treating the respondent- workmen to be in continuous service with effect from 28-10-1987. It is hereby therefore directed that the workmen are entitled to the benefit of the Government Resolution dated 17-10-1988 by treating the workmen to be in continuous service with effect from 28-10-1987 and the Department to give benefit as per the Government Resolution dated 17-10-1988 and calculation with regards to the same be made within period of three months from the date of receipt of the order of this Court.

12. In view of the aforesaid, the petition stands allowed to the aforesaid extent. Rule is made absolute with no order as to costs.

Direct service is permitted.