

(2014) 01 GUJ CK 0093

In the Gujarat High Court

Case No : Special Civil Application No. 11076 of 2008

State of Gujarat

APPELLANT

Vs

Saburbhai Umalabhai Mavi

RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(j), 25F, 25G

Citation : (2014) 141 FLR 460

Hon'ble Judges : N.V. Anjaria, J

Bench : Single Bench

Advocate : Government Pleader, Advocate for the Appellant; B.J. Trivedi, J.T. Trivedi and Ms. Jignasa B. Trivedi, Advocate for the Respondent

Final Decision : Dismissed

Judgement

N.V. Anjaria, J.—By judgment and award dated 16.2.2008, the Labour Court, Godhra decided Reference (LCG) No. 813 of 2001, which was upon remand of the proceedings. It thereby directed the petitioner to reinstate the respondent-workman on his original post with continuity of service, but without backwages, awarding Rs. 500/- towards cost. It is against this judgment and award that State of Gujarat through the Range Forest Officer, Normal Range, Dahod, filed the present petition.

The facts in the background leading to the impugned judgment and award noted. Respondent-workman invoked jurisdiction of Labour Court raising industrial dispute in respect of his oral termination with effect from 15.11.2000. The workman was working as Chokidar (Watchman) under the first party employer the Forest Department. In his statement of claim at Exhibit 6 it was his cast that he was in service since 5.7.1981 on a monthly pay of Rs. 1,950/-. It was his case that he had completed 240 days of continuous service in each year. It was stated that since the employer had been paying at the rate less than the minimum wages, he requested for payment of higher wages, due to this demand the employer terminated his services. The Reference was sought in the year 2001. In

the said original Reference, the first party employer in his reply (Exh. 9) stated that the workman was Rojamdar and during the year 2000, he illegally cut the grass of the value of Rs. 5,000/- from the Forest and sold the same.

One of the contentions raised before the Labour Court was that the Forest Department was not "industry" within the meaning of section 2(j) of the Industrial Disputes Act, 1947 (hereinafter mentioned as "the Act"). The Labour Court held that no departmental inquiry was conducted by the Department for the alleged act of theft. It was further held that allegation was not proved and established. The Labour Court recorded the finding also that the workman had completed 240 days of service and his termination being without complying with the requirements of law, was in breach of section 25F of the Act. The Labour Court passed award on 26.5.2004 directing reinstatement with all consequential benefits and 50% backwages.

Against the aforesaid judgment and award passed in 2004, the petitioner herein had filed before this Court Special Civil Application No. 15600 of 2004. This Court took into account the aspect that the contention of the petitioner that it was not "industry" and therefore the Labour Court had no jurisdiction was not gone into by the Labour Court. It was observed that the said point was required to be decided in light of decision of Full Bench of this Court in Gujarat Forest Producers, Gatherers and Forest Workers Union Vs. State of Gujarat, , this Court remanded the matter for fresh consideration of the Labour Court by setting aside the said judgment and award. The remand of the Reference directed as above culminated into the impugned judgment and award.

2. Heard learned Assistant Government Pleader Ms. Jyoti Bhatt for the petitioner and learned advocate Mr. D.J. Trivedi for the respondent-workman.

In Gujarat Forest Producers, Gatherers and Forest Workers Union (supra), Full Bench of this Court held that even as the entire Forest Department may not be treated to be industry generally, whether a particular unit or division of the Forest Department would fall within the purview of section 2(j) of the Act would depend upon the nature of activity carried put by such unit or division. From paragraph 26.2 of the aforesaid judgment, relevant observations are noticed:

... 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 done 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. (para. 26.2)

3. Thus it was on the issue whether engagement of the workman was in an "industry", the matter was remanded by this Court. It was in the background of a plea taken initially by the petitioner herein that the workman was not employed in industry. Since it was assertion of the petitioner, primary burden of proof was on the petitioner to discharge. In the first round of litigation, despite such a plea having been taken, the State did not produce any material in support.

As noted above, this Court by order in the writ petition mentioned hereinabove, required the Labour Court to reconsider the matter and decide it expeditiously. This Court observed that parties would lead evidence on the aforesaid aspect. Even in the second round and the opportunity given as above, the petitioner-State failed to submit any documentary evidence, nor it led any further evidence. It was recorded by the Labour Court in judgment and order impugned that the first party employer choses not to lead any evidence to establish that it was not an industry. Since there is an omission and failure on part of petitioner-State to lead evidence despite permitted twice, an adverse inference would be drawn. By not availing the opportunity specifically granted, the petitioner-State could be legitimately saddled with adverse inference for the reason that it failed to submit before the Court the relevant details by putting it has evidence on the point of industry.

The Labour Court was justified in absence of any further evidence led, on the basis of existing material, to come to conclusion that the workman was employed as a Watchman and his duty is to take care and to protect the grass grown in the Forest. The grass was cut and stocked in the Grass Bit of Rampur Range where the workman was posted on duty. There is no gainsaying, and it was rightly inferred by the Labour Court that in the unit of Forest Department where the workman was serving, a systematic activity of cutting grass and selling the same was being undertaken. It was, therefore, an "industry" within the meaning of section 2(j) of the Act. There was no contrary suggestion either from the evidence directly or circumstantial. Therefore, finding recorded by the Labour Court holding that the workman was a Chokidar in the Grass Bit where systematic activity was going on, was industry, could not be excepted.

4. On the aspect of completion of requisite number of days to constitute continuous service, Labour Court already found after appreciating evidence that respondent-workman has completed 240 days of service. Accordingly the Court held that there was a breach of sections 25F and 25G of the Industrial Disputes Act, 1947 and workman was entitled to be reinstated. In the impugned judgment and award reinstatement was therefore granted, however backwages came to be denied. Learned Assistant Government Pleader could not successfully assailed

the finding either on the above two aspects. For the foregoing reasons and discussion, no interference is called for in the impugned judgment and award. Petition is dismissed. Rule stands discharged.