

(2016) 08 GUJ CK 0080

In the Gujarat High Court

Case No : Special Civil Application No. 30221 of 2007

Surendranagar District Panchayat

APPELLANT

Vs

Idalkhan Jivankhan

RESPONDENT

Date of Decision : 23-08-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2017) 1 CLR 487

Hon'ble Judges : Mr. K.M. Thaker, J.

Bench : Single Bench

Advocate : Rule Served, for the Respondent Nos. 1-5; Notice Served, for the Respondent Nos. 1-5; Mr H.S. Munshaw, Advocate, for the Petitioner Nos. 1-3

Final Decision : Dismissed

Judgement

Mr. K.M. Thaker, J.(Oral) - In this petition, the petitioner panchayat has challenged order dated 11.10.2006 passed by the learned Labour Court, Surendranagar in Recovery Application No. 278 of 1996 whereby the learned Labour Court partly allowed the recovery application (which was filed by five applicants, who are respondents in present petition) and directed the petitioner panchayat to pay Rs. 26,867/- to each of the applicants (i.e. present respondents). Accordingly, the learned Labour Court directed the petitioner panchayat to pay total sum of Rs. 1,34,335/- to the said five claimants. Against the said order, the petitioner panchayat has taken out present petition.

2. The record reflects that the respondents have not entered appearance though process of rule is served to the respondents.

3. So far as factual background is concerned, it has emerged from the record that the original claimants i.e. present respondents were engaged by the petitioner panchayat as daily wagers. They were continued in service as daily wagers for long time and suddenly, their services were discontinued. Feeling aggrieved by the said action of the panchayat, the claimants raised industrial

dispute, which was referred for adjudication to the learned Labour Court by appropriate government who passed order of reference somewhere in 1989. The dispute was registered as Reference (LCS) No. 773 of 1989. The learned Labour Court adjudicated the said reference and vide award dated 1.2.1993 partly allowed the reference and directed the panchayat to reinstate the claimants with continuity of service.

3.1 It appears that after some delay in implementation the petitioner panchayat implemented the award and complied the directions by reinstating the claimants. It is relevant to mention that the petitioner panchayat did not comply the order directing the panchayat to treat the claimants in continuous service.

3.2 It further appears that the claimants felt aggrieved by the action of the panchayat of not treating their service continuous and not extending benefit of GR dated 17.10.1988. According to the claimants, the petitioner panchayat also did not grant benefits of medical allowance, weekly off, etc. to the claimants. The claimants also felt aggrieved by the petitioner's action of not paying salary in accordance with the GR dated 17.10.1988.

3.3 With such grievance, said claimants filed an application under Section 33C(2) of the Industrial Disputes Act which was registered as Recovery Application No. 278 of 1996 and they claimed Rs. 26,876/- towards different benefits for each claimant. The claimants also prayed that the direction to pay interest at the rate of 18% may also be passed. Accordingly, the claimants demanded total amount to the tune of Rs. 1,34,335/- for five claimants.

3.4 The petitioner panchayat opposed the said recovery application. In its written statement, the panchayat denied the claims and allegations by the claimants. The petitioner panchayat admitted that the claimants were reinstated w.e.f. 1.2.1993 and that it had not prepared seniority list in respect of the daily wagers including the claimants for the period prior to 1.10.1988. The panchayat also accepted that it had extended benefits under GR dated 17.10.1988 to the claimants w.e.f. 1.2.1998. The petitioner panchayat also admitted that the claimants were paid wages at the rates of minimum wages (and not in consonance with GR dated 17.10.1988) until 1.2.1998. It appears that the petitioner panchayat also accepted that it had not extended benefit of GR dated 17.10.1988 to the persons since the claimants were not in service of the panchayat as on 1.10.1988 and the claimants are not considered entitled for benefit of GR dated 17.10.1988 w.e.f. 1.2.1993. The petitioner panchayat further claimed and clarified that the said benefit of GR dated 17.10.1988 was extended to and granted to the claimants w.e.f. 1.2.1998.

3.5 Before the learned Labour Court, during their respective submissions, the parties relied on and reiterated the details mentioned in their respective pleadings, i.e. statement of claim and written statement. The parties, i.e. the claimants as well as the panchayat, declared that they did not intend to lead any oral evidence. Accordingly, neither party examined any witness.

3.6 The learned Labour Court heard the submissions and considered the material on record and passed the impugned award dated 11.10.2006.

4. Any submissions on behalf of the petitioner panchayat are not put forward in support of the petition and against the impugned award. Whereas the respondents have not entered appearance.

5. On examination of the award and other material on record, it has emerged that the petitioner panchayat, for the purpose of considering the eligibility and entitlement of the claimants for the benefit under the GR dated 17.10.1988, took into account the date on which the claimants were reinstated pursuant to the award passed by the learned Labour Court in Reference (LCS) No. 773 of 1989 and calculated the eligibility on the basis of the date of reinstatement in service i.e. 5 years after 1.2.1993. Accordingly, the panchayat granted benefit under GR dated 17.10.1988 w.e.f. 1.2.1998. The said date of reinstatement of the workmen was taken into account as relevant date for considering the claimants' entitlement for GR dated 17.10.1988. The said aspect emerges from the document placed on record by the petitioner at Annexure-A, page-11 of this petition. From the said document, it appears that the petitioner panchayat considered 1.2.1998 as the date of appointment/reinstatement of the concerned claimants and considered the said date as relevant date and on that base, the petitioner panchayat considered 5 years' period during which the claimants were engaged for more than 240 days. Accordingly, the petitioner panchayat fixed the date 1.2.1998 as date for entitlement of the benefit of the GR dated 17.10.1998 and started granting benefit of the said GR to the claimants w.e.f. 1.2.1998.

6. From the award, it appears that the learned Labour Court took into account the said reply i.e. petitioner's own admission.

The learned Labour Court also took into account the fact that by virtue of award dated 27.5.1992 in Reference (LCS) No. 773 of 1989, the panchayat was directed to reinstate the claimants with continuity of service and that therefore, the panchayat was not justified in taking 1.2.1993 as the base for calculating eligibility period of 5 years and thereby considering the case of claimants for the benefit of said GR w.e.f. 1.2.1998.

By considering 1.2.1998 as relevant date, the petitioner panchayat did not comply the order by labour Court directing the panchayat that service of the claimants should be treated continuous.

In view of said direction passed by the learned Labour Court in Reference (LCS) No. 773 of 1989, the service should have been treated continuous and the period from date of termination to the date of reinstatement should not have been treated as break and the date when they were reinstated/re-engaged should not have been treated as date of appointment/fresh appointment.

The learned Labour Court being of the view that original date should be considered, accepted the claims of the workmen.

Since the petitioner panchayat had not disputed the calculation submitted by the claimants and the quantification of the claim amount i.e. Rs. 26,867/-, the learned Labour Court accepted the said calculation and quantification in absence of any dispute on that count.

7. From the said facts, it emerges that it was not disputed by the petitioner panchayat before the learned Labour Court that it granted the benefit of GR dated 17.10.1988 w.e.f. 1.2.1998. In view of the direction by the learned Labour Court in Reference (LCS) No. 773 of 1989 i.e. to reinstate the workmen with continuity of service and to treat their service continuous, which has been taken, and rightly so, as base by learned Labour Court while passing the impugned order in recovery application, the decision of the learned Labour Court in the impugned order cannot be faulted.

It cannot be said that the learned Labour Court has committed any error or illegality while passing the impugned order dated 11.10.2006.

The learned Labour Court has taken into account the award in Reference (LCS) No. 773 of 1989 which has, undisputedly, attained finality. The learned Labour Court also seems to have taken into account the direction which obliged the panchayat to treat the service of the claimants continuous and on that basis, the claim by the applicants is granted by the learned Labour Court. Therefore, the impugned order does not warrant any interference.

The petitioner panchayat has failed to make out any ground against the directions passed by the learned Labour Court. The contentions mentioned in the memo of the petition under the heading "GROUND" in paragraph Nos. 3(a) to 3(f) are without merits and do not deserve to be accepted. Therefore, the said contentions are rejected.

Since any ground to interfere with the petition is not made out, the petition is dismissed.

Rule is discharged.