
(1995) 02 GUJ CK 0029
In the Gujarat High Court
Case No : S.C.A No. 13508 of 1994

Vadodara Municipal Corporation

APPELLANT

Vs

Gajendra R. Dhumal

RESPONDENT

Date of Decision : 14-02-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1996) 1 LLJ 206

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : Prnav G. Desai, for the Appellant; H.P. Hasulkar, for the Respondent

Final Decision : Dismissed

Judgement

R. Balia, J.—Rule. Mr. S.P. Hasulkar, learned Advocate appears for respondent and waives service of Rule, Heard learned Counsel for the parties on merits.

2. On reference being made, of the following question.

The Industrial Tribunal, Vadodara made Award on the following terms on April 30, 1994.

3. Aggrieved with the aforesaid Award, the Municipal Corporation, Vadodara has come up before this Court through this Special Civil Application.

4. To understand contentions and controversy raised before me, it would be necessary to notice brief facts as narrated in the Award. Respondent - Gajendra R. Dhumal (hereinafter called as the workman) was appointed in 1981 by the petitioner - Corporation as Asst. Draftsman on which post he continued until when his services were wrongly terminated without following the conditions of Chapter V-A of the Industrial Disputes Act, 1947. Thereafter he was appointed on Tracer's post, lower to the post of Asstt Draftsman from October 1985. By the order dated October 9, 1985, the workman was transferred to another department on the ground that his work in the present department was not

satisfactory. However, from the record of the Municipal Corporation, it was clear that the work of Shri Dhumal was satisfactory throughout. On the said post, workman again came to be appointed on February 15, 1986 until March 31, 1986. He continued on the post even after March 31, 1986 without any order. On May 17, 1986 the order was issued for extending services w.e.f. April 1, 1986 for a period of 3 months. Likewise thereafter appointment was continued, without termination on expiry of time, though extension orders were issued retrospectively from time to time. This was done notwithstanding the fact that from the letter dated August 2, 1986 of Town Planner it came on record that in fact the work was existing and there were recommendations for appointing the petitioner at least for a period of one year. The petitioner has raised dispute about placing him on lower post as while working on the post of Asstt. Draftsman, he was continued and the fact that he had already completed one year continuous service on the post of Asstt. Draftsman and from which post, his services could not be terminated without fulfilling conditions precedent for valid retrenchment from the post of Draftsman. While this was going on, after some time, workman was given appointment as Helper in the month of August 1988 for a fixed period from August 6, 1988 to September 30, 1988 as a Daily-wage Helper and while the petitioner made a demand for doing justice to him in respect of his status in the matter of appointment by not reverting him from the post of Asstt. Draftsman to the post of Helper, by the impugned order dated November 5, 1988, services of the respondent workman were brought to an end.

5. It is in this background that the workman's first appointment as Asstt. Draftsman and his subsequent reversion to the lower post of Tracer and his demand for post of Asstt. Draftsman on the ground that his termination from the post of Asstt. Draftsman being violative of retrenchment provisions of the Industrial Dispute Act, 1947 and subsequent termination of the petitioner's service even from the post of Helper led to the aforesaid question being referred to the Tribunal for adjudication.

6. The Tribunal found as a fact that the workman has worked for two years and seven months between 1981 to 1984 on the post of Asstt. Draftsman, that there was permanent post of Asst. Draftsman on which workman was functioning but in order to accommodate somebody else, the workman was transferred from parent department to another department. Thereafter also from 1986 to 1988, workman worked for more than 2 years with the Corporation. It also came to the finding that though the work was existing which was of permanent nature, the petitioner was offered fixed-term appointment and with artificial break meaning thereby that it was purely a camouflage (sic) to hide the indefinite nature of appointment and in view of this finding, the aforesaid Award was made by the Industrial Tribunal in which it also took into account the necessary qualifications which the workman has acquired in the field.

7. It was firstly contended by the learned counsel for the petitioner that as respondent-workman's service were of fixed term tenure, termination of services

cannot be considered as retrenchment. Secondly, it was contended that there is no finding that workman has worked for 240 days in 12 months immediately preceding November 5, 1988 so as to attract the provisions of Section 25-F of Chapter V-A of the Industrial Disputes Act, 1947. Thirdly, it was contended that even assuming that retrenchment was invalid, the workman could have been reinstated only on the post from which he came to be retrenched and could not have been directed to be reinstated on the post of Tracer. Lastly, it was contended that the workman being highly qualified man, is not likely to join the services, but only purpose of this disputes was to claim back wages (sic) as accumulated capital and walk away with it.

8. To allay the apprehension of the petitioner, the learned Counsel for the respondent at the very outset of the contentions as stated above, has stated on behalf of his client so far as last contention of me petitioner is concerned, that the workman undertakes to join the services of the Corporation and will serve at least for a period of 3 years failing which he would not claim any benefits flowing from Award made in his favour. Regarding other contentions, he submitted that the dispute was not merely with reference to the termination of services on November 5, 1988 but was concerning entire period of service and unfair treatment given to the workman in the matter of employment by the petitioner corporation which is a local authority falling within the definition of State" within the meaning of Article 12 of the Constitution of India and the dispute was wholesome dispute keeping in view the dispute concerning reversion of the petitioner from the post of Draftsman to Tracer culminating termination of services from the post of Draftsman in the first instance and termination of employment altogether on November 5, 1988 which was mala fide apart from being violative of provisions of the Act.

9. I have carefully considered the rival contentions raised before me and perused the Award. It is true that had it been a case of examining legality of termination simpliciter in the context of provisions of the Industrial Disputes Act, 1947, on finding retrenchment being illegal, the ordinary consequence would have been to reinstate the workman on the same post from which he was retrenched, i.e. revival of status quo as existing at the time of termination with necessary consequence flowing therefrom as the facts and circumstances of the case may require. However, from the perusal of the Award and facts stated above, it is apparent that dispute which was referred did not relate merely to the question of termination on November 5, 1988, but the dispute related to treatment given to the workman since his appointment as Asst. Draftsman and thereafter asking him to discharge duties of Tracer by giving him appointments on fixed term basis with artificial breaks. If viewed from this point of view, in my opinion, none of the contentions raised by the learned Counsel for the petitioner sustain scrutiny. The undisputed fact is that the petitioner was appointed as a Draftsman way back in 1981 on which post he worked right up to December 1985, i.e. he was continuously employed as Draftsman for a period of more than 4 years. Therefore his services as Draftsman could not have been terminated without

following the procedure. If that is the position, the very first termination of the workman being in violation of the provisions of the Act from the post of Asstt. Draftsman was invalid. Even asking an employee to work on the lower post to one on which he was appointed, amounts to retrenchment. Again thereafter the workman was employed as Tracer from February 1986. i.e. after about a break of 10 months which was a post lower than Asstt. Draftsman. If termination of services of workman from the post of Asstt. Draftsman was invalid, the consequence shall be that he would be deemed to have continued in the post of Asstt. Draftsman and entitled to that status unless lawfully terminated from that post. Be that as may be, again from December 1986 till May 1987, the workman has completed more than one year's continuous service on the post of Tracer which also was terminated without following procedure and was illegal. Thereafter, in August 1988 the petitioner was again given appointment yet on lower post of Helper. Therefore, it is not merely termination w.e.f. November 5, 1988 was in question, but the action of the Corporation throughout the period was in question and the Tribunal was justified in taking into consideration the fact of earlier illegal termination and offering lower post while adjudicating the dispute referred to it. As is apparent from the Award, termination from the Asst. Draftsman as well as from the post of Tracer itself was found illegal and void, it was justified in holding retrenchment to be illegal and directing the petitioner-Corporation to reinstate the workman on the post of Tracer looking to his qualifications and keeping in view of the previous service record, if not on the post of Draftsman - the post on which he was first appointed. It is also to be noticed that keeping in view nature of dispute referred to for adjudication by the Tribunal, the question of actual working for 240 days immediately preceding November 5, 1988 was not much of relevance. Date November 5, 1988 was only relevant for the purpose that as on November 5, 1988, the workman was actually in employment, his reinstatement should have been from that date. However on what post, was to be determined, depending upon finding about the previous post held by the petitioner and the circumstances in which he was terminated from those posts and whether earlier terminations were valid or invalid. So far as the question of applicability of Section 2(oo)(bb) of the Act is concerned, in my opinion, this contention is not open to be raised in this case inasmuch as the same was not raised before the Tribunal. Moreover, in view of clear finding that there was permanent vacancy against which workman was working and periodical appointments were offered only for the purpose of creating artificial break, takes the case out of purview of Section 2(oo)(bb) of the Act. In this connection, it is also to be stated that though the appointment order when issued, spoke of fixed term appointment, yet the services on expiry of such term did not come to an end automatically on expiry of the term, but the workman was continued on the post without any order. Once the workman's appointment ceased to be a fixed term appointment, subsequent issue of an order giving a fixed term appointment with retrospective effect will not attract the provisions of Section 2(oo)(bb) of the Act.

10. One more fact may be noticed. Parties are in agreement that as per settlement operating between employees and Corporation, a person who has worked for 720 days or more, he is entitled to be made permanent. If that be so, leaving aside the case of retrenchment being legal or illegal, on the basis of operative settlement between the parties, the workman was entitled to be regularised on the post on which he has actually worked for 720 days or more. As per the finding of the Tribunal, workman has undoubtedly worked on the post of Ass. Draftsman and tracer taking together for more than 720 days. Under the settlement itself, therefore, the workman was entitled to be regularised and offered permanent service rather than getting marching orders. In that view of the matter, Award made by the Tribunal is pre-eminently just and does not call for any interference under Articles 226 & 227 of the Constitution of India.

11. In view of my aforesaid conclusions, this petition has no force and is hereby dismissed subject to the observations that before joining with Corporation, the respondent-workman shall furnish an undertaking about his serving the employer for a period of 3 years and in case he leaves the job before 3 years, he shall return the amount of backwages in terms of statement made before this Court on his behalf as noticed above. Rule discharged. No costs.