
(2016) 07 GUJ CK 0016

In the Gujarat High Court

Case No : Special Civil Application No. 3084 of 2012

Vinubhai Rameshbhai Harijan

APPELLANT

Vs

Industrial Training Institute

RESPONDENT

Date of Decision : 05-07-2016

Acts Referred:

Citation : (2016) 151 FLR 590 : (2017) LabLR 442 : (2016) 3 LLJ 745

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

Bench : Single Bench

Advocate : Mr. DG Shukla, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Mr. K.M. Thaker, J. (Oral) - Heard Mr. H.D.Shukla, learned advocate, for Mr. D.G.Shukla, learned advocate for the petitioner.

2. The office has circulated a note dated 4.7.2016 stating that Rule qua the respondent is not received back. The cause list also contains similar remarks. From hearing the petitioner and upon examining the award impugned in present petition, the Court is of the view that the petition can be decided in absence of the respondent since the Court, for the reasons recorded hereafter, is not inclined to pass any order which would be adverse to the interest of the respondent. Therefore, the Court proceeded to hear the learned advocate for the petitioner on merits and following order is passed though the respondent is not present/ process is not received back.

3. In present petition, the petitioner has challenged award dated 12.10.2011 passed by learned Labour Court, Nadiad in Reference (LCN) No.301 of 2001 whereby the learned Labour Court directed the respondent institute to pay Rs. 15,000/- by way of lump sum compensation to the petitioner. The petitioner felt aggrieved by the said direction, inasmuch as the petitioner had claimed that he should be reinstated with consequential benefits and that feeling aggrieved by the said direction, the petitioner has taken out this petition.

4. So far as factual background is concerned, it has emerged from the record and also from the submissions by learned advocate for the petitioner that the petitioner had raised industrial dispute on the allegation that his service was illegally terminated by oral order dated 17.7.2000. The appropriate Government referred the dispute for adjudication to the learned Labour Court, Nadiad and the dispute came to be registered as Reference (LCN) No.301 of 2001. Before the learned Labour Court, the claimant filed a statement of claim with allegation that he was appointed as part time sweeper w.e.f. 22.11.1993 and thereafter, he continuously worked with the opponent institute. He also alleged that he was paid wages at the rate of Rs. 240/- p.m. and that without assigning any reason and without any fault on his part, the opponent institute terminated his service on and from 17.7.2000 by oral order. He also alleged that he was not paid wages from 1.4.2000 to 30.6.2000. With such allegations, the claimant demanded that he should be reinstated with consequential benefits and the wages for the period from 1.4.2000 to 30.6.2000 may be paid.

4.1 The opponent institute opposed the reference by filing its written statement. In its written statement, the opponent raised preliminary objection against maintainability of the reference on the ground that the institute is engaged in activity of training and that therefore, it is not industry within the meaning of the term defined under Section 2(j) of the Act. The opponent institute also raised an objection against maintainability of the reference on the ground that the claimant cannot be termed as workman as defined under Section 2(s) of the Act.

4.2 Besides the said preliminary objections against maintainability of the reference, the opponent institute also denied the allegations that the claimant was working with the institute since November 1993 and/or that he was employed as part time sweeper and/or that he was paid salary at the rate of Rs. 240/- p.m. and/or that his service was orally terminated from 17.7.2000. The institute claimed that the claimant was intermittently and on need basis engaged from time to time for some cleaning/sweeping work which, he used to complete within 15 to 20 minutes and for such work, the claimant was paid Rs. 10 to Rs. 12 depending on the work on the particular day whenever he was called for work. The institute also claimed that the petitioner was not appointed in regular course after regular selection procedure and in any case, he was not appointed either as a part time or temporary or even ad-hoc sweeper as alleged by him. With said assertions in its written statement, the institute also claimed that when the claimant was not appointed by the institute, occasion and question of terminating his service never arose and the institute has not terminated his service.

4.3 After the stage of pleadings was completed, the parties placed oral and documentary evidence on record. So far as the petitioner ? claimant is concerned, his deposition was recorded at Exh.20. From the record, it has emerged that the petitioner claimant had not placed on record any documentary evidence and he also did not examine any other person/co-employee of the

institute as his witness.

5. On the other hand, it has emerged from the record that during the proceedings before the learned Labour Court, the respondent institute had placed on record vouchers under which the amount was paid to the petitioner claimant from time to time.

5.1 The said documents/vouchers for the period from August 1997 to January 1998 were placed on record below Exh.14.

5.2 Besides the said documents, the respondent institute also examined one Mr. A.I.Pandya, Incharge Principal, as its witness whose deposition was recorded at Exh.23.

5.3 Further, an affidavit by Mr. M.M. Parmar was also placed on record which was accepted on record at Exh.31.

5.4 After the stage of evidence was concluded, the learned Labour Court heard the submissions and thereafter, passed the award dated 12.10.2011 with above mentioned directions which is challenged by the petitioner claimant.

6. At the outset, it is relevant and pertinent to note that though the respondent institute had expressly raised preliminary objection against the maintainability of the reference which, in the facts and circumstances of the case, deserved to be considered and decided as a preliminary issue in view of the fact that the said preliminary objection touch the roots of the proceedings and the jurisdiction of the learned Court to decide the reference cases.

6.1 It is pertinent to note that despite the fact that the said objection was raised as a preliminary contention/objection against the maintainability of the reference and the jurisdiction of the learned Court to entertain the reference case, the learned Labour Court did not to even frame an issue and did not decide the said objection/contention at all, much less as preliminary issue.

7. It is also pertinent that the learned Labour Court proceeded to entertain and decide the reference without examining the said contention and without deciding the said objection and without coming to the conclusion that the respondent institute is and can be termed as an industry within the meaning of the term defined under Section 2(j) of the Act.

7.1 Without recording any findings and conclusion as regards the said contention, the learned Labour Court could not have proceeded to entertain and decide the reference.

7.2 The fact that the learned Labour Court proceeded in the matter without deciding the said preliminary objection is apparent on the face of the record and the said error and defect vitiates the impugned award.

8. Unless the learned Labour Court, after examining relevant evidence, came to the conclusion and recorded such finding that the respondent institute is an

industry, it could not have examined the petitioner's dispute on merits and could not have passed the award.

8.1 On this count, it is also relevant and pertinent to mention that even the petitioner claimant failed to lead any evidence to establish that the respondent institute is an industry. He did not lead any evidence to demonstrate the nature of the activities being undertaken at the respondent institute.

8.2 Since the learned Labour Court did not frame any issue and also in view of the fact that the respondent institute did not lead any evidence and the institute was not called upon by the learned Labour Court to lead any evidence in support of the said contention. Under the circumstances, the award is passed without reaching to the conclusion as regards preliminary issue which renders the award defective and vitiated.

9. Now, so far as the other aspects, more particularly allegations by the petitioner claimant are concerned, it is relevant to note that:-

(a) the petitioner claimant did not place any appointment letter or any other material on record of the reference case to establish that he was appointed as an employee, even as part time employee, by the respondent institute;

(b) there is nothing on record to establish that the petitioner was appointed by the competent authority of the respondent institute as its employee even on part time basis;

(c) undisputedly, the respondent institute is Government institute and that therefore, ordinary, any person would not be appointed without appointment letter by the competent authority and salary would not be paid to a person who is not appointed, as an employee of the institute, by the competent authority;

(d) any evidence controverting the claim of the respondent institute viz. that the institute used to call the petitioner on adhoc and casual basis only intermittently when need arose and he was, at that time, paid Rs. 10 to Rs. 12 on voucher basis, depending on the work on the particular day is not placed on record;

(e) the petitioner claimant also failed to place any evidence on record to establish that he was appointed as part time sweeper w.e.f. 22.11.1993 and that he worked as such until 17.7.200 when he was orally terminated.

10. It has also emerged from the discussion in the award that the petitioner claimant had also accepted and admitted that he had not submitted any application for being considered and selected and appointed in the institute.

11. Further, important and relevant aspect which has emerged from the award impugned is that the learned Labour Court has recorded in the impugned award that the petitioner claimant had accepted and admitted that it is true that in consideration of his work, he was paid Rs. 10 to Rs. 12.

12. From the said deposition, evidence by the petitioner claimant, which the

learned Labour Court has recorded in the award, it emerges that the petitioner failed to establish that he was paid Rs. 240/- p.m. as salary by the respondent institute. He also failed to establish that he was appointed in November 1993. He also failed to establish that he was appointed as part time sweeper and that he worked for almost 7 years i.e. until 17.7.2000. The petitioner also failed to mention name of the person who orally terminated his service and thereby, he failed to establish that he was orally terminated by the respondent institute.

13. On the other hand, the respondent institute had placed on record vouchers under which the amounts were paid to the petitioner claimant as and when he was engaged from time to time for some cleaning/sweeping work. Any evidence to controvert the said vouchers was not placed on record by the petitioner claimant. Despite such facts, the learned Labour Court failed to take into account said vouchers and the learned Labour Court also failed to take into account that the petitioner claimant did not place any material on record to support his allegations including the allegation that he was appointed as part time employee and he was paid salary at Rs. 240/- p.m.

14. Besides this, only on oral allegation of the petitioner claimant that he had worked for 240 days the learned Labour Court assumed that the workman had worked for 240 days.

15. In this background, the learned Labour Court has observed in the impugned award that the petitioner's service was terminated on 17.7.2000 without payment of compensation and that therefore, the petitioner's termination is illegal.

15.1 The said observation is recorded in the order despite the fact that the petitioner had not placed on record any material except his oral version that he was terminated on 17.7.2000.

15.2 The petitioner claimant failed to even establish that he was regularly appointed by the institute.

15.3 In that view of the matter, the learned Labour Court could not have and ought not have lightly and casually accepted and believed the petitioner's allegation that his service was orally terminated on 17.7.2000.

16. Despite such facts and without having recorded any specific conclusion with regard to relevant issues, the learned Labour Court directed the petitioner to pay Rs. 15,000/- as lump sum compensation to the petitioner.

17. In this view of the matter and despite above mentioned defects in the impugned award, even if it is assumed that the learned Labour Court has not committed error in believing oral allegations, then also, there is nothing on record to convince the Court that the learned Labour Court should have accepted the petitioner's request and should have directed the respondent institute to reinstate the petitioner claimant with consequential benefits.

18. The petitioner has failed to make out any case to support and justify his claim for reinstatement and/or for back wages. The petitioner has also failed to establish that the learned Labour Court has committed any error in rejecting his claim for reinstatement and back wages. Any case to take different view is not made out.

19. Now, so far as the order directing the respondent institute to pay Rs. 15,000/- by way of lump sum compensation is concerned, it is necessary to note that the respondent institute has not challenged the said direction.

20. In this view of the matter, there is no basis for the Court to interfere with the said order/direction, i.e. the order which directs respondent institute to pay Rs. 15,000/- as lump sum compensation to the petitioner claimant. Therefore, the said direction is not interfered with. With aforesaid observations and clarifications, the petition is disposed of. The petitioner has failed to make out any case in support of his demand. Consequently, the petition fails and is rejected. Rule is discharged.