

HIGH COURT OF GUJARAT

GUJARAT ELECTRICITY BOARD (O & M) DIVISION

Versus

MEMUNABEN MUSTAFA RAJPURA

Date of Decision: 01 August 2012

Citation: 2012 LawSuit(Guj) 595

Hon'ble Judges: [J B Pardiwala](#)

Case Type: Special Civil Application

Case No: **6211 of 2002**

Subject: Constitution, Labour and Industrial

Acts Referred:

[Constitution Of India Art 227](#)

[Industrial Disputes Act, 1947 Sec 17B, Sec 25F](#)

Final Decision: Petition allowed

Advocates: [J V Japee](#), [R C Jani](#), [S P Hasurkar](#)

Cases Referred in (+): 2

J. B. Pardiwala, J.

[1] By way of this petition under Article-227 of the Constitution of India, the petitioner Gujarat Electricity Board seeks to challenge the Award dated 27th February, 2002 rendered in Reference (LCH) No.490/1996 passed by the Labour Court, Himmatnagar whereby the Reference came to be allowed directing the petitioner board to reinstate the respondent (since deceased) in service with full back wages.

[2] The facts relevant for the purpose of deciding this petition may be summarized thus

2.1) Respondent Late Rajpura Mustufa Siddiqbhai was in service of petitioner board. The respondent workman joined the Board on 20/5/1983 as a Junior Assistant and Meter Reader. According to the petitioner, the services of the workman were purely on temporary and ad-hoc basis. It appears that the services of the respondent workman came to be terminated by the petitioner board on

23/6/1987. Record reveals that the workman filed one T.Application being No.427/1989 challenging his termination dated 23/6/1987 which was subsequently withdrawn by the workman. After that the workman filed one complaint alleging that his termination dated 23/6/1987 was illegal and against the provisions of the Industrial Disputes Act, 1947. The said complaint was filed before the Assistant Labour Commissioner, Himmatnagar in the year 1993. Since no settlement was arrived at between the parties, the complaint was referred for final adjudication to the Labour Court by the Assistant Labour Commissioner in 1996. The same was registered as Reference (LCH) No.490/1996. The Labour Court, Himmatnagar vide order dated 27/2/2002 allowed the Reference directing the petitioner to reinstate the workman in service with full back-wages.

[3] Being aggrieved and dissatisfied with the order passed by the Labour Court in Reference, the petitioner Board has come-up before his Court by way of this petition.

[4] It appears that initially notice was issued on the respondent and in the meanwhile the impugned order was stayed with a stipulation that the petitioner shall comply with the provisions of Sec. 17-B of the Industrial Disputes Act till the disposal of this petition. Later on on 24/2/2003 this petition was admitted by issuance of Rule and the ad-interim relief which was granted earlier was ordered to be continued till final disposal of the petition. The order dated 24/2/2003 passed by the learned Single Judge of this Court reads as under :-

"Mr.J.V.Japee, the learned advocate is not able to produce the text of the so-called objection which was taken at the time of production of the statement showing the exact number of days worked by the respondent workman, a copy of which is produced at page-35 to this petition. Rule. Ad-interim relief granted earlier shall continue till final disposal of the petition."

Record reveals that during the pendency of this petition, the original respondent i.e. workman passed away and accordingly the legal heirs were brought on record of this petition vide order dated 23/8/2010 passed in Civil Application No.9659 of 2010.

[5] It appears that both sides led oral and documentary evidence. On behalf of the petitioner Board an application was preferred to produce few documents on record which included the statement of the Attendance Register for the period between 1983 to 1987 and the appointment letters issued between 1983 to 1987 including documents relating the place of work etc. It appears that the advocate appearing for the workman raised an objection before the Court to the effect that in absence of requisite documents it is not sufficient for the Board to produce mere statements which

cannot be looked into as evidence. The advocate, therefore, objected in exhibiting the documents. Record reveals that production was allowed by the Court vide order dated 10/1/1997 and the documents were admitted in evidence at Exh.20. However, it appears that Exh.20 was given to the Production Report of the documents, whereas the statement regarding attendance of the workman was given Mark-20/1 and Mark-20/2. It is not clear as to why they were not exhibited, more particularly when the production was allowed by the Labour Court over-ruling the objection raised by an advocate for the workman. Be that as it may, the statement reveals that the workman had worked between 20/5/1983 to 19/5/1984 -111 days; between 20/5/1984 to 19/5/1985 -106 days; between 20/5/1985 to 19/5/1986 there was no attendance noted; between 20/5/1986 to 19/5/1987 -83 days and between 20/5/1987 to 19/5/1988 35 days. Perusal of the order goes to show that the Court has recorded that the petitioner Board had produced the appointment letters as well as the statement of attendance of the workman at Exh.20. It appears that during the course of hearing of the Reference the advocate for the workman raised an objection that in the absence of authorized documents a simple document in the form of statement cannot be read into evidence and in spite of taking objection in this regard the Board has failed to produce the original attendance statements. The Labour Court observed that only with a view to suppress material facts, Board has deliberately not produced the original Attendance Registers and have merely produced something in the form of a statement. The Court further observed that Board has not even produced Xerox copy of the original attendance register and, therefore, it was a fit case wherein an adverse inference could be drawn against the Board.

[6] By drawing an adverse inference in this regard, the Court came to the conclusion that the workman has been able to establish that he had worked for continuous 240 days a year. Accordingly Reference was allowed.

[7] I have heard Mr. R. C. Jani, learned Counsel appearing for the petitioner Board and Mr.J. V. Japee learned counsel appearing for respondent workman.

[8] Mr. R.C.Jani, learned counsel appearing for the petitioner Board vehemently submitted that the Court below committed a serious error in allowing the Reference ordering reinstatement of the respondent workman with full back-wages. Mr.Jani submitted that the Court below committed a serious error of law in drawing an adverse inference against Board for not producing the original attendance register. Mr. Jani submitted that assuming for the moment that for some reason original attendance register is not produced on record, by itself would not establish that the workman had worked for continuous 240 days in a year. According to Mr.Jani the burden is on the workman to establish first by leading cogent, oral as well as documentary evidence to show that he had worked for a continuous period of 240 days in a year and his

termination was contrary to the provisions of Sec. 25-F of the Industrial Disputes Act. Mr.Jani submitted that all necessary documents were produced which included the statement showing the position as regards the attendance of the workman in service at different period. Mr.Jani also brought to the notice of this Court that at the time of production of the documents objection was raised in this regard, but still the production was allowed and the documents were admitted in evidence at Exh.20.

[9] Mr.Jani submitted that mere non-production of muster-rolls or attendance registers per-se would not be the ground for the Court to draw an adverse inference against the Management. According to Mr.Jani, the documents which have been placed on record would go to show that the workman had not worked for 240 days in the preceding 12 months prior to his alleged retrenchment. Mr.Jani, therefore, urged to allow this petition and set aside the order passed by the Court below.

[10] On the other hand, Mr.Japee, learned counsel appearing for the respondent, vehemently submitted that no error, much less an error of law can be said to have been committed by the Court below warranting any interference at the hands of this Court in exercise of Supervisory jurisdiction under Article-227 of the Constitution of India. Mr.Japee in support of his contention relied upon the decision rendered by the learned Single Judge of this Court in the case of Principal [S.V.Doshi Girls High School & another Vs. Lilaben Somabhai Gadasa](#), 2008 1 GLH 286. Mr.Japee submitted that it is now well settled by catena of decisions of the Supreme Court that the High Court should not interfere with the Award of the Labour Court on mere technicalities. According to Mr.Japee interference is permissible only if the order of the court below suffers from an error of jurisdiction, breach of principles of natural justice or is initiated by a manifest or apparent error of law.

[11] Mr.Japee submitted that the Court below was well justified in drawing an adverse inference against the petitioner Board for not producing the original muster rolls and attendance registers in spite of raising objections at the time of production of statement showing attendance of the workman. Mr.Japee, therefore, urged that there being no merit in this petition, the same be rejected with cost.

[12] Having heard the learned counsels for the respective parties and having gone through the materials on record, the only question which falls for my consideration in this petition is as to whether the Court below was justified in law in drawing an adverse inference against the petitioner Board for non-production of the original attendance register and thereby reaching to the conclusion that the workman has enabled to make good his case that he had worked for a continuous period of 240 days in the preceding 12 months prior to his alleged retrenchment and therefore, his retrenchment from service was without complying with the provisions of Sec. 25-F of the Act.

[13] By now it is well settled position of law that the provisions of the Evidence Act in terms do not apply to the proceedings U/s.10 of the Industrial Disputes Act. However, applying general principles and taking into consideration various judgments of the Supreme Court rendered on the subject uptill now, I find that the consistent view of the Supreme Court has been that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In the present case there is no doubt that the workman did step in the witness box, but except a bald assertion that he worked for 240 days continuously, no other evidence was led in this regard. The question which is bagging is that whether by drawing adverse inference for non-production of original attendance register by itself will prove the fact that the workman had worked for 240 days continuously in a given year. Drawing the adverse inference ultimately would depend on the facts of each case. However, one thing is very clear that mere affidavits or self-serving statements made by the workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. In the present case apart from the fact that the workman was not in a position to lead any cogent evidence in support of his claim to have worked for 240 days in a given year, the petitioner Board on the other hand did produce his statements showing the position of the attendance of the workman at different period while he was in service of petitioner Board. There was no reason as such for the Court below to disbelieve such statements in the absence of any other evidence to even remotely suggest that the statements produced did not reveal the true and correct position. In my opinion mere non-production of the original attendance register in the facts of the present case would not justify drawing of an adverse inference. The point I am drawing to drive at is that by drawing an adverse inference against the Board it cannot be said that the workman successfully proved that he had worked for 240 days in a given year. At this stage it would be profitable to quote observations of the Supreme Court as made in the case of [Municipal Corporation, Faridabad V. Siri Niwas](#), 2004 AIR(SCW) 5184.

"A Court of Law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration in the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be

found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the Appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the Respondent."

[14] Besides the above referred aspect of the matter, there is one more thing which deserves consideration. It appears as per the case of the workman that his services were terminated by the petitioner Board on 23/6/1987. The workman had filed one T.Application No.427/1989 challenging his termination dated 23/6/1987 which was subsequently withdrawn by the workman. This is suggestive of the fact that even the so-called T. Application was preferred after two years from the date of termination. After withdrawing the T. Application the workman filed a complaint before the Asst.Labour Commissioner, Himmatnagar in the year 1993. As no settlement was arrived at between the parties, the complaint was referred for final adjudication to the Labour Court by the Asst.Labour Commissioner in 1996. This is suggestive of the fact that after withdrawing the T. Application in 1989, almost after a period of 4 years thereafter the workman approached the Asst. Labour Commissioner, who, in turn, after 3 years referred the matter to the Labour Court. The Reference of 1996 was answered in 2002 finally. It is evident from the dates which are narrated above that there was a delay of almost 6 years in approaching the Authority after the services were terminated in 1987.

[15] In a case of this nature, it is trite, the High Court exercising the power of judicial review would not interfere with the discretion of the Tribunal unless the same is found to be illegal or irrational. In the facts of the present case, I find that the discretion exercised by the Labour Court could definitely be termed as illegal and irrational too.

[16] In view of the foregoing reasons, I hold that the Labour Court committed an error in passing the impugned order. This petition accordingly succeeds. The order passed by the Labour Court, Himmatnagar dated 27/2/2002 in Reference (LCH) No.490/1996 is set aside. Rule is made absolute. However, in the facts and circumstance of the case there shall be no order as to cost.