HIGH COURT OF GUJARAT

CHAIRMAN, & 2 ORS
Versus
MULRAJSINH KESARISINH GOHIL & 2 ORS

Date of Decision: 11 February 2016

Citation: 2016 LawSuit(Guj) 763

Hon'ble Judges: K M Thaker

Eq. Citations: **2016 3 LLJ 550**, 2016 150 FLR 72, 2016 LabIC 2988, 2016 2 LLN 123, 2016 LLR 666

Case Type: Special Civil Application

Case No: 21996 of 2007

Subject: Labour and Industrial

Acts Referred:
Industrial Disputes Act, 1947 Sec 25G, Sec 25F

Final Decision: Petition dismissed

Advocates: R C Jani, Sangeeta N Pahwa

K.M. Thaker, J.

[1] Heard Mr.Jani, learned advocate for the petitioners and Ms.Pahwa, learned advocate for the respondent-workman.

[2] The petitioners are aggrieved by common award dated 18.10.2006, passed by the learned Labour Court at Bhavnagar in Reference (L.C.B.) Nos.286/89 and 288/89, whereby the learned Labour Court directed the petitioner-board to reinstate two workmen-claimants on their original posts without backwages.

3. The respondent no.1 raised an industrial dispute against present petitioners-board and Bhavnagar Nagarpalika. The respondent no.1- claimant workman alleged that he was working with the petitioner-board as Chokidar on Shetrunji Pipeline and that he worked as such for more than four years at salary of Rs.600/- per month before his service came to be illegally and arbitrarily terminated with effect

from 01.04.1989. The respondent no.1-claimant workman also claimed that, while he was employed by the petitioner as Chokidar, he had worked continuously and had worked for more than 240 days in each year and had also completed 240 days in preceding 12 months. The respondent no.1- claimant workman alleged that the petitioners terminated his service with effect from 01.04.1989 without following any procedure prescribed by law. The respondent no.1-claimant workman also claimed benefit of Government Resolution dated 17.10.1988.

[3] The petitioners-board opposed the reference.

The petitioners-board filed its written-statement and asserted that the respondent no.1-claimant workman was not employed by it, but the board had engaged him. The petitioner-board claimed that it was merely executing a project on behalf of the Bhavnagar Municipal Corporation. The petitionerboard claimed that it had engaged respondent no.1-claimant workman on daily-wage basis for temporary period i.e. until the completion of project work and on completion of the project work, the service of the respondent no.1-claimant workman was terminated. The petitioner-board also claimed that on completion of the project/scheme, it was handed over to Municipal Corporation. At the same time, the petitioner-board also claimed that when the respondent was terminated, the petitioner-board had followed the procedure prescribed by law. On such ground, the petitioner-board requested the learned Labour Court to reject the reference.

[4] The parties to the reference proceedings led documentary as well as oral evidence. The deposition of respondent no.1-claimant workman was recorded at Exh.27 and deposition of one Mr.D.B.Patel, witness of the petitioner-board was recorded at Exh.52.

[5] After considering the documentary and oral evidence available on record, the learned Labour Court reached to the conclusion that the workman had established that during the preceding 12 months of his tenure, the respondent no.1- claimant workman had worked for 240 days. The learned Labour Court found that the respondent no.1-claimant workman had worked with the petitioner-board for more than 12 months and before terminating his service, the petitionerboard had not followed the procedure prescribed under Section 25F of the Industrial Disputes Act.

The learned Labour Court also reached to the conclusion that the petitioner-board committed breach of Section 25F as well as 25G of the Act.

Having reached to said conclusion, the learned Labour Court passed impugned award with above mentioned directions.

[6] Mr.Jani, learned advocate for the petitionerboard reiterated the contention raised in the written-statement. He claimed that the respondent no.1-claimant workman was engaged on behalf of the Municipal Corporation. He submitted that the petitioner-board was concerned only with execution of the project and on completion of the project work, the scheme was handed over to Municipal Corporation. He also submitted that the respondent no.1-claimant workman was engaged for execution of the work of Municipal Corporation.

He submitted that before terminating the service of the respondent no.1-claimant workman, the petitioner-board had sought to serve the notice and pay the compensation, however, the respondent no.1-claimant workman refused to accept the notice and the compensation, and therefore, the learned Labour Court has committed error in holding that procedure prescribed under Section 25F of the Act was not followed.

[7] Per contra, Ms.Pahwa, learned advocate for the respondent-claimant workman submitted that learned Labour Court did not accept the claim that the respondent no.1-claimant workman had worked until 31.03.1988 and instead learned Labour Court held that the respondent no.1- claimant workman had worked until 03.10.1988. She also submitted that the learned Labour Court, however, found that the compensation was not paid on or before 03.10.1988, but the compensation was sought to be paid on 01.03.1989. Accordingly, learned Labour Court reached to the conclusion that the petitioner-board has not followed the condition under Section 25F of the Act.

[8] Ms.Pahwa, learned advocate for the respondent-workman further submitted that the respondent no.1-claimant workman had specifically claimed and established before the learned Labour Court that when his service was terminated and he was relieved, two workmen viz. Babubhai Savji and Bogha Bechar who were junior to him, were not terminated, but they continued in service. She submitted that learned Labour Court, on the basis of evidence available on record, reached to the conclusion that said junior workmen continued in service even after the respondent no.1-claimant workman, though senior, was terminated.

Accordingly, the learned Labour Court reached to the conclusion that the petitioner-board had committed a breach of Section 25G of the Act. She submitted that in view of the said conclusion, direction passed by the learned Labour Court is not unjust and the challenge against the award is without merits.

[9] I have considered the submissions by learned advocate for the petitioner-board and learned advocate for the respondent no.1-claimant workman.

[10] It is noticed that the respondent-claimant workman challenged the action of petitioner-board on the ground that while terminating his service, procedure prescribed under Sections 25F and 25G of the Act was not followed and his service was illegally and arbitrarily terminated.

[11] The respondent no.1-claimant workman submitted that his service was illegally terminated with effect from 31.03.1989.

[12] As against the said claim, the petitionerboard had claimed, and the learned Labour Court, after examining the evidence, also found and accepted that the service of the respondent no.1- claimant workman was terminated with effect from 03.10.1988.

[13] It appears that the learned Labour Court reached to the said conclusion in light of the fact that the respondent no.1-claimant workman could not establish that he had worked after 03.10.1988.

[14] From the record, it also appears that on the basis of the evidence available on record, the learned Labour Court also reached to the finding of fact that the petitioner-board had sought to pay retrenchment compensation to the respondent no.1-claimant workman on 01.03.1989, whereas his service was terminated with effect from 03.10.1988, and therefore, there was noncompliance.

[15] Learned advocate for the petitioner-board sought to rely on the document placed on record of present petition at page no.40.

[16] On the strength of the said document, learned advocate for the petitioner-board tried to submit that on 30.09.1988, the petitioner-board had sought to serve the notice and pay the compensation to the respondent no.1-claimant workman at his residence however, the respondent no.1-claimant workman had refused to accept said notice and/or the compensation.

[17] On examination of the said document, it appears that it is a report submitted by Mr.R.M.Gohil, who, allegedly, had gone to serve the notice and pay the compensation.

[18] The said report does not mention anything about the quantum of compensation which was sought to be paid, and therefore, it does not become clear from the said document as to whether the compensation in accordance with law was sought to be paid or not.

[19] Further, the said person Mr.R.M.Gohil was not examined as witness to prove that the contents of the document and/or to prove that the respondent no.1-claimant workman himself had refused to accept the notice of compensation.

[20] There is another document on record of present petition which is placed on Page No.42.

The said document also appears to be a report of the person who allegedly had gone to serve the notice to the respondent no.1-claimant workman on 06.10.1988.

[21] It is mentioned in the report that on 06.10.1988, the respondent no.1-claimant workman refused to accept the notice. In the said document, there is no reference about to compensation. Even the said person who allegedly submitted the report is not examined before the learned Labour Court to establish that the concerned respondent had refused to accept the notice and/or compensation.

[22] The copy of the notice duly served by the competent authority is not placed on record and even the amount which was allegedly sought to be paid towards compensation and notice of compensation is also not mentioned either in said two documents or in the reply or in the oral evidence led by the petitioner-board.

[23] Under the circumstances, the claim of the petitioner board that it had sought to serve the notice and also offered payment of compensation on 30.09.1988 and/or 06.10.1988 is not established.

[24] On the other hand, the learned Labour Court has recorded finding of fact on the basis of material available on record that actually the amount was sought to be paid on 03.03.1989, and therefore, there was non-compliance of Section 25F of the Act.

[25] Thus, the learned Labour Court has concluded that the petitioner-board has committed breach of Section 25F of the Act. During hearing of present petition, learned advocate for the petitionerboard could not establish that two documents i.e. reports by employees and their contents were duly established before the learned Labour Court by examining concerned person as witness and/or by confronting the respondent no.1-claimant workman with the said notice.

[26] Under the circumstances, any material to dislodge the conclusion by the learned Labour Court that the petitioner-board committed breach of Section 25F is not brought to the notice of this Court. Under the circumstances, there is no reason or justification to interfere with the said conclusion.

[27] For a moment, even if the petitioners' contention that is believed or accepted in light of the said 2 documents (contents which are not proved), then also the fact remains that the learned Labour Court also reached to the conclusion that at the time when the service of the respondent workman was terminated, two person junior to the respondent were continued in service, and therefore, the petitioners have, thereby,

committed breach of Section 25G of the Act. The said conclusion, in any case, stares in face of the petitioners. In view of the said defect the termination is even otherwise bad in law.The Learned advocate for the petitioners could not establish that the said conclusion is contrary to the record and/or any person junior to the respondent no.1-claimant workman was not continued in service from and after the date from which the respondent was relieved from service.

[28] Under the circumstances, the petitioner-board has failed to dislodge the said finding of fact recorded by the learned Labour Court.

[29] Further, it is relevant and necessary to mention at this stage that the learned advocate for the petitioner-board and learned advocate for the respondent no.1-claimant workman have jointly submitted that the respondent is already reinstated by the petitioner-board since 2008. In that view of the matter, it comes out that the respondent-workman has been working with the petitioner-board since last 7 years. This is another reason in light of which this Court is not inclined to interfere with the direction granting reinstatement without backwages.

[30] Beside this, it is also relevant that the learned Labour Court by way of finding of fact also recorded the conclusion that the petitioners-board had committed breach of Section 25F of the Act when the service of the respondent no.1-claimant workman was terminated.

[31] Any material from the record of the petition is not brought to the notice of the Court to convince the the court to hold that the finding of fact recorded by the learned Labour Court are perverse or materially erroneous or incorrect.

Any error of law or jurisdiction is not established.

[32] Under the circumstances, when the respondentworkman, as mentioned above, is undisputedly is reinstated since 2008 and has been working with the petitioner-board from last 7 years, thsis Court is not inclined to interfere with the impugned award, whereby the learned Labour Court directed the petitioner-board to reinstate the petitioner without benefit of any back-wages.

With the aforesaid reason, the petition fails and deserves to be rejected and is accordingly rejected. Rule discharged.