HIGH COURT OF GUJARAT (*D.B.*)

INDIAN PETROCHEMICALS CORPORATION LIMITED
Versus
NARESH MANUBHAI PATEL

Date of Decision: 24 March 1998

Citation: 1998 LawSuit(Guj) 138

Hon'ble Judges: C K Thakker, A L Dave

Eq. Citations: 1998 1 GCD 788, 2000 4 GCD 2947

Case Type: Letters Patent Appeal; Special Civil Application

Case No: 1455 of 1997, 5937 of 1997

Subject: Constitution

Acts Referred:
Constitution of India Art 311, Art 226

Final Decision: Appeal dismissed

Advocates: Nanavati Associates, R K Mishra, Deepak Raval

Cases Referred in (+): 7

---

[1] This appeal is filed against a judgment and order in Special Civil Application No. 5937 of 1997 passed by the learned Single Judge on October 16, 1997. In that petition, an award passed by the Industrial Tribunal No.2 at Vadodara on June 19, 1997 in Reference (IT) No.44 of 1994 was challenged.

[2] Appellant is the original petitioner and respondents are the workmen of the company. In the reference, a prayer was made by the workmen of regularise their services by making them permanent and by extending them all benefits as regular employees from the date on which they would be completing 240 working days counted from their initial appointment. It appears that originally, there were 10 workmen. But, subsequently, two workmen came to be added.

[3] According to the appellant, in 1989, the company was in need of drivers for a short span and a notification was issued calling certain names from Employment Exchange to be appointed as drivers, pursuant to which some persons were appointed on purely

temporary basis for a fixed period of two months with a specific understanding that their services would automtically come to an end after the said period would be over. It is asserted by the company that, simultaneously, a process was started for inviting applications for the post of drivers and services of the workmen were extended from time to time till suitable candidates were to be appointed. Applications were invited for regular appointments and posting. As the workmen wanted regularisation and permanency benefits, they approached industrial forum and a reference was made. The Industrial Court, as stated above, passed an award directing the company to grant benefits on the basis of the directions issued in the award. An order of cost was also made in favour of the workmen.

[4] Being aggrieved by the said award, above petition was filed by the company. The learned Single Judge considered rival submissions of the parties and was of the opinion that the Tribunal had not committed error of law in granting benefits of regularisation and directing the company to make applicants 1 to 10 as permanent. At the same time, however, he was of the view that such permanency benefits ought to be granted from the date of reference, i. e. from March 16, 1994, and not from the date of completion of 240 days by the workmen. To that extent, the award was modified by the learned Single Judge.

[5] Regarding workmen Nos. 11 and 12, the learned Single Judge held that the direction issued by the Industrial Tribunal that in their case the award was not made and the reference was pending but they would be entitled to the benefits of the award in case the reference would be decided in their favour, was not legal and called for. According to the learned Single Judge, such an award could not have been passed and it was not open to the Tribunal to grant anticipatory benefits on inference or presumption holding that as and when an award would be passed in their favour, they would be entitled to benefits similar to applicants 1 to 10. To that extent, therefore, the direction was set aside by the learned Single Judge.

[6] Mr. K.S. Nanavati, learned Senior Advocate, of M/s Nanavati Associates, contended that the Industrial Tribunal has committed an error of law in granting benefits and by directing the company to regularise, the services of the workmen by treating them as regular and permanent. He submitted that the workmen were appointed on purely temporary basis till regular recruits were available and that such appointments were made Without following due process of law. when appointment orders were issued, they were for a filed period with a clear stipulation to that effect. All the workmen were aware that their services would stand terminated automatically without following any procedure whatsoever as soon as the period specified in the appointment orders would be over. He also submitted that the appellant company was to make regular appointments by inviting applications and by following due proceedure the

appointments of the workmen, which were not regular, but were stop gap and of temporary nature could not have been taken into consideration for making them permanent. The Tribunal has, thus, exceeded its jurisdiction in passing the award and granting benefits.

[7] He further submitted that the learned Single Judge was right in partly allowing the petition filed By the company and in setting aside the award which was anticipatory award in favour of applicants Nos. 11 and 12. But, according to him, the learned Single Judge ought to have allowed the petition even against workmen Nos. 1 to 10. When no regular appointment was made and the workmen were aware that it was stop gap arrangement, it was not open to the workmen to ask for such relief and neither the Industrial Tribunal nor the learned Single Judge should have granted the benefits.

[8] On merits and on question of law, it was submitted that no such prayer could have been granted. Our attention was invited by the learned counsel to the following decisions, which were also cited before the learned Single Judge, (1) Sukhji Starch & Chemicals Ltd. vs. State of Punjab & Ors., 1962 (2) LLJ 269. (2) N.J. Chavan vs. P.O. Sawarkar, AIR 1958 Bom. 133. (3) Bhagwati Prasad vs. Delhi State Mineral Development Corporation, 1990 (1) SCC 361. (4) Dr. Arundhati Ajit Pragaonkar vs. State of Maharashtra & Ors., 1995 (1) LLJ 927. (5) Surendra Kumar Gyani vs. State of Rajasthan, AIR 1993 SC 115. (6) Nilesh Bhatt & Ors. vs. Administrative Officer, Nagar Prathmik Shikshan Samiti, 1996 (1) GLH 108. (7) Surender Singh Jamwal vs. State of Jammu and Kashmir, AIR 1996 SC 2775. Mr. Nanavati, subsequently, drew our attention to a decision of a learned Single Judge of this Court in Special Civil Application No. 2794 of 1997 and companion matters decided on April 23,1997.

[9] In our opinion, after considering the relevant case law and in the light of facts and circumstances, the Industrial Tribunal as well as the learned Single Judge decided the matter. In paragraph 9, the Tribunal considered the circumstances which weighed with it in granting the demand of the workmen. It also recorded a finding that there was "unfair labour practice" on the part of the company and only with view to deprive the workmen of benefits of regularisation and permanency benefits as also other benefits that some actions were taken by the company. In the light of that finding, the Tribunal passed the award and granted benfits.

[10] The learned Single Judge also considered the reasoning of the Tribunal, but he was of the opinion that such benefits ought to have beep granted with effect from the date of reference and to that extent, the petition of the company was allowed. Similarly, the learned Single Judge held that in respect of two persons, as the proceedings were not over and reference was not culminated into an award, the Tribunal was not right in granting the benefit observing that, if the award would be

passed in their favour, they would also be entitled to the benefits which had been granted in favour of workmen Nos. 1 to 10.

[11] Regarding the decisions cited by the learned counsel for the appellant, the learned Single Judge, in our opinion, rightly observed that they did not pertain to labour matters and were cases of civil servants under the provisions of Art. 311 of the Constitution. The learned Single Judge was, therefore, right in observing that ratio laid down therein was to be appreciated and applied in the light of that fact. By doing so, the learned Single Judge has not committed any error which requires to be corrected.

[12] The last decision, in our opinion, turns on its own facts. In the instant case, the Tribunal has recorded a finding that "unfair labour practice" was adopted by the company. This is a pure finding of fact and on the basis of appreciation of evidence, such finding was recorded. It is not open to this Court to appreciate and reappreciate the evidence and to come to a different finding or to substitute that finding. If on the basis of such finding, relief is granted, it cannot be said that, by doing so, the Tribunal has exceeded its jurisdiction or that it has passed an order which no reasonable man would have passed.We, therefore, do not see substance in that contention also.

[13] There is an additional factor which cannot be forgotten. Earlier the workmen had approached Labour Court against the appellant-company in Reference (LCV) No. 561 of 1990. After hearing the parties, the reference was allowed and the action taken by the company was held to be violative of and inconsistent with the provisions of Sec. 25F of the Industrial Disputes Act, 1947 and the company was directed to reinstate the workmen with all consequential benefits. That award was passed as early as on 7th May, 1993. It is not even the case of the appellant-company that any proceeding was taken against such an award. The award, therefore, stands today as it is final. Hence, the contention of Mr. Nanavati now in the present proceedings that the workmen were recently appointed as earlier they were appointed merely on temporary basis and their services could be terminated is not open. Even at that time, the Labour Court held that the action of the company was bad in law.

[14] If on the basis of all these circumstances, an award was passed which was partly modified and rest was confirmed by the learned. Single Judge, it cannot be said that, by doing so, the learned Single Judge has committed error which requires interference in exercise of powers under Art. 226 of the Constitution. We, therefore, do not see any reason to interfere with the said award. Letters Patent Appeal is, therefore, summarily dismissed. No costs.