HIGH COURT OF GUJARAT

FAG BEARINGS INDIA LIMITED
Versus
K N SAIYED

Date of Decision: 16 September 2002

Citation: 2002 LawSuit(Guj) 679

Hon'ble Judges: Ravi R Tripathi

Eq. Citations: 2003 1 GLH 235, 2003 4 LLJ 241

Case Type: Special Civil Application

Case No: 2719 of 2001

Subject: Constitution, Labour and Industrial

Acts Referred:
Constitution of India Art 227, Art 226
Industrial Disputes Act, 1947 Sec 2(g), Sec 2(s)

Final Decision: Petition dismissed

Advocates: Nanavati Associates, A K Clerk

Cases Cited in (+): 1

[1] Rule. Mr.A.K. Clerk, the learned advocate appearing for the respondent waives service of the rule.

[2] In light of the fact that the matter was to take the same time in admission hearing and on the question of interim relief as it will take for its final disposal, with the consent of both the parties by an order dated 9.7.2001, the matter was ordered to be posted for final disposal on 19.7.2001.

[3] The present petition is filed by the petitioner company being aggrieved of the judgement and award dated 17.1.2001 passed by the Labour Court, Vadodara in Reference (LCV) No.300 of 1992. The same was published on 23.3.2001. The learned Judge of the Labour Court was pleased to direct the petitioner company to reinstate the respondent with full back wages on the ground that the petitioner company failed to conduct a departmental inquiry before terminating the services of the respondent.

[4] The learned advocate appearing for the petitioner company contended that the Labour Court failed to appreciate that the petitioner was not liable to conduct inquiry in view of the fact that the respondent was discharged simpliciter; that the Labour Court erred in not permitting the petitioner company to conduct inquiry before the Labour Court once the Labour Court had come to the conclusion that inquiry is necessary; that the Labour Court has no jurisdiction to entertain or try the reference as the respondent is not a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

[5] A caveat application was filed on behalf of the respondent workman and the learned advocate appearing for the respondent workman filed an affidavit in reply denying all the averments of the petition. The learned advocate submitted that the order dated 22.5.1984 does not specify that the respondent was to work in supervisory capacity; that the Labour Court has found as a matter of fact and recorded the same that the respondent herein was performing clerical duties and therefore, was a workman within the meaning of section 2(s) of the Act; that the finding recorded by the Labour Court is not required to be interfered with by this Court while exercising its extraordinary jurisdiction under Article 226/ 227 of the Constitution of India; that no new material can be produced before this Court in the present petition and can be relied upon; that the copy of order dated 22.5.1984, which is produced at page 46 to the petition (Annexure 'B' Colly) is not a true and correct copy of appointment order. A copy of the order dated 22.5.1984 was made available for perusal of the Court. The petitioner company had treated the other supervisory monthly rated employees placed in Grade 'H', 'G', 'F' and 'E' as workmen under section 2(s) of the Act, therefore, company is estopped from contending that the respondent herein is not a workman, that this Court cannot and should not interfere with the findings of fact recorded by the Labour Court regarding duties and status of the respondent workman and should not reappreciate the evidence and interfere with the finding of the Labour Court even if a different view is possible, that the petitioner company had never contended before the Labour Court regarding absence of the respondent and therefore, the petitioner company cannot be permitted to contend the same before this Court for the first time.

5.1 The learned advocate for the respondent workman submitted that in the alternative if the petitioner company is relying the factum of absence of the respondent which was never contended before the Labour Court, then in that case the termination of services of the respondent workman is on account of misconduct of the remaining absence without leave. In such circumstances it was obligatory on the part of the petitioner company to conduct departmental inquiry before terminating the services as and by way of penal action. The petitioner company never gave any notice, as contemplated under the appointment order dated

22.5.1984, nor did it pay any wages in lieu of the notice and for that reason also termination order is illegal, null and void. The petitioner company had never asked or pressed for holding departmental inquiry or leading evidence to prove the misconduct of the respondent workman before the Labour Court, on the contrary it filed a Closing Purshis, exh.32. The company, if at all wanted to avail such opportunity it ought to have asked for such opportunity before completing its arguments, therefore, the petitioner cannot be permitted to raise this contention before this Court for the first time in a petition under Article 226/ 227 of the Constitution of India. As the petitioner company did not ask for an opportunity to hold inquiry or lead evidence to prove the misconduct before the Labour Court, that should be treated as a waiver on the part of the company of its opportunity and the judgement and award of the Labour Court be not held erroneous on that count. In fact, the company had relied upon the order of termination as, 'an order of termination simpliciter' it did not refer to any of the charges and that is why the company did not press for inquiry or an opportunity to lead evidence before the Labour Court.

[6] The facts of the case which are not in dispute are as under:

6.1 The petitioner is a company registered under the provisions of the Companies Act, 1956. By an order dated 12.10.1964 the respondent was appointed as a trainee for a period of six months. Thereafter, by an order dated 30.4.1965 he was appointed as Operator Grade III. The respondent workman was then promoted as Senior Time Keeper vide order dated 24.10.1981. Lastly, by an order dated 22.5.1984 the respondent workman was appointed as Sectional Officer. The services of the respondent workman were brought to an end by order dated 17.1.1992, a copy of which is produced at Annexure 'E'. On passing of the aforesaid order of termination, the respondent workman raised a dispute which was referred for adjudication before the Labour Court, Vadodara and the same was numbered as Reference (LCV) No.300 of 1992 and was decided by judgement and order dated 17.1.2001, a copy of which is produced at Annexure 'A'.

[7] The present petition is filed challenging the judgement and award of the Labour Court. In a petition under Article 226/ 227 of the Constitution of India, the scope is circumscribed by the decisions of this Court as well as that of the Honourable the Apex Court. So far as the finding of fact of the Labour Court is concerned, the same cannot be interfered with by this Court by reappreciating the evidence even if a different view is possible. In the present case, the Labour Court has recorded a finding regarding the duties and status of the respondent workman and has held that the respondent is a workman under section 2(s) of the Act. It is also borne out from the record that after filing the written statement the petitioner company did not ask for or press for holding

departmental inquiry or leading any evidence to prove misconduct of the respondent workman. In fact the case of the company was that the order impugned was an order of termination simpliciter. The petitioner company had never referred to any of the charges which are sought to be agitated before this Court for the first time, which pertains to unauthorised absence, as narrated in paras 5 and 6, same cannot be allowed to be raised in this petition for the first time.

[8] The petitioner company has produced a copy of the order dated 22.5.1984 at Annexure 'B' (Colly.), page 46, the learned advocate for the respondent workman has contended that the same is not a true and correct copy of the order. The learned advocate for the respondent workman produced a xerox copy of the order dated 22.5.1984. On perusal of the annexure at page 46, the foot note or P.S. contained in the order is found missing. The annexure is certified to be a true copy by the learned advocate. A serious view could have been taken about the same, but as the learned advocate for the petitioner company submitted that it is a bona fide mistake on the part of typist and that there is no intention on the part of the petitioner company to suppress the said foot note. He also submitted that in the earlier orders there is a similar foot note or P.S. which is on record. The explanation having found acceptable is accepted, therefore, no orders are passed in this regard.

[9] The contentions raised by the petitioner company are found without any substance. The contention that 'the Labour Court failed to appreciate that the petitioner company was not liable to conduct an inquiry because the respondent was discharged simpliciter' is contradictory in terms and is running in the face of the other contention that 'the petitioner company had taken into consideration the incidents of absence without permission', narrated in paras 5 and 6 of the petition. It is also to be noted that the Labour Court found the order to be punitive in nature, in such circumstances it was obligatory for the petitioner company to hold a departmental inquiry. The Labour Court has also recorded that the petitioner company did not ask for or press for holding departmental inquiry or leading evidence to prove the misconduct of the respondent workman after filing written statement. Filing of written statement is not enough. The petitioner company ought to have asked for an opportunity to hold departmental inquiry or leading evidence to prove misconduct of the respondent workman by such a separate, specific application for the same and an order ought to have been obtained on such application which could have been challenged by filing appropriate proceedings if the same was not in favour of the petitioner company. The petitioner company has not chosen to do so. Therefore, the argument of the learned advocate for the respondent workman about waiver of its right by the petitioner company requires to be accepted and the same is accepted.

[10] So far as the contention that the respondent is not a workman within the meaning of section 2(s) of the Industrial Disputes Act, the same is purely a question of fact and the Labour Court has recorded its finding on that question and as stated hereinabove on the questions of fact this Court is not to reappreciate the evidence even if it is likely to reach to a different conclusion on reappreciation of evidence.

[11] In view of the aforesaid discussion, none of the contentions raised by the petitioner company finds favour with this Court. Hence the present petition is dismissed. Rule is discharged.

[12] Taking into consideration that the petitioner company did not press for an opportunity to hold departmental inquiry or leading evidence to prove the misconduct of the respondent workman before the Labour Court and has raised such contentions before this Court for the first time, the present petitioner is saddled with cost of Rs.5,500=00 (Rupees five thousand and five hundred only).