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

BAI CHANDANBEN JAMNADAS
V/S
I G THAKORE

Date of Decision: 11 July 1975

Citation: 1975 LawSuit(Guj) 54

Hon'ble Judges: A D Desai, B K Mehta

Eq. Citations: 1976 GLR 348, 1976 (32) FLR 427, 1976 LabIC 1753

Case Type: Special Civil Application

Case No: 487 of 1971

Acts Referred:
Bombay Industrial Relations Act, 1946 Sec 42(4)

Final Decision: Petition allowed

Advocates: C T Darn,K S Nanavati, J M Nanavati

Reference Cases:
Cases Referred in (+): **2**

Judgement Text:-

B K Mehta, J

[1] Shortly stated the facts leading to this petition are as under :

The petitioner was a badli employee in respondent No.2-mill company since more than 18 years and was working as an employee serving water to the workmen of the said mill company. She claims to be first on the badil list for the said post. It appears that on account of the demise of one bai shivi who was the permanent incumbent on the said post, the post of the water-woman fell vacant. It is the case of the petitioner that she Actually worked for a period of ten days on the said post after the demise of bai shivi. It is her grievance that instead of making her permanent, respondent No. 2-mill company appointed one Somjibhai, who was neither on the badli list nor a workman in the mill company, on the said post. The petitioner, therefore, under sec. 42(4) of the Bombay Industrial Relation Act, 1946, made an application, being application no. 1167 of 1965 to the labour court at Ahmedabad, challenging the Action of the company in not giving her permanent post to which she was entitled. By the judgment and order of December 21, 1966, the labour court dismissed the said application on the ground that the petitioner was only a badli worker and her claim to be made permanent virtually amounted to promotion which was nota matter Covered by Schedule-Ill of the said Act and, therefore, the labour court had no jurisdiction to hear and try the application. The petitioner being aggrieved with the said judgment and order carried the matter in appeal before the industrial court, which also dismissed the appeal by its judgment and order of December 4, 1970 on the same ground. The petitioner has, therefore, moved this court for appropriate writs, orders and directions to quash and set aside the said order of the Labour Court as confirmed by the Industrial Court.

[2] A short question, which we have to answer in this petition is, whether the labour court and the industrial court were justified in taking the view that since the claim of the petitioner was for being made permanent on the post for which she was a badli worker virtually amounted to promotion the matter was not within the terms of Schedule-Ill and, therefore, the court had no jurisdiction to hear and try such application? Item No. 6 of Schedule-Ill of the Bombay Industrial Relations Act, 1946, provides as under :

(6) employment including-

(i) reinstatement andrecruitment;

(ii) unemployment of persons previously employed in the industry concerned."

We have not been able to appreciate how the labour court as well as the industrial court took the view that the claim of a badli worker to be made permanent would amount to a promotion and, therefore, beyond the terms of item no. 6 of schedule iii of the said Act. The terms, employment is to be given a widest meaning and the import of it cannot be restricted by taking out the matters which would generally be included in it unless with reference to other items in the said schedule, it can be inferred that the legislature intended to exclude the particular matter from the general matter. It cannot be gainsaid that item of employment which included reinstatement and recruitment as well as unemployment of persons previously employed in the industry concerned is an item of the widest import and the claim to permanent post which is a part of the employment cannot be carved otit from the said item unless the scheme of the table may so warrant. We have not been able to agree with the industrial court confirming the order of the labour court, having regard to the scheme of the table that the claim of being made permanent is not a part of an employment. As a matter of fact, the legislature has provided that employment would include reinstatement, recruitment and unemployment. In any case the claim of a badli worker to be made permanent will be, in our opinion, recruitment. In the New Gujarat Cotton Mills Ltd. v. The Labour Appellate Tribunal, (1956) 59 BLR 209, while considering in context of a claim by the employees of the transferor company for re-employment against the transferee company, Mr. Justice shah, as he then was, speaking for the Division Bench of the Bombay High Court, observed as under :-

".....we have also observed that the raise on deters a Labour Tribunal is to be found in the desire of the state to provide a forum which may, unhindered by legalistic considerations, attempt to secure harmonious relations between the employer and the employee, with the ultimate object of securing an efficient working of industry by resolving disputes through the medium of arbitration and adjudication. That being the real object of legislation like the Bombay Industrial Relations Act, jurisdiction to adjudicate upon a claim

made by an employee of a transferor undertaking as against the transferee undertaking must be implicit."

[3] In our opinion, therefore, the Industrial Court failed to exercise the jurisdiction when it held that the claim of the petitioner herein to be made permanent, she being first worker on the badli list for the post of water woman, virtually amounted to promotion and, therefore, not within the scope of the term employment of item no. 6 or schedule 111 of the aforesaid Act. As we have stated above, the term employment is to be construed in the widest sense and there is no warrant either in the table of the schedule or the Act which would compel us to restrict its meaning and to carve out the claim of the petitioner to be made permanent as not within the scope and ambit of the term employment. In our opinion, the claim, if accepted by the mill-company, would result in there curetment of the petitioner on the said permanent post. It cannot be urged successfully that this term employment or recruitment is to be restricted to initial employment or recruitment. In that view of the matter, therefore, we are of the opinion that this petition should be allowed.

[4] The result is that this petition is allowed and we issue a writ of certiorari to quash and set aside the order of the Industrial Court confirming the judgment and order of the Labour Court, Ahmedabad, which are Annextures-A and bto the petition, and send the matter back to the Labour Court, Ahmedabad, for purposes of deciding the matter on its merit. Rule is made absolute accordingly with costs.

Petition allowed.