(2024) 11 GUJ CK 0006

Gujarat High Court

Case No: Special Civil Application No. 15518 of 2024

Nikhil Praveenbhai Joshi	APPELLANT
Vs	
Vs Chief General Manager & Ors.	RESPONDENT

Date of Decision: Nov. 18, 2024

Acts Referred:

- Constitution of India, 1950 - Articles 14, 16, 226, 227
- Industrial Disputes Act, 1947 - Section 17B, 25B, 25F

Hon'ble Judges: M. K. Thakker, J

Bench: Single Bench

Advocate: P H Pathak, Reena M Kamani, Shree P Pathak

Final Decision: Dismissed

Judgement

M. K. Thakker, J

1. Rule returnable forthwith.

2. This petition is filed under Article 14, 16, 226 and 277 of the Constitution India of following prayers:

â€œ(A) The Hon'ble Court be please to issue writ a of certiorari or any other appropriate writ order or direction declaring the impugn

award passed by the Labor Court dated 11/10/2024 in Reference (LCA) 56/2004(ANNEXURE- A) as illegal, arbitrary and non-application

of mind and be pleased to quash and set aside the same and direct the respondents to reinstate the petitioner in services with all

consequential benefits.

(B) Pending admission and final disposal of the present petition, the Hon.ble Court be pleased to stay the operation and implementation of

the award passed by the Hon'ble Labour dated 11/10/2024 in Reference (LCA) 56/2004(ANNEXURE-A).

(C) Any other relief to which this Hon'ble Court deem fit and proper in the interest of justice together with cost.â€

3. It is the case of the workman that he was working as peon under the respondent employee since 01.03.2000 and he was paid the wages of

Rs.2,250/- per month. He was orally terminated with effect from 05.02.2004 without following the provision of the Industrial Dispute Act, 1947.

Therefore dispute was raised before the conciliation officer and thereafter, it was referred to the learned labour court. The learned labour court after

considering the evidence placed on record has dismissed the reference on the ground that workman fails to prove the mandatory requirement of

section 25-B of completion of 240 days in preceding years from the date of termination. The same is subject matter of challenge before this court.

4. Heard learned advocate Mr.P.H.Pathak for the petitioner workman.

4.1. Learned advocate Mr.P.H.Pathak submits that though initially reference was awarded in favour of the petitioner, respondent challenged before

this Court on the ground that it was ex-parte award and the learned co-ordinate bench of this court vide order dated 27.06.2024 has allowed the

petition and remanded back to the learned labour court for deciding afresh after giving opportunity to both the parties to lead the evidence. Learned

advocate Mr.P.H.Pathak submits that aforesaid order passed by this Court dated 27.06.2024 in SCA No. 9468 of 2008 was challenged before the

Division Bench of this Court and after issuing the notice same was pending for adjudication learned labour court in haste has decided the reference

against the present petitioner. Learned advocate Mr.P.H.Pathak submits that during the pendency of the petition wages under section 17-B was

granted by this Court and was paid by the respondent also. Therefore, no question arises to dispute the relation of master and servant as claimed by

the respondent. Learned advocate Mr.P.H.Pathak submits that in addition to above aspect vouchers were produced before the learned labour court

below Exh.60 to 63 showing that wages were paid by the principal employer and therefore contention of the present respondent regarding contractual

employment through Radient Enterprise is baseless.

4.2. Learned advocate Mr.P.H.Pathak has relied on the judgment of the Apex Court in the case of Hussainbhai Vs The Alath Factory Tezhilali Union

and Ors. reported in AIR 1978 SC 1410 and submitted that the contract which was executed between the respondent and the Radient Enterprise is

paper arrangement and therefore the present petitioner cannot be said as an employee of the Contractors. Learned advocate Mr.P.H.Pathak submits

that though the application was preferred by the petitioner workman seeking production of the documents below Exh.28 and was allowed in favour of

the present petitioner on 05.09.2024 without complying with the above directions learned labour court has committed error in not drawing adverse

inference and by holding that no evidence was led to show that the petitioner has completed 240 days in the preceding years.

4.3. Learned advocate Mr.P.H.Pathak has relied on the decision rendered by the Apex Court in the case of National Insurance Co. Ltd Vs M/s Ishar

Das Madan Lal reported in 2007 4 SCC 105 as well as in the case of Director, Fisheries Terminal Department Vs Bhikubhai Meghajibhai Chavda

reported in (2010) 1 SCC 47 and submitted that burden would be discharge only upon the workman stepping in the box and when the application has

already been preferred which was ordered and not complied with by the Management to produce the evidence on record then adverse inference is to

be drawn in favour of the workman to conclude that the workman has completed 240 days in the preceding year.

4.4. Learned advocate Mr.P.H.Pathak submits that learned labour court committed error in relying on the evidence which was produced below

Exh.60 to 63 only for the purpose of showing the relation between the employee and the employer and not for the purpose of completion of 240 days.

Learned advocate Mr.P.H.Pathak submits that without considering the decision rendered by the Apex Court which was relied in written arguments by

the petitioner-workman learned labour court has awarded the reference against the present petitioner and therefore, same is required to be interfered

with and present petition is required to be allowed.

5. Considering the submission made by the learned advocate and perusing the record, it transpires that the petition was filed challenging the ex-parte

award before this Court being SCA No. 9468 of 2008 which was allowed by the Co-ordinate Bench of this Court vide order dated 27.06.2024 and

reference was remanded back to the learned labour court with direction to decided after giving due opportunity to both the parties to lead the

evidence. It further transpires from the record that against the aforesaid order letters patent appeal was filed before this Court being LPA No.1265 of

2024 wherein, notice was issued without granting any stay by the Division Bench of this Court. The contention raised by the learned advocate that

though LPA was pending learned labour court has committed error in deciding the reference appears to misconceived as merely pendency of the

appeal would not amount to granting the stay and learned labour court is not supposed to stall the proceedings when this court has already directed in

the petition to conclude the hearing after giving due opportunity to both the parties. This Court is of the view that learned labour court has not

committed any error on that count to decide the reference after the order is passed by the learned Single Judge by the Co-ordinate Bench of this

Court in SCA No. 9468 of 2008 which was not stayed in the Intra Court Appeal preferred by the present petitioner.

5.1. Other ground which was raised by the present petitioner is that though no evidence was produced by respondent as per the directions issued by

the learned labour court production application, instead of drawing adverse inference, learned labour court has decided reference against present

petitioner on the ground that petitioner has not completed 240 days in preceding year. It is required to be noted herein that Exh.60 to 63 which were

produced before the learned labour court by the present petition showing that present petitioner was the employee of the principal employer not of the

Contractors suggests that present petition has completed 92 days from 03.08.2000 to 02.03.2001. If the petitioner could have produced these

documents below Exh. 60 to 63 i.e voucher of wages then he could have produced the documents showing that he worked from 2000 to 2004

continuously however, for this limited period voucher which was produced suggest that he had not completed service of 240 days in any of the

preceding years. This voucher might have been produced for the purpose to show that there is a relation between the petitioner and the employee of

master and servant but that does not mean that learned labour court cannot consider the voucher for other purpose i.e to ascertain the aspect of 240

days in preceding year.

5.2. The judgments which are relied upon by the learned advocate Mr.Pathak for the purpose to draw the adverse inference wherein, no documents

are produced by the workman and application was preferred. In that scenario production application was preferred and was allowed. In that

background, Honâ€™ble Apex Court has held that adverse inference is required to be drawn and it can be said that burden is discharged by the

workman by stepping in the witness box and by filing the production application. Herein the case it was not such fact therefore, learned labour court

has rightly dismissed the reference on the ground that present petitioner fails to produce any evidence to show that he completed 240 days in

preceding year.

6. At this stage this court is referring the decision rendered by the Apex Court in case of Municipal Corporation, Faridabad Vs. Siri Niwas reported in

(2004) 8 SCC 195 wherein Apex Court has held as under:

â€œ13. The provisions of the Indian Evidence Act per se are not applicable in an industrial adjudication. The general principles of it are,

however applicable. It is also imperative for the Industrial Tribunal to see that the principles of natural justice are complied with. The

burden of proof was on the respondent herein to show that he had worked for 240 days in preceding twelve months prior to his alleged

retrenchment. In terms of Section 25-F of the Industrial Disputes Act, 1947, an order retrenching a workman would not be effective unless

the conditions precedent therefor are satisfied. Section 25-F postulates the following conditions to be fulfilled by employer for effecting a

valid retrenchment :

(i) one month's notice in writing indicating the reasons for retrenchment or wages in lieu thereof;â€

(ii) payment of compensation equivalent to fifteen days, average pay for every completed year of continuous service or any part thereof in

excess of six months.

14.For the said purpose it is necessary to notice the definition of 'Continuous Service' as contained in Section 25-B of the Act. In terms of

sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which

calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in

continuous service. By reason of the said provision, thus, a legal fiction is created. The retrenchment of the respondent took place on

17.5.1995. For the purpose of calculating as to whether he had worked for a period of 240 days within one year or not, it was, therefore,

necessary for the Tribunal to arrive at a finding of fact that during the period between 5.8.1994 to 16.5.1995 he had worked for a period

of more than 240 days. As noticed hereinbefore, the burden of proof was on the workman. From the Award it does not appear that the

workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section 25B of the

Industrial Disputes Act. Apart from examining himself in support of his contention he did not produce or call for any document from the

office of the Appellant herein including the muster rolls. It is improbable that a person working in a Local Authority would not be in

possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms

and conditions of his offer of appointment and the remuneration received by him for working during the aforementioned period. He even

did not examine any other witness in support of his case.

21.Curiously the respondent produced copies of some muster rolls before this court. If he was in possession of the said documents, it

betrays one's imagination as to why the same had not been produced before the Tribunal. As indicated hereinbefore, he filed some

documents before the High Court but the same were not accepted. The High Court, therefore, proceeded to pass the impugned judgment

only on the basis of the materials relied on by the parties before the Tribunal. The High Court, in our opinion, committed a manifest error in

setting aside the award of the Tribunal only on the basis of adverse inference drawn against the Appellant for not producing the muster

rolls.â€

7. In view of the above, this court is of the view that learned labour court has not committed error either in facts or on the law and therefore, this

Court is not inclined to entertain the petition by exercising the writ jurisdiction under Article 226 of the Constitution of India.

8. In view of the above this petition is dismissed.

9. Rule is discharged accordingly.