(1981) 03 GUJ CK 0021

Gujarat High Court

Case No: None

Bipinchandra P. Singwala		APPELLANT
	Vs	
Navin Fluorine Industries and Another		RESPONDENT

Date of Decision: March 27, 1981

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10(1)(c), 10(1)(c), 33C, 36A, 9, 9

Citation: (1981) 22 GLR 1070

Hon'ble Judges: R.C. Mankad, J; M.P. Thakkar, J

Bench: Division Bench

Judgement

M.P.Thakkar, J.

An employee whose service was terminated on August 14, 1975 raised in industrial dispute which was referred to the Labour Court at Surat under Sections 9 and 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) for adjudication in accordance with law. By an Award dated October 8, 1979, Annexure XX, the Presiding Officer, Labour Court, Surat, ordered reinstatement (with back-wages) of the employee concerned. The employee has approached this Court by way of an application under the Contempt of Courts Act, 1971 for punishing the employer Company and its Manager, respondents Nos. 1 and 2 herein, for wilful non-compliance with the directions given by the Labour Court. The respondents have contended that there exists a dispute in regard to the interpretation of the directions issued by the Labour Court as regards the basis on which the back-wages were to be computed. And that is why the petitioner was asked by them to make recourse to Section 36-A of the Act and that instead of doing so the petitioner had approached the High Court by way of the present petition which according to them was not maintainable.

2. In order to understand the dispute, a few facts require to be stated. The petitioner was initially appointed as an apprentice Assistant Chemist on December 20, 1973.

On December 19, 1974 he completed one year of service as an Apprentice Assistant Chemist. Some eight months later, on August 14, 1975, his service was terminated by an oral order without holding any inquiry. The dispute in the Labour Court arose in the back-ground of these facts. The Presiding Officer, Labour Court, Surat, in para 12 of his judgment in clear terms recorded a finding in favour of the employee and concluded that he had become a permanent employee of the respondent company by force of law on the lapse of one year after the date of his initial appointment under order Ex. 11, whereby he was appointed. The relevant portion from the Award may be reproduced for the sake of preciseness:

...This model Standing Order 3(2) cannot be committed breach of by the first party and after period of one year the second party cannot be treated as an apprentice, and therefore, clearly in my opinion the second party became permanent servant by force of law after lapse of one year after the date of his initial appointment under order Exh. 11.

(Emphasis Supplied)

It is, therefore, clear that according to the Labour Court, the petitioner became a permanent employee with effect from December 19, 1974 which is the date on which the period of one year elapsed after the date of his initial appointment as per Ex. 11. In the wake of the aforesaid finding the Labour Court directed the respondents to reinstate the petitioner with back-wages. The Labour Court observed, in para 14 of its Award, as under:

...Hence I order that the second party should be reinstated by the first party in service with continuity and paid back wages from 14-8-1975 up to ;date of actual reinstatement and paid Rs. 100/- by way of costs. The first party shall implement this order within one month of its publication.

(underlines added)

3. The Award must be read as a whole in a harmonious fashion. If this is done, it is abundantly clear that the Labour Court has directed reinstatement of the petitioner with back-wages from August 14, 1975 with continuity of service on the fooling that the petitioner became a permanent employee on December 20, 1974. In other words, the obligation of the respondents under the Award was-

1. To treat the oral order of termination dated August 14, 1975 as non-est.

2. To treat the petitioner as having continued in service throughout without break as if the order of termination dated August 14, 1975 was non-existent.

3. To treat the petitioner as an employee who had become permanent with effect from December 20, 1974.

4. To pay him back-wages on the aforesaid basis.

5. To give him a posting.

The petitioner has already been reposted. The only dispute which has given rise to the controversy is as regards the computation of the back-wages in the light of the Award rendered by the Labour Court which imposed the aforesaid obligations-particularly the obligation projected in Clause (3), namely, to treat the petitioner as an employee who had become permanent with effect from December 20, 1974. In order to give effect to this obligation in letter as well as in spirit the petitioner''s back-wages had to be determined on the footing that he was held to be a permanent employee with effect from December 20,1974, as disclosed by the relevant provision of the Award extracted and quoted in the earlier part of this judgment. The salary was required to be fixed as per the salary payable to a permanent Asstt. Chemist (and not as an apprentice) on December 20, 1974. Admittedly salary has not been fixed on this basis but on the basis that he became a permanent Asstt. Chemist on January 10, 1980 on which date he was actually reposted. In other words for the period between (1) August 14, 1975, on which day his service was terminated by the order held to be void and (2) January 10, 1980 on which date he was reposted, salary is not paid as a permanent Asstt. Chemist but as an apprentice. In view of the aforesaid position there can be no dispute that the petitioner has to be treated as a permanent employee with effect from December 20, 1974 and he has to be paid back-wages with effect from August 14, 1975 on the footing that he became a permanent employee on the lapse of one year from the date of his initial appointment. It is not in dispute that the petitioner has not been paid on this basis notwithstanding the conclusion reached by the Labour Court that the petitioner had become a permanent employee by force of law from December 20, 1974. Even so he has not been paid salary on the basis of the pay-scale applicable to a permanent employee. Learned Counsel for the respondents called our attention to some portion from the application made by the petitioner and also called our attention to the Standing Orders. However, since the respondents have accepted the Award and the Award has become final, we are not concerned with the question as to whether the Award is justified or not. The Award has been accepted as it is and the respondents are, therefore, bound to abide by the Award and to pay the back-wages in accordance with the directions given by the Labour Court. Learned Counsel has contended that it is open to the petitioner to approach the Labour Court either u/s 36-A or u/s 33-C of the Act. Section 36-A in so far as it is material for our purpose, reads as under:

36.-A(1). If, in the opinion of the appropriate Government any difficulty or doubt arises as to the interpretation, of any provision of an award or settlement, it may refer the question to such Labour Court, Tribunal or National Tribunal as it may think fit. (2) ....

It is evident that this provision does not confer a right on the employee to insist on any question being referred to the Labour Court. Far from it-the appropriate

Government alone has the power to do so upon being satisfied as regards the difficulty or doubt as to the interpretation of an award, to make a reference in order to remove difficulty in the implementation of the Award.

4. It is therefore, not a valid reason to drive the petitioner to approach the Government to exercise the aforesaid power. What is more the respondents themselves could have done so. Why should they (who can afford the time and money cost) not do so and insist on the petitioner doing so? It is therefore, not possible to uphold the contention of the respondents in this behalf. Though no such contention is indicated in the Affidavit-in-reply, it is argued that recourse can also be made to the Labour Court by way of a Recovery Application u/s 33-C of the Industrial Dispute Act. There are 5 extremely vital objections to this course indicated by the respondents.

(1) A long drawn out and subtle debate on the true scope and ambit of Section 33-C of the Industrial Disputes Act, must be anticipated.

(2) The proceedings in the Labour Court (the present proceedings lasted for 4 years during which the employee was starving remaining idle, suffering indignity and getting stale at the cost of his self-respect) will not be completed for years even if numerous adjournments are not sought or granted.

(3) Further appeals and ultimate recourse to this Court under Articles 226 and/or 227 of the Constitution of India cannot be ruled out (in fact must be anticipated and taken into account).

(4) It will result not only in time cost but also in money cost to both the sides. The employer can well afford it (more than 50% will be borne by the State coffers upon the legal expenses being allowed as business expenditure). The employee may have to spend more than what he may eventually gain.

(5) Multiplicity of proceedings should not be encouraged on principle regardless of the nature of litigation. But in no case it must be encouraged where it will result in tiring out a worker who can be driven from pillar to post and made to abandon the claim rather than run from Court to Court personally (the employer can send one of its officers-the employee has to take leave and attend personally).

We have no supervisory control over the Labour Courts. Even if we had supervisory control we would not be in a position to direct the Labour Court to dispose of the matter within a specified time because the Courts are flooded with work as is well known. Besides, the power of the High Court under the Contempt of Courts Act does not depend on whether or not the petitioner can make an approach to the Labour Court or can file Civil Suit or apply for the execution of the Award through the Collector by way of Recovery Application. Though under the circumstances, we do not hold the respondents guilty of contempt for their failure to comply with the Award so far, and punish them, we do not see why we should drive the petitioner to

a fresh round of litigation. The anxiety of the Court must be to avoid multiplicity of proceedings and to see that speedy justice is done to the parties and they are not obliged to incur avoidable expenditure. Since there is no doubt whatsoever that the petitioner is entitled to be paid back-wages from August 14, 1975 onwards in accordance with the pay scale applicable to a permanent employee for the reasons discussed hereinabove, the respondents may well have abstained from raising such a plea. Be that as it may, we do not agree that the petitioner is not entitled to approach this Court by way of a petition of this nature. Indeed this course can more often be adopted with advantage when the demands of justice so enjoin so that parties are not driven from pillar to post and obliged to incur time cost and money cost which neither they nor the society can afford.

5. We, therefore, direct the respondents to pay to the petitioner back-wages with effect from August 14, 1975 on the footing that he had already become a permanent employee with effect from December 20, 1974. Of course the respondents will not be required to pay on that basis for the intervening period from December 20, 1974 to August 13, 1975 because the Labour Court has not issued any such direction. The pay of the petitioner will no doubt have to be notionally fixed on the footing that he had become a permanent employee with effect from December 20, 1974. On that basis his pay may be fixed in the appropriate pay scale as on August 14, 1975 and he must be paid back-wages with effect from August 14, 1975 till the date of reinstatement.

6. We may make it clear that back-wages will include all the payments to which a permanent employee would be entitled to, such as, dearness allowance, increments, bonus, etc. The payment shall be made within 60 days from to-day. In case of failure to comply with this direction it will constitute Contempt of Court and it will be open to the petitioner to revive this petition. Subject to the aforesaid directions this petition stands disposed of in the aforesaid terms, There will be no order as to costs.