

(2017) 07 GUJ CK 0168

GUJARAT HIGH COURT

Case No: 1224 of 2016

MALLINATH
MAHARAJ TRUST

APPELLANT

Vs

KALUBHA
CHANDUBHA
SOLANKI & ANR

RESPONDENT

Date of Decision: July 4, 2017

Acts Referred:

- Industrial Disputes Act, 1947, Section 11A, Section 2(j) - Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen - Definitions

Hon'ble Judges: M.R. Shah, B.N. Karia

Bench: Division Bench

Advocate: RV DESAI

Judgement

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge in Special Civil Application No.12368/2013 by which the learned Single Judge has dismissed the said petition preferred by the appellant herein and has confirmed the judgment and award declared by the learned Labour Court by which the learned Labour Court has passed an order of reinstatement of the respondent - workman, who was working as Clerk, however denied the total back wages, appellant herein - original petitioner has preferred the present Letters Patent Appeal.

2. The facts leading to the present Appeal in nutshell are as under;

2.1 Respondent was working with the appellant - Trust as a Clerk. His services came to be terminated on 01/02/2006. At the instance of the respondent - workman, the dispute

was referred to the learned Labour Court, Ahmedabad challenging the order of termination. It was the case on behalf of the appellant herein - original petitioner that the appellant - Trust cannot be said to be an "industry" within the definition of Section 2(j) of the Industrial Disputes Act, and therefore, the Reference was liable to be rejected. It appears that the learned Labour Court specifically raised the issue whether the appellant - Trust - employer can be said to be an "industry" within the definition of Section 2(j) of the Industrial Disputes Act or not? The appellant - Trust neither led any oral evidence before the learned Labour Court nor placed any documentary evidence, except the report of the inquiry proceedings. On appreciation of evidence and in absence of any further evidence led by the appellant - Trust with respect to their activities, learned Labour Court held against the appellant - Trust by specifically giving the finding and observing that the appellant - Trust has failed to lead any evidence to prove that the appellant - Trust is not an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act. On appreciation of evidence, learned Labour Court held the order of dismissal disproportionate to the misconduct and charge and in exercise of powers under Section 11A of the Industrial Disputes Act set aside the order of termination and directed the appellant - original petitioner to reinstate him in service, however denied total back wages. The said judgment and award was passed by the learned Labour Court on dated 09/05/2013.

Feeling aggrieved and dissatisfied with the impugned judgment and award passed by the learned Labour Court, the appellant herein - original petitioner - employer preferred the aforesaid Special Civil Application before this Court, being Special Civil Application No.12368/2013. By the impugned judgment and order dated 16/03/2016 the learned Single Judge has dismissed the said petition and has confirmed the judgment and award passed by the learned Labour Court.

Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge, appellant herein - original petitioner - Trust has preferred the present Letters Patent Appeal under Clause 15 of the Letters Patent.

3. Shri R.V. Desai, learned advocate has appeared on behalf of the appellant - original petitioner.

3.1 Having realized that as no evidence was led by the appellant - Trust with respect to the activities carried out by the appellant - Trust and in support of their claim that the appellant - Trust is not an "industry", Shri R.V. Desai, learned advocate appearing on behalf of the appellant has requested to remand the matter to the learned Labour Court so as to enable the appellant to adduce the evidence on the aforesaid aspect. In support of his above submissions, Shri R.V. Desai, learned advocate appearing on behalf of the

appellant has heavily relied upon the decision of the learned Single Judge in the case of Administrator, Jain Derasar Vs. Amrutlal Ambala Mistry rendered in Special Civil Application No.1193/2002. It is submitted that in the aforesaid case no issue was framed by the learned Labour Court and the learned Single Judge remanded the matter to the learned Labour Court with a liberty in favour of the parties to raise all the issue afresh including the issue with regard to the Temple whether it is an "industry" or not within the meaning of Section 2(j) of the Industrial Disputes Act and permitting the parties to produce necessary evidence in support of their contentions.

3.2 Shri R.V. Desai, learned advocate appearing on behalf of the appellant - original petitioner has submitted that as such it was orally submitted before the learned Single Judge to remand the matter to the learned Labour Court, however, the learned Single Judge has not dealt with the same.

3.3 Shri R.V. Desai, learned advocate has relied upon the decision of the Division Bench of this Court in the case of Managers Shri, Panchasara Jain Derasar Vs. Mahamadkhan Gazikhan Baloch reported in 1993 (1) GLH (U.J.) 9 in support of his submissions that the appellant cannot be said to be an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act. He has also relied upon the order passed by the Division Bench of this Court in Letters Patent Appeal No.2386/2010 by which the Division Bench has confirmed the order passed by holding that the Temple Trust cannot be said to be an "industry" within the definition of Section 2(j) of the Industrial Disputes Act.

Making the above submissions, it is requested to remand the matter to the learned Labour Court permitting the appellant - original petitioner to lead the evidence with respect to the activities carried out /undertaken by the appellant - Trust.

4. We have heard Shri R.V. Desai, learned advocate appearing on behalf of the appellant - original petitioner at length. We have perused the impugned judgment and order passed by the learned Single Judge as well as the judgment and award passed by the learned Labour Court. At the outset it is required to be noted that despite the fact that the learned Labour Court framed the issue to consider whether the appellant - Trust can be said to be an "industry" within the definition of Section 2(j) of the Industrial Disputes Act or not, and though it was the case on behalf of the appellant - original petitioner that it being a Temple /Temple Trust, it cannot be said to be an "industry" within the definition of Section 2(j) of the Industrial Disputes Act, no evidence whatsoever either oral or documentary was led before the learned Labour Court in support of their above claim. No evidence was led with respect to the activities carried out by the appellant - Trust, and therefore, in absence of any evidence led by the appellant - Trust with respect to the activities carried out by them and in support of their claim that the appellant - Trust is not an "industry", the

learned Labour Court did not accept the case on behalf of the appellant - Trust that it is not an "industry" within the definition of Section 2(j) of the Industrial Disputes Act. From the petition memo before this Court before the learned Single Judge it appears that no such request was made. Even from the impugned judgment and order passed by the learned Single Judge it does not appear that any such submissions were made and /or any such request was made. It is the case on behalf of the appellant - original petitioner that oral submission was made and orally it was requested. However, from the impugned judgment and order it does not appear that any such oral request was made. If the appellant - original petitioner is of the opinion that oral submission was made and the same was not dealt with, in that case, remedy available to the appellant - original petitioner would be to file a review application pointing out and drawing the submission that though oral submission has been made the same has not been dealt with. The aforesaid procedure has not been followed. It is the learned Single Judge only who can opine that whether any such oral submissions were made or not.

4.1 Now so far as the request made on behalf of the appellant - original petitioner to remand the matter to the learned Labour Court so as to enable the appellant - Trust to lead the evidence is concerned, the same cannot be accepted. The same cannot be exceeded to. It is not the case on behalf of the appellant - Trust that no sufficient opportunity was given to the appellant - Trust to lead the evidence. On the contrary specific issue was framed and despite the above the appellant failed to lead any evidence. The matter cannot be remanded at the appellate stage so as to enable the appellant to fill in the lacuna. Unless it is found that either sufficient opportunity was not given to lead the evidence or the appellant - original petitioner was prevented from leading the evidence, the submission on behalf of the appellant - original petitioner to remand the matter to the learned Labour Court so as to enable the appellant - original petitioner to lead the evidence afresh cannot be accepted. Now so far as the reliance placed upon the decision of the learned Single Judge is concerned, in the said case it was Derasar / Temple before the Court. On facts, the learned Single Judge thought it fit to remand the matter. However, for the reasons stated hereinabove, more particularly, to fill in the lacuna, the appellant - original petitioner cannot be permitted to lead the evidence afresh, which the appellant - original petitioner failed to lead.

4.2 Now so far as the reliance placed upon the decision of the Division Bench of this Court in the case of Managers Shri, Panchasara Jain Derasar (Supra) is concerned, in that case before the learned Labour Court the evidence was in fact led and thereafter the learned Labour Court held against the Temple Trust and on appreciation of evidence on record and the activities carried out by the Temple - Trust it was found that the Temple - Trust cannot be said to be an "industry". In the present case, as observed hereinabove, no evidence whatsoever has been led with respect to the activities carried out by the appellant - Trust. Under the circumstances, the said decision shall not be applicable to

the facts of the case on hand.

5. In view of the above and for the reasons stated hereinabove, we see no reason to interfere with the impugned judgment and order passed by the learned Single Judge in exercise of intra court appellate jurisdiction. Under the circumstances, the present Appeal deserves to be dismissed and is accordingly dismissed.

CIVIL APPLICATION No.11177/2016

On dismissal of the Letters Patent Appeal, Civil Application stands dismissed.