Divisional Controller. Vs. Ravikumar Bhalabhai Parmar.

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Court : Gujarat

Decided On : Mar-16-2011

Judge : Mr.Justice H.K.Rathod, J.

Acts : Industrial Disputes Act - Sections 2(S), 33(A), 33(1)(a), 33, 10, 25 F; Constitution of India - Article 227,

Appeal No. : SPECIAL CIVIL APPLICATION No. 805 of 2011.

Appellant : Divisional Controller.

Respondent : Ravikumar Bhalabhai Parmar.

Advocate for Pet/Ap. : MR HARDIK C RAWAL, Adv.

Judgement :

1. Heard learned advocate Mr. HC Rawal on behalf of petitioner Corporation.

2. The petitioner Corporation has challenged award passed by Industrial Tribunal, Ahmedabad in complaint IT no. 4/2006 in reference IT no. 123/2003 dated 23/7/2010.

3. Learned advocate Mr. Raval appearing for petitioner Corporation raised contention that respondent workman was casual workman and his appointment was not made under Statutory Rules and Regulation of Corporation. Therefore, he can not consider to be a workman covered by definition of workman under section 2(S) of Industrial Disputes Act, 1947. The respondent workman was given work of

arranging tickets bundles on temporary basis as casual workman. But work started decreasing and was being done by modern techniques. So work given to respondent workman was stopped and wages for days worked by respondent were paid to respondent. Therefore, he submitted that industrial Tribunal has committed gross error in coming to conclusion that petitioner Corporation has violated section 33(1)(a) of Industrial Disputes Act, 1947 while terminating service of respondent on 16/8/2005.

4. He also raised contention that Industrial Tribunal has committed gross error in entertaining complaint under section 33(A) of Industrial Disputes, Act 1947 because Corporation has not committed any breach of section 33(1)(a) or section 33 of Industrial Disputes Act, 1947. He submitted that during pendency of reference in which dispute raised, respondent was not concerned workman and termination is not connected with pending dispute. Therefore, he submitted that Industrial Tribunal has committed gross error in granting reinstatement of respondent workman as casual workman in Corporation.

5. He also submitted that Industrial Tribunal, Ahmedabad has also committed gross error in setting aside termination order passed by Corporation against respondent.

6. I have considered submission made by learned advocate Mr. Raval and I have also perused award passed by Industrial Tribunal, Ahmedabad in complaint IT no. 4/2006. The complaint was filed by workman under section 33 (A) of Industrial Disputes Act, 1947. According to workman, he was working as casual workman in Jamnagar Division office in tickets section w.e.f. 1/11/1999. The respondent workman was arranging different type of blocks in proper manner and as per instructions given by cashier of booking section. In each month, there were twenty four days continuous working and considering six day i.e. Saturday and Sunday in all thirty days continuous working are there. The wages has been paid to workman on vouchers. Accordingly for presence, certificate has been issued by Corporation in favour of respondent workman. The case of respondent workman is that he has completed 180 days continuous service. Therefore, he entitled benefit of time scale. He has completed 240 days continuous service and also completed more

than five years service. Therefore, on the basis of statement of working days workman is entitled to become permanent employee of Corporation. The representation was made to Divisional Controller, Jamnagar which resulted into termination of workman on 16/8/2005. According to workman, he was doing work on computer and was also sent for training in Bhuj Division on 18/1/2001. The administrative work has been carried out by him and there was an industrial dispute pending before Industrial Tribunal being reference IT no. 123/2003 in respect to various demand raised by Union. Therefore, during pendency of such reference, without prior permission, termination of workman is amounts to breach of section 33 of Industrial Disputes Act, 1947.

7. Therefore, complaint was filed by workman. The petitioner Corporation has filed reply vide exh 17 raising contention that in pending reference being no. 123/2003, respondent has no connection at all with dispute and section 33 is not violated by Corporation. The workman was working as casual employee, therefore, complaint under section 33 A of Industrial Dispute Act, 1947 is not maintainable. The complainant has produced certain documents exh 9 office order of petitioner Corporation, exh 10 presence of respondent workman for March 2004, exh 11 presence of April 2004, exh 12 presence of March 2005, exh 13 letter of Senior Accountant to increase working hours of respondent workman, exh 14 letter to sent respondent workman for training on computer, exh 15 payment which was made to complainant by voucher and exh 22 total working days and payment which has been made against it as well as copy of voucher are also produced on record by Corporation from page 1 to 244.

8. Thereafter, matter has been heard by Industrial Tribunal. On the basis of record, Industrial Tribunal has come to conclusion that service of respondent workman was terminated on 16/8/2005 without following due process of law and though industrial dispute was pending no prior permission has been obtained by Corporation. Therefore, it has been held that section 33 of Industrial Disputes Act, 1947 has been violated by Corporation and respondent workman is covered by definition of workman under section 2(S) of Industrial Disputes Act, 1947. The workman has completed more than 240 days continuous service from date of joining 1/11/1999 to 16/8/2005. The issues have been framed by Industrial

Tribunal, Ahmedabad in para 6. The Industrial Tribunal has considered decision of Apex Court in case of The Bhavnagar Municipality v. Alibhai Karimbhai & Ors reported in AIR 1977 SC 1229. The relevant discussion made in para 12 and 13 are quoted as under: "12. Before we proceed further we should direct our attention to the subject matter of the industrial dispute pending before the Tribunal. It is sufficient to take note of the principal item of the dispute, namely, the demand of the respondents for conversion of the temporary status of their employment into permanent. To recapitulate briefly the appellant employed daily rated workers to do the work of boring and hand pumps in its Water Works Section. These workers have been in employment for over a year. They claimed permanency in their employment on their putting in more than 90 days' service. They also demanded two pairs of uniform every year, cycle allowance at the rate of Rs. 10/- per month, Provident Fund benefit and National Holidays and other holidays allowed to the other workers. While this particular dispute was pending before the Tribunal, the appellant decided to entrust the work, which had till then been performed by these workers in the Water Works Section, to a contractor. On the employment of the contractor by the Municipality for the self-same work, the services of the respondents became unnecessary and the appellant passed the orders of retrenchment. It is, therefore, clear that by retrenchment of the respondents even the temporary employment of the workers ceased while their dispute before the Tribunal was pending in order to improve that temporary and insecure status.

13. Retrenchment may not, ordinarily, under all circumstances, amount to alteration of the conditions of service. For instance, when a wage dispute is pending before a Tribunal and on account of the abolition of a particular department the workers therein have to be retrenched by the employer, such a retrenchment cannot amount to alteration of the conditions of service. In this particular case, however, the subject matter: being directly connected with the conversion of the temporary employment into permanent, tampering with the status quo ante of these workers is a clear alteration of the conditions of their service. They were entitled during the pendency of the proceeding before the Tribunal to continue as temporary employees hoping for a better dispensation in the pending adjudication. And if the appellant wanted to effect a change of their system in getting the work done through a contractor instead of by these

temporary workers, it was incumbent upon the appellant to obtain prior permission of the Tribunal to change the conditions of their employment leading to retrenchment of their services. The alteration of the method of work culminating in termination of the services by way of retrenchment in this ease has a direct impact on the adjudication proceeding. The alteration effected in the temporary employment of the respondents which was their condition of service immediately before the commencement of the proceeding before the Tribunal, is in regard to a matter connected with the pending industrial dispute."

9. In view of aforesaid decision of Apex Court and considering being an undisputed fact that service of respondent workman was orally terminated on 16/8/2005. At that occasion, general demand for better condition of service in respect to workman those who were working in Corporation was pending being reference IT no. 123/2003 and this respondent workman is considered to be concerned workman in pending dispute and it also considered to be affected workman. During pendency of that reference, service of respondent was terminated without giving any opportunity to workman. The respondent workman has completed more than seven years continuous service as casual employee in booking section for arranging different kind of tickets blocks as per instructions given by cashier from booking section. Therefore, termination of respondent workman by Corporation during pendency of reference without prior permission itself is violated section 33 of Industrial Disputes Act, 1947. In case of breach of section 33 committed by Corporation then section 33(A) complaint can be file by concerned workman before Industrial Tribunal which may be considered to be a reference referred by Appropriate Government under section 10 of Industrial Disputes Act, 1947. Therefore, after considering entire matter this being an undisputed fact is that workman was employed by Corporation as casual workman w.e.f. 1/11/1999 and remained continuous in service upto 16/8/2005 date of termination and in between workman was remained continuous in service and has completed 240 days continuous service in each year. Even though, section 25 F has not been followed by Corporation at the time of terminating service of respondent workman. The respondent workman was connected, concerned and affected workman in pending dispute 123/2003.

10. Therefore, according to my opinion respondent workman is covered by definition of workman under section 2(S) of Industrial Disputes Act, 1947 and industrial dispute no. 123/2003 was pending where general demand has been raised by Union for better condition of service of concerned workman wherein this respondent is also concerned workman. In such circumstances, retrenchment of present respondent without prior permission is amounts to breach of section 33 of Industrial Disputes Act, 1947. The decision of Apex Court in case of Bhavnagar Municipality is squarely covered the issue. Therefore, Industrial Dispute has rightly examined matter and come to conclusion that section 33 has been violated. Therefore, complaint under section 33 A is maintainable. The Industrial Tribunal has passed an order which considered to be balanced order because no back wages has been awarded in favour of workman by Industrial Tribunal, Ahmedabad and simply reinstatement to original post has been granted in favour of respondent workman. For that, according to my opinion, Industrial Tribunal, Ahmedabad has not committed any error which would require interference by this Court while exercising power under Art. 227 of Constitution of India.

11. I have considered reasoning given by Industrial Tribunal, Ahmedabad and matter has been discussed at length by Industrial Tribunal, Ahmedabad. On the basis of documents produced by Corporation most of facts are remained undisputed which included date of joining and date of termination. The industrial dispute was pending being reference no. 123/2003 for general demand raised by Union for better condition of service in which respondent workman was concerned workman. Even though, while terminating/retrenching respondent no prior permission was obtained. Therefore, complaint under section 33 A is maintainable and otherwise also section 25 F is not also followed by Corporation though workman has completed continuous service of 240 days in each year from 1/11/1999 to 16/8/2005. Therefore, order of termination is also violated section 25 F of Industrial Disputes Act, 1947. The order of retrenchment is ab initio void and workman is deemed to be in service as decided by Apex Court in case of Mohan Lal v. The Management of M/s Bharat Electronics, Ltd., reported in AIR 1981 SC 1253. In light of this back ground, no interference would require by this Court under Article 227 of Constitution of India.

12. The contention raised by learned advocate Mr. Raval can not be accepted, therefore, rejected. Hence, there is no substance in present petition. Accordingly, present petition is dismissed.