

CASE NO.:
Appeal (civil) 7229 of 2002

PETITIONER:
D.G.M., Oil & Natural Gas Corpn. Ltd. & Anr.

RESPONDENT:
Ilias Abdulrehman

DATE OF JUDGMENT: 17/12/2004

BENCH:
N. Santosh Hegde & S.B. Sinha

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

The reference under Section 10 (1) (c) of the Industrial Disputes Act in regard to two employees, was referred to the Industrial Judge (Centre) Ahmedabad in Reference (ITC) No. 23 of 1987. The issue referred was whether the Management was justified in terminating the services of the workmen without complying with the provisions of Section 25 F of the Industrial Disputes Act, 1947? If not, what relief are they entitled to?

Since in this appeal we are concerned with workman Ilias Abdul Rehman only, we will confine ourselves to that part of the Reference only.

Before the Industrial Court, the respondent-workman pleaded that between the period 1-3-1982 and 30-7-1984 he had worked in the Department of geophysical party at Baroda and Mehsana, and also in the Chemistry Department as a daily wager. According to the workman these appointments were intermittent in nature but he had worked continuously for more than 240 days in a given year, hence his non-employment from 30.7.1984 is contrary to section 25F of the Act.

The appellant-corporation, however, pleaded that this respondent was never appointed in the service of the appellant but was working as a water supplier contractor on a payment of Rs. 250/- per month and it produced exhibit No. 21 and other records of Rig No. 28 at sl. No. 2 to 9 which contained his signature to show that he was contracted to supply water at Rs. 250/- per month. The Industrial Court on consideration of the material on record came to the conclusion that according to the respondent-workman himself, he worked in different units under different administrations of the appellant-Corporation at Baroda and Mehsana projects. These units, however, cannot be considered as a single unit or department under the appellant-corporation. Hence, the days put in by the respondent-workman in different units cannot be counted for the purpose of determining whether the workman worked for 240 days continuously for the purpose of Section 25 F of the Act. While arriving at this conclusion, the Industrial Court relied on a judgement of this Court in the case of Indian Cable Co. Ltd. vs. Its Workmen (1962 1 LLJ 409). On facts also it came to the conclusion that the respondent was considered for regular appointment and found not qualified since he had not passed 7th Class which was a requisite qualification. Hence, despite considering his case the Corporation was unable to provide regular appointment to the respondent-workman. Therefore, not providing a continuous job to the respondent-workman by the appellant did not offend Article 25 F of the Act and did not really amount to an unfair labour practice. It also gave a finding that his last appointment was as a water supply contractor which is evidenced by Exhibit 21 and from the vouchers of Rig No. 28 at Sl. Nos. 2 to 9 of the records, the contents of which

were admitted by the workman. On the above basis the claim of the respondent workman came to be rejected.

The aggrieved workman filed a writ petition before the Single Judge of the High Court of Gujarat at Ahmedabad who took a contrary view on facts of the case by holding that the services of the petitioner under the several sections or departments in the same industry have to be counted as under the same employer, and consequently, the termination of such service has to be held illegal in view of the non compliance of the provisions of Section 25 F of the Act. Hence, it ordered his reinstatement with 50 % back wages from the date of Reference.

The appeal filed against the said order of the learned Single Judge by the appellant herein before the Appellate Bench of the said High Court also came to be dismissed accepting the finding of the learned Single Judge that the termination of the workman was contrary to Section 25 F of the Act. While doing so the Appellate Bench made two factual errors. In the impugned judgment it noticed that the Industrial Tribunal on appreciation of evidence had held that the case of the appellant that the workman was last employed as a contractor for supply of water to the employees of the appellant has not been proved. A perusal of the judgment of the Industrial Tribunal shows otherwise. The Appellate Bench made a second factual error in noting that the Industrial Tribunal had given a finding that the respondent-workman had been employed by the appellant-Corporation which again is contrary to the finding recorded by the Industrial Tribunal. A perusal of the order of the Industrial Tribunal shows it to be so, therefore the judgment of the Appellate Bench is based on factual inaccuracies.

However the learned Single Judge considered the question of the nature of work done by the respondent-workman in the appellant organisation and came to the conclusion that even though the respondent-workman worked in different independent Departments of the appellant-Corporation like Geophysical party No.18 and Department of Chemistry at different periods and at different places like Baroda and Mehsana, still for the purpose of computing 240 days of continuous work for the purpose of section 25F of the Act, the said employment should be construed as an employment under the appellant-Corporation. This finding of the learned Single Judge was by overruling the finding given by the Industrial Tribunal which followed a judgment of this Court in the case of Indian Cable Co. Ltd. (supra).

A perusal of the evidence adduced by the workman himself shows that he went in search of employment to different places and whenever there was a temporary employment available in different Departments of the appellant-Corporation; be it the field work or the work in the Chemistry Department, he accepted the employment and worked in these Departments not in one place alone but at different places like Baroda and Mehsana. It has come on record that the Management did try to accommodate the appellant in a permanent job but could not do so because of lack of qualification. In such circumstances we think the Industrial Tribunal was justified in coming to the conclusion that the number of days of work put in by the respondent in broken periods, cannot be taken as a continuous employment for the purpose of section 25F of the Act, as has been held by this Court in the case of Indian Cable Co. Ltd. (supra). We are aware that the judgment of this Court in Indian Cable Co. Ltd. (supra) was rendered in the context of section 25G of the Act, still we are of the opinion that the law for the purpose of counting the days of work in different Departments controlled by an apex Corporation will be governed by the principles laid down in the judgment of Indian Cable Co. Ltd. (supra), and the Industrial Tribunal was justified in dismissing the Reference.

For the reasons stated above, we allow this appeal, set aside the orders of the High Court and restore the order of the Industrial Tribunal.

JUDIS