

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6032 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VINOD N. SOLANKI

Versus

ASSTT. LABOUR COMMISSIONER

Appearance:

MRS. SANGITA PAHWA FOR MR PM THAKKAR for Petitioner
NOTICE NOT RECD BACK for Respondent No. 1, 2

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 31/03/97

ORAL JUDGEMENT

1. No one appears for the respondent. In this case Rule was issued on 25.4.1994 and notices were sent by post on 3.5.1994 to the Government of India, Ministry of Labour, Shram Shakti Bhavan, Rafi Marg, New Delhi. Since then, almost three years have elapsed. The letter must in ordinary course have been served on the respondent No.2 in the ordinary course of business. In that view of

the matter respondent No.2 must be deemed to have been served.

2. The petition raises a short issue. Heard learned counsel for the petitioner and perused the impugned order dated 17.9.1994 communicated by the Desk Officer refusing to make reference of the industrial dispute raised by the petitioner to the appropriate Labour Court/Industrial Tribunal under Section 10 of the Industrial Disputes Act.

3. As per the averments made in the petition, petitioner was employed with the Life Insurance Corporation of India, Doraji Branch as a Clerk, since 12.9.1988 on a monthly salary of Rs.1302 and his services came to be terminated with effect from 1.4.1990 in breach of Section 25F of the Industrial Disputes Act and also acted in violation of 25H in recruiting new hands thereafter. The petitioner raised the dispute about the legality of the termination order, by lodging complaint before respondent No.1 - Conciliation Officer. The conciliation having failed a failure report was submitted to the appropriate Government. The appropriate Government, Central Government in the present case, informed the petitioner about its refusal to make a reference of the Industrial Dispute for adjudication. The reason for refusal reads as under:

"A general issue regarding the claims of badli/temporary/part-time workmen employed by the LIC after 20.5.1985 for absorption in the Corporation has already been referred to the CGIT., New Delhi for adjudication. The case of the workman in dispute is also covered by the said reference and the award of the Tribunal will be applicable to him as well."

3. It is true that decision to make or refuse to refer an industrial dispute for adjudication to appropriate authority is in the discretion of the appropriate Government, and ordinarily courts do not interfere in exercise of such discretion. But it is also equally well established that, however wide the discretion of appropriate Government may be in this regard, it is inhibited by inherent limitation of reasonableness and fairness, required of every State action and cannot be exercised on wholly non existent and irrelevant consideration not germane to purpose for which such discretion has been vested in appropriate Government. If the appropriate Government transgresses this limit the order is liable to be interfered with by

way of judicial review. The primary object of the provision is to provide for resorting to adjudicatory forum for resolution of industrial disputes, where parties thereto fail to resolve through negotiation, either bi-parte or through intervention of conciliatory measures in order to maintain industrial peace.

4. It is apparent from the narration of facts and the reading of the order that while the substantial issue between the petitioner and its employer was about illegal termination of the services, the demand for regularisation on the post was the consequential relief of being continued in the service raising claim posterior to that. The reason given in the rejection order only refers to the claims of Badla/temporary workers employed by the Life Insurance of India after 20.5.1985 for absorption in the Corporation, in some other matter, which according to Central Government may govern the case of the petitioner. However, it is apparent that the said reference would not cover the question of termination of petitioner which has taken place on 1.4.1990 which requires determination of the question whether termination was in accordance with provisions of Chapter VA of the Industrial Disputes Act, which in its term require consideration of questions about petitioner's continued service with the employer, fulfillment of the requirement of notice or payment in lieu of notice and payment of compensation in terms of Section 25F and applicability of other provisions. How those questions are relevant and would be determined in reference concerning absorption of employees employed after 20.5.1985 is not understandable. The order apparently is founded on wholly irrelevant consideration, while considering the dispute of the nature raised by the petitioner, is required to be referred to the Tribunal.

5. Accordingly, this petition succeeds. The impugned order communicated vide Annexure C dated 17.2.1994 is quashed and respondent No.2 is directed to consider the question of referring the disputes raised by the petitioner about illegal termination of his services through appropriate Tribunal/Labour Court may be decided afresh in accordance with law within a period of one month from the date of service of the writ. Rule made absolute. No order as to costs.
