

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7477 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  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? : NO
  5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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DHANJIBHAI L. MAKWANA

Versus

THE DESK OFFICER, GOVT. OF INDIA

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Appearance:

1. Special Civil Application No. 7477 of 2004  
MR PH PATHAK for Petitioner No. 1  
MR BIPIN MEHTA for the respondents.
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CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 30/07/2004

ORAL JUDGEMENT

Rule. Shri Bipin Mehta appears and waives service of notice of rule on behalf of the respondents. At the joint request of the learned advocates appearing

for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner has challenged the order dated 28/31.3.2003 passed by the respondent No.1 by which the request of the petitioner to refer the industrial dispute with respect to his termination for adjudication to the appropriate Industrial Tribunal was rejected. The reasons indicated in the said order are as follows:

- (i) It is reported that the union failed to produce any supporting documents in support of their claim that the workman has worked continuously for 240 days in a year.
- (ii) The dispute has been raised after a lapse of more than 12 years.

From the perusal of the petition, it is clear that the petitioner was terminated with effect from 1.7.88 after 8 years of service with the respondent No.2. The petitioner challenged the said termination by filing Original Application No.656/96 before the Central Administrative Tribunal, Ahmedabad along an application for condonation of delay. The said petition was admitted and remained pending before the Central Administrative Tribunal, Ahmedabad till 22.2.2001 when the Central Administrative Tribunal was pleased to relegate the petitioner to the remedy under the Industrial Disputes Act. Ex-facie, therefore, the observations that the demand is raised after a gap of 12 years is not borne out from the record. The petitioner under a bonafide belief was agitating the remedy under the Administrative Tribunals Act before the Central Administrative Tribunal, Ahmedabad.

3. With respect to the other ground also, I find that it was not open for the respondent No.1 to go into the said question at the stage of deciding whether the reference is to be referred for adjudication or not since entering into merits is out of the scope of the power of the respondent No.1 at that stage. By now it is well settled that the appropriate Government while deciding the question whether an industrial dispute is required to be referred for adjudication or not cannot decide the lis and enter into the merits or demerits of the rival contentions (see AIR 1989 SC 1565 and AIR 1985 SC 860). I also find that the petitioner has been agitating that after his termination new persons have been engaged and thereby respondent No.2 has violated the provisions of

section 25-H of the Industrial Disputes Act.

4. On all these grounds, I find that the respondent No.1 had committed an error in refusing to refer the dispute sought to be raised by the petitioner for adjudication to the appropriate Industrial Tribunal. The impugned order dated 28/31.3.2003 is therefore quashed and set aside and the matter is remanded to the respondent No.1 for a fresh decision whether to refer the dispute for adjudication to the appropriate Tribunal or not keeping in mind the observations made in this order. The above exercise may be completed within a period of three months from the date of receipt of copy of this order.

5. In view of the above directions, the petition stands disposed of. Rule is made absolute to the above extent with no order as to costs.

6. The petitioner is permitted to communicate this order to the respondent No.1 by speed post in addition to the normal procedure of service of writ of this Court.

(Akil Kureshi, J.)

(vjn)