IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8956 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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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

RAMVIRSINH SUGARSINH BADORIYA

Versus

AMBICA IRON & RE-ROLLING MILL

Appearance:

1. Special Civil Application No. 8956 of 1995
MR VM DHOTRE for Petitioner No. 1
MR.ANUP KRISHNAN FOR M/S TRIVEDI & GUPTA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 24/03/2005

ORAL JUDGEMENT

The petitioners, 10 in number, all C/o Gujarat Industrial & General Workers' Union have approached this Court as they are aggrieved by the judgement and award dated 31.03.1995 passed in Reference (LCA) No.39 of 1983 by the learned Judge of Labour Court, Ahmedabad, rejecting their reference.

2. The facts of the case are that the petitioners, the workmen serving with the respondent were told by notice dated 23.11.1982 that on account of reconstruction of the factory, for the present, their services are not required as the management is not able to run that particular section/ department/ part of the factory for an indefinite period, and hence the workmen mentioned therein are discharged with effect from 24.11.1982. The notice also contained an intimation to the effect that the workmen shall collect the dues payable to them, like wages, Earned Leave, etc. from the Office of the Time Keeper during the office hours on 24.11.1982. The notice contained as many as 59 names. The Gujarat Industrial and General Workers Union challenged the legality and validity of the said notice retrenching 59 workers by filing Special Civil Application No.104 of 1983. This Court [Coram: M.P. Thakkar, C.J. & S.A. Shah, J. (as they then were)] on 08.02.1983 suspended the operation of the impugned notice (annexed at Annexure 'F' in that petition) dated 23.11.1982 qua 19 employees only named in Annexure 'G' (in that petition). The Court also made clear in the order that,

".. ..
We may make it clear that the observations made hereinabove are only for the prima facie purpose but since the matter requires serious consideration and petitioners have a prima facie case, we are granting the interim relief in the aforesaid terms."

The Court also recorded the resultant effect of its order by saying that,

".. ..

The result will be that the aforesaid 19 persons will have to be paid their salaries, though the respondents will not be obliged to permit them to work when they report for duty. Of course, in case respondents permit them to work, the aforesaid 19 workmen will be obliged to work."

3. The management, Messrs Ambica Iron Steel and Works Re-rolling Private Ltd. filed two Civil Applications being No.520 of 1984 and 3474 of 1984. Civil Application No.520 of 1984 was filed for vacating interim order, contending that the Union has already availed of alternative remedy of 'industrial reference' before the Labour Court, in the alternative it was also prayed that the order may be modified and appropriate order may be passed in the matter of payment of wages continuously. Civil Application No.3474 of 1984 was filed praying that writ be rejected as the Union has already chosen to avail of and proceed with alternative remedy.

This Court [Coram: B.K. Mehta & D.H. Shukla, JJ. (as they then were)] on 20.12.1984 passed an order, the relevant part of which reads as under:

> "Mr.S.R. Shah appears for the employer and does not press Civil Application No.520/ 84 which is, therefore, disposed of accordingly.
>
> Having heard the learned advocates for the parties on the reliefs prayed for in Civil Application No.3474 of 1984 we are of the opinion that since the Union has already availed of the remedy of reference under section 10 of the Industrial Disputes Act as to whether the retrenchment of 59 workers was legal and proper and, if not, whether they should be reinstated with back wages, the present petition being Special Civil Application No.104 of 1983 challenging the legality and validity of the retrenchment of those workers become infructuous for the time being since all the questions about the legality and validity of retrenchment would be considered and gone into by the Labour Court including the one which has been specifically raised in this petition. In the circumstances, therefore, Special Civil Application No.104 of 1983 would not survive at this stage and the Rule should be and is discharged. Petition is rejected accordingly. There would be no order as to costs."

4. The Court was also pleased to extend interim relief upto 31.12.1984. The Court also recommended to the Labour Court that,

> ".. .. it will give priority to the application which may be moved by the Union for

the interim relief and dispose of the same before our interim relief expires."

5. The Union filed Exhibit 36 for interim relief in Reference (LCA) No.39 of 1983, which was rejected by order dated 08.02.1985. Relevant observations of the learned Judge of the Labour Court are as under:

".. .. Right to move such application can be vindicated by the workmen but the Labour Court has to see that such right can be properly exercised and that such interim relief application is legally tenable during the pendency of the present Reference. Still, however, we have to honour the order of the Gujarat High Court in respect of the interim relief which has been extended upto 15.1.1985. It is, therefore, directed that the company would continue to pay the monthly wages to said 19 concerned workmen till 31st January 1985.

6. The wages thereafter can never be directed to be paid during the pendency of the legality of the orders of termination passed by the company against the concerned workmen.

7. For the reasons stated above, therefore, the present application for interim relief is not tenable and therefore, the same is rejected. However, all the concerned workmen must be paid wages in pursuance of the order of the Gujarat High Court which is upto 15.1.1985 but the same shall be continued to be paid upto 31.1.1985. The main reference is hereby fixed for urgent hearing on 20.2.1985. No order as to costs."

6. Despite the order in aforesaid terms, on interim application the hearing of reference did not proceed with the speed, it was expected of. The learned Judge of the Labour Court has recorded in terms that the workmen were not interested in proceeding with the hearing of the reference, workman, named, Ramvirsinh Sugarsinh Bhadoriya was examined on 13.08.1984 (Exhibit 28). But thereafter he did not remain present, therefore, his further evidence could be recorded only on 30.09.1987. But on that day also his cross examination was deferred at the request of the parties. Thus, his deposition could be completed only on 20.08.1992. The hearing of the reference was prolonged as deposition of the witnesses-workmen was recorded within a period of eight years (30.08.1984 to 20.09.1992). Thereafter, the

deposition of other four workmen was recorded on 30.03.1993, 04.04.1993, 16.07.1993 and 27.07.1993.

6.1 Besides, there is yet another, important aspect of the matter, which is discussed by the learned Judge in para 11 of the judgement and award. In all, 59 workmen were discharged by notice dated 23.11.1982. A statement of claim was scheduled to be filed on 04.03.1983, but then the same was delayed. Meanwhile, the establishment presented its case by filing its reply that, out of 59 workmen, 40 workmen have settled the dispute, still the Union did not mention anything about the same in its statement of claim, filed on 22.12.1983. The learned Judge has also taken note of the fact that this Court (Gujarat High Court) had also directed the establishment to continue to pay wages to only 19 employees and hence so far as 40 workmen are concerned, there is no subsisting dispute which the Court is required to adjudicate. Out of remaining 19, three other workmen also settled the dispute and they are reinstated in service and therefore, the question of only 16 workmen remained.

6.2 The learned Judge has recorded that, these 16 workmen were not remaining present, hence the Union filed Purshis, Exh.52 on 16.10.1989 seeking permission to withdraw the reference. Hence the Court is not required to adjudicate for any workman. But then the learned Judge has recorded that as there is no order on Exh.52 on 16.10.1989, and Purshis was filed by the learned advocate Shri H.K. Rathod (as he then was) on 21.02.1991, Exh.58 stating that, qua 9 workmen he wants to proceed further with the reference, while qua rest of the workmen he does not want to proceed with the reference, the reference was required to be proceeded only qua 9 workmen. The Union has examined only 5 workmen, namely, (i) Ramvirsinh Sugarsinh Bhadoriya, (ii) Sitaram Mahipal Tiwari, (iii) Ramkumar Jagannath, (iv) Ramasharey Shrikallu, and (v) Rustamsinh Badasinh, hence, out of 9 workmen, question is required to be decided qua these 5 workmen only.

7. The learned Judge in para 11 (duplicated para) of the judgement and award has recorded that, the statement of claim produced by the second party does not mention as to who Shri Madhavlal Patadia is. Besides, authorisation given, if any, to said Shri Madhavlal Patadia is not produced. A statement of claim produced before the Court, is supposed to be signed by every workman as provided in Rule 4(C) of the Industrial Disputes (Gujarat) Rules, 1966 (hereinafter referred to as "the Rules"). The learned Judge has recorded that thus, there

is breach of Rule 4(C), hence statement of claim cannot be taken cognisance and prima facie, it deserves to be rejected. However, the learned Judge has discussed all the rival contentions of both the parties in detail and at the end has come to the conclusion that in view of the totality of the facts and circumstances the reference is liable to be rejected and the same is rejected.

8. The learned Judge has examined the reason/s for which the services of the workmen were terminated. As per the say of the Union it was on account of submitting of general demands, the management discharged the workmen saying that their services are no more required as the factory is to be reconstructed. It was also contended by the Union that while the Union was pressing for demands, the company closed its rolling section for reconstruction, without giving 21 days' notice, violating section 9A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") discharged the workmen, that when conciliation proceedings were in progress, the workmen could not have been discharged keeping bias against them, without obtaining approval under section 33A of the Act, that the establishment had committed breach of sections 25FFA and section 25F of the Act. To bring home the aforesaid contentions the Union examined its witnesses.

8.1 The learned Judge on appreciation of the evidence of the workmen has held that the Union is not able to prove that the establishment has committed breach of sections 25F, 25FFA, 9A and 13A of the Act. The learned Judge referring to the deposition of one Shri Ramasharey Shrikallu has recorded that in his cross examination he has stated that relations between the workmen and the establishment-management were cordial. The learned Judge therefore, recorded that there was no question of any bias against the workmen. It is also recorded that on 21st 22nd & 23rd November the workmen were given lay off. It was on 24.11.1982 when the workmen went for duty, they found a notice displayed by which certain workmen were discharged. The learned Judge did not believe the case of the Union that it was on account of 'bias' that the workmen were discharged. According to the learned Judge if the establishment had discharged the workmen on account of 'bias' then the establishment would not have re-engaged them and hence he held that the ground alleged is not proved/ established.

9. The learned Judge then examined the question of compliance of the provisions of section 25F of the Act. The learned Judge considered the case of the

establishment that earlier the factory was run by another company but when it was closed in 1981. The present establishment purchased it in closed condition and started production in the beginning of 1982. It was in the year 1982 it recruited workmen. But then as the machinery was old, on 20.11.1982 the main gear box of the rolling mill was broken and therefore, from 21st to 23rd November 1982 the workers were given lay off. Thereafter, by notice dated 24.11.1982 the workmen were retrenched. The learned Judge considered the deposition of the workman, Ramvirsinh Sugarsinh Bhadoriya, Exh.28 wherein he has deposed that,

"I was taken on duty in 1981. I was taken on duty in the month of October. I was working in the company for three years and I will produce documentary evidence in support thereof."

While appreciating the aforesaid deposition the learned Judge has recorded that it is admitted by the witness that the establishment had started working since 01.01.1982. This date becomes significant because the notice in question is dated 24.11.1982. For determining the question of breach of provisions of section 25F of the Act it is necessary that the workman should have been in continuous service for not less than 'one year'. The term 'continuous service' is defined in section 25B of the Act. Clause (2) of section 25B of the Act provides that,

"where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer--

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than ---

(i) .. ..

(ii) two hundred and forty days, .. "

The learned Judge on appreciating the relevant material on record of the case has recorded a categorical finding that none of the workmen have worked 240 days and therefore, they cannot be said to have been in 'continuous service' for 'one year', and therefore, the

provisions of section 25F of the Act are not applicable and hence there is no breach of section 25F of the Act. The learned Judge has taken into consideration the facts placed before him and has come to the conclusion that, 'there was no intentional act on the part of the establishment to see that the workmen are discharged'. The learned Judge has taken note of the fact that it was breakage of gear box of the rolling section which resulted into initial lay off for three days and thereafter discharge by notice dated 24.11.1982.

The learned Judge after having recorded a categorical finding on the question of fact, relying on the same has rejected the reference of the petitioner workmen.

10. Mr.Dhotre, learned advocate appearing for the petitioners submitted that there is violation of section 25FFA of the Act which provides for 60 days' notice of intention to close down any undertaking. The learned advocate also submitted that in the case on hand the establishment is "Messrs Ambica Iron Steel and Works Re-rolling Private Ltd." of which "rolling section" is severable part/ section from other parts/ sections and will therefore, constitute a separate industrial establishment. That being so, section 25FFA of the Act will be applicable.
This contention was not pressed before the learned Judge in the form it is sought to be pressed before this Court. It is clear from the judgement and award of the learned Judge that except a mere mention of the breach of various sections of the Act and various rules of the Gujarat Industrial Disputes Rules, the contentions were not taken to their logical end.

It is a matter of common knowledge of which due notice can be taken that various points are raised in the pleadings but then all of them are not pressed at the time of arguing the matter. Therefore, the adjudicating forum deals with only those contentions which are pressed into service at the time of arguing the matter. In para 13 of the judgement and award various sections of the Act are mentioned, whose violation is alleged, they are sections 9A, 33A and 25FFA. But then, the learned Judge has not dealt with those contentions giving rise to the aforesaid presumption. So far as sec.25F of the Act is concerned same is discussed with all the relevant material which fortifies the aforesaid presumption that only one point was pressed.

The learned advocate submitted that the contention regarding violation of section 25FFFA of the Act is

stated in the written submissions and that is very much on record of the case. As discussed hereinabove mere mentioning of a contention in the written submission is not enough to hold that the same was pressed into service at the time of hearing of the matter but then the same is not dealt with by the learned Judge.

If at all the petitioners were aggrieved by non dealing of the contention/s raised by them or their learned advocate at the time of hearing, the remedy was to file an appropriate application requesting the learned Judge to incorporate the same in the judgement and order. In absence of any such application this contention does not warrant any entertainment at the hands of this Court.

11. Learned advocate Mr.Dhotre next submitted that the establishment was required to produce the seniority list before the learned Judge. He submitted that what was produced before the learned Judge is produced at Annexure 'I' to this petition. He submitted that it is not the seniority list, as only names of 59 workers, their designations and date of joining is set out therein. He submitted that it was seniority list which was required to be produced by the establishment.

In para 14 of the judgement and award the learned Judge has recorded a finding to the effect that the establishment has produced a seniority list. In the latter part of the same para (at page 125) the learned Judge has recorded that the establishment has produced seniority list of all the workmen and that on perusal of the same it is clear that the workmen were not the permanent workmen and were working as daily wagers. The learned Judge has come to the conclusion on appreciation of the material that only on the basis of an assertion on oath the averment that the workmen were permanent workmen cannot be accepted.

The Honourable the Apex Court in the matter of Range Forest Officer Vs. S.T. Hadimani, reported in (2002) 3 SCC 25 has held that where the claim of the workman is that he had worked for more than 240 days in the year preceding his termination and if the same is denied by the employer, it is for the claimant to lead evidence to prove the same. In the present case the learned Judge has rightly recorded a finding that on the basis of an assertion in absence of any material in support thereof, it cannot be held that the workmen were permanent workmen. In fact if it was the case of the workmen that they were permanent workmen they were under an obligation to produce relevant material in support thereof. If it

was the case of the workmen that such material is in possession of the respondent-establishment then, they ought to have called upon the establishment to produce the same so as to establish that the workmen were permanent workmen. In absence of the aforesaid, namely, production of material or calling upon the establishment to produce such material, the finding recorded by the learned Judge does not require interference at the hands of this Court.

12. The learned advocate for the petitioners next contended that there is breach of section 9A of the Act. He submitted that section 9A provides for a notice of change. He submitted that the Fourth Schedule of the Act provides at items 10 & 11, 'conditions of service' for change of which notice is to be given. Items 10 & 11 of the Fourth Schedule read as under:

"THE FOURTH SCHEDULE
Conditions of service for change of which notice is to be given.

1 to 9 : xxx

10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen;

11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift not occasioned by circumstances over which the employer has no control."

13. The learned advocate for the petitioners submitted that in the present case assuming for the sake of argument that the notice dated 24.11.1982 was issued for the purpose mentioned therein, i.e. 'reconstruction of the factory', the same falls within the ambit of section 9A and therefore, the same should have been given 21 days before, affecting the same. This contention like the earlier one, i.e. violation of section 25FFA of the Act was not pressed into service at the time of argument. Hence there is no question of accepting the same.

14. The learned advocate for the petitioners next contended that there was breach of section 33 of the Act. This contention is raised by the learned advocate for the first time before this Court. Even while mentioning various sections of the Act breach of which was alleged

to be in para 13, section 33 was not referred to. Therefore, this cannot be considered by this Court at this stage. Last but not the least the learned advocate complained that there was violation of sections 25G & H of the Act. The learned advocate submitted that though these sections were not referred to by number, the contention was raised. The learned Judge has recorded in para 14 that in future when workmen were required, the establishment had called the workmen and in that regard an advertisement was given in the newspaper. The learned Judge also referred to the affidavit filed by the establishment wherein it is stated that after there was "breakage of gear box", semi automatic machine was brought and 50-60 Tomsmen/ workmen were required. Accordingly, the establishment had recruited Tomsmen. The learned Judge has also taken note of the fact that the establishment had reinstated required workmen. Thus, the establishment has complied with the requirement of the relevant provisions of the Act.

15. Mr.Anup Krishnan, learned advocate for the establishment contended that the judgement and award of the learned Judge is in accordance with the provisions of law and it does not warrant any interference at the hands of this Court. He submitted that the learned Judge has taken pains to take into consideration all the contentions which were raised before him. He submitted that he has made threadbare analysis of the evidence led before him and the contentions raised before him and has appreciated every one of them in their true perspective. He submitted that the learned Judge has not committed any error which will warrant interference with the judgement and award while examining the same under Article 227 of the Constitution of India.

16. In the considered opinion of this Court, this Court finds that the petitioners have failed to make out any case for grant of any relief to them. Hence the petition fails. It is dismissed. Rule is discharged with no order as to costs.

(Ravi R. Tripathi, J.)

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