

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 12945 of 2008**

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NAVCHETAN DUDH UTPADAK SAHAKARI MANDLI LTD

Versus

BHUPATSINH BHAJIBHAI PARMAR

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Appearance:

MR DG CHAUHAN for the Petitioner(s) No. 1

HCLS COMMITTEE(4998) for the Respondent(s) No. 1

MS KRUTI J VORA(983) for the Respondent(s) No. 1

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CORAM: HONOURABLE MS JUSTICE SONIA GOKANI**Date : 04/05/2017****ORAL ORDER**

1 By way of present petition preferred under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the judgement and award dated September 11, 2008, passed by the labour Court, Nadiad, in Reference (LCN) No.285 of 1991, whereby the labour Court directed the petitioner to reinstate the respondent at his original post with continuity of service and 40% back wages from January 01, 1990 with costs of Rs.2000/-.

2 The facts of the case, if put in a nutshell, are as under :

2.1 The petitioner is a cooperative society

registered under the Gujarat Cooperative Societies Act, 1961 and engaged in collecting and selling milk for and on behalf of its members. There were only two employees working with the petitioner and the financial condition of the petitioner society was in doldrums.

3 The father of the respondent worked in the petitioner- Society and on attaining the age of superannuation, his services came to an end. Under the settlement, no family member of the retired employee can be employed in the petitioner-Society, however, the respondent-son of the exemployee of the petitioner-Society, was engaged as Milk collector. The respondent did not work for 240 days continuously during the period of 12 calendar months, preceding the date of his alleged termination from service. On both the grounds I.e. sale of the milk was reduced and the financial condition of the petitioner-Society was in doldrums, the service of the respondent was terminated.

4 The respondent-workman had preferred Reference

(LCN) No.285 of 1991 before the labour Court, Nadiad, praying for reinstatement with continuity of service and back wages. After about four years of termination, the respondent filed the Statement of Claim on August 02, 1994, inter alia alleging that he was working as a Milk Collector for an amount of Rs.388/- per month and his services came to be terminated illegally on September 01, 1990 without issuing any notice and/or notice pay and/or retrenchment compensation. Hence, the respondent raised a Reference being Reference (LCN) No.285 of 1991. The labour Court dismissed the Reference for want of prosecution on September 04, 2001. Thereafter, on November 27, 2003, the labour Court restored the Reference to its original file for hearing the same on merits. The petitioner filed its written statement and denied all the allegations. The main contention of the petitioner in the written statement was that the respondent did not work for 240 days continuously in a year and the financial condition of the petitioner-Society was very

weak.

5 Both the sides were permitted to lead evidence and eventually, the learned Presiding Officer of the labour Court, Nadiad, passed an award impugned in the present petition in favour of the respondent. Challenging the said judgement and award, the petitioner has prayed as under: "11(A) Your Lordships be pleased to issue a writ of Certiorari and/or any other appropriate writ, order or direction in the like nature to quash and set aside the impugned award dated 11.9.2008 passed by the labour Court, Nadiad in Reference (LCN) NO.285 of 1991." 3 An affidavit-in-reply was filed by the respondent denying all the averments made in the petition. According to him, he possessed the educational qualification of B.A. And he was appointed as a Milk Collector. It is further his say that there is no evidence produced on behalf of the petitioner-Society to point out that the respondent has not been appointed on regular basis and his termination also was not in contravention of the provisions of the

Industrial Disputes Act. It is further his say that no notice pay has been given while terminating his service. He discharged the initial burden of proving his case under the Industrial Disputes Act.

6 An additional affidavit has also been filed by the respondent stating that the petitioner-Society everyday receives about 20 cans of milk, each can containing 40 litres of milk. It is further his say that all those who work with the petitioner-Society are the relatives of the concerned ex-employees. The respondent has denied that he has been cultivating any land of the Panchayat.

7 This Court has heard Shri D.G. Chauhan, learned counsel appearing for the petitioner-Society and Ms.Kruti Vora, learned counsel appearing for the respondent. This Court is conscious of the fact that ordinarily no interference is desirable in the award passed by the Tribunal unless the parameters specified under the law are duly fulfilled.

8 This is one such case where this Court has

found that the evidence which has been adduced has not been appreciated in accordance with law. There is a serious error committed by the labour Court in not only evaluating the evidence, but also appreciating the material which has been brought on record.

9 What has weighed with this Court are the following two points :

9.1 In the deposition, the respondent has failed to establish that he has worked for 240 days in the last 12 months preceding his termination. The question of rebuttal would come only when the party which is required to prove succeeds. So far as the respondent is concerned, the respondent in his deposition before the labour Court has not uttered a word about his completing 240 days of service in the preceding year of his termination. It is not his case that either he is illiterate or his record has been destroyed.

9.2 It is also to be noticed that it had been a specific case of the petitioner-

Society that his work was average for 1 to 2 hours a day as the petitioner-Society is very small society and it had limited number of employees working there and the intake of milk is on a daily basis of the limited number of cans which by no stretch of imagination would make a person work for more than 1 to 2 hours.

9.3 In the cross-examination, the petitioner admitted that not only his service came to be terminated, but the service of one Shankar Patel was also brought to an end. He has been given land on lease by the Gram Panchayat, which is admeasuring about 10 to 12 Vighas. He has also admitted that his means profit from the crop of groundnut on the said land is also reflected from the record and is paying Rs.18000/- to Rs.2000/- per month to the petitioner-Society.

9.4 This court notices that the labour Court has erred on the ground that there had been no compliance in accordance with law either to pay notice pay or the retrenchment

compensation and also on the ground of non-production of necessary documents by petitioner-Society, and erred in holding everything against the petitioner-Society. The labour Court also did not believe fully the case of the employer by holding that there is a breach of provisions of sections 25F, 25G and 25H of the Industrial Disputes Act.

9.5 It is not in dispute that there were only two persons who were working with the petitioner-Society. It is not a case where many of the workmen were working and no seniority list had been kept.

9.6 Section 25F of the I.D.Act does not permit retrenchment of a person, who completed 240 days of service in a year preceding the date of his termination without issuance of notice of retrenchment, giving reasons or in lieu of such notice, one month notice pay and retrenchment compensation. While exercising powers under section 25G of the I.D. Act, there would not

be any requirement of completing 240 days of service in a year preceding the date of his termination in the first place, however, with only two workmen, working for one or two hours and there being no dispute in relation to their inter se seniority, for adherence to the provisions of the I.D. Act under section 25F, the completion of 240 days of service in the preceding 12 months was necessary and could not have been overlooked by the court.

10 . Considering the evidence adduced before the trial Court total intake of milk and also the earning of the respondent from the land, which has been leased to him by the Gram Panchayat, coupled with the fact that in his deposition itself, he has not uttered of having completed 240 days of service in the year preceding his termination, this Court finds a valid reason to interfere with the award passed by the labour Court.

11 For the foregoing reasons, the present petition succeeds and the same is, accordingly,

allowed. The impugned judgement and award is quashed and set aside. There shall be, however, no order as to costs.

(MS. SONIA GOKANI, J.)

AAKAR/SUDHIR