

Shri Bileshwar Khand Udyog Khedut Sahakari Mandali Ltd., Kodinar

Vs

Khand Udyog Kamdar Mandal, Kodinar

Civil Appeal No. 129(NL) of 1978

(R.S. Pathak, A.D.Koshal JJ)

22.07.1981

JUDGMENT

PATHAK, J. –

1. This appeal by special leave is directed against an order of the High Court of Gujarat dismissing in limine the appellant's writ petition challenging an industrial award.
2. The appellant is a cooperative society, whose members include cultivators of agricultural produce. It operates a sugar factory and its labour force includes seasonal workers. On April 10, 1973, the Khand Udyog Kamdar Mandal served notice under Section 42(2) of the Bombay Industrial Relations Act, 1946 demanding that 124 seasonal workers should be given permanent status. Conciliation proceedings were taken and having failed, the dispute was referred to the Industrial Court, Gujarat. On July 29, 1977 the Industrial Court made an award directing the appellant to treat the 124 workers as permanent employees, the permanent status being vested in them with effect from the year 1974-75. The appellant filed a writ petition before the High Court of Gujarat, and the writ petition was rejected in limine.
3. In this appeal, the main contention is that having regard to the questions which arose in the case the High Court erred in dismissing the writ petition in limine. It is pointed out that in making its award the Industrial Court adopted the standard that a worker employed for 240 days or more in the year was entitled to the status of a permanent worker but nowhere did the Industrial Court consider whether for acquiring that status it was sufficient that the worker was employed for such period in one year alone, as for example in the present case in 1972-73, or continued to be so employed in successive years. The Industrial Court specifically referred to the respective periods of employment in subsequent years, but failed to notice that in each of those years the period fell short of 240 days.
4. The Industrial Court had also observed in its award that most of the 124 workers had been employed all the year round in the sugar factory's maintenance department, and said that this had not been disputed by the appellant. It is pointed out that in its writ petition, a copy of which is before us, this assumption in the award was specifically challenged and the High Court should have examined whether the basis for the Industrial Court's finding was warranted.
5. We have heard learned counsel for the parties on these contentions, and we are of opinion, that the appellant is right. This was not a case deserving "in limine" dismissal in the High Court. The High Court should have called upon the respondent to present its case, and then disposed of the matter on its merits.

6. Accordingly, the appeal is allowed, the order dated September 26, 1977 is set aside and the case is remanded to the High Court for disposal on the merits. There is no order as to costs.

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