

Dhari Gram Panchayat vs Saurashtra Mazdoor Mahajan Sangh And ... on 3 September, 1987

Equivalent citations: JT1987(3)SC486, (1988)ILLJ468SC, 1987(2)SCALE483, (1987)4SCC213, 1987(2)UJ475(SC), AIRONLINE 1987 SC 27, 1987 SCC (L&S) 433, (1987) 2 LAB LN 875, 1987 (4) SCC 213, (1987) 2 GUJ LH 459, (1987) 3 JT 486, (1987) 3 JT 486 (SC), AIRONLINE 1987 SC 66

Bench: K. Jagannatha Shetty Shetty, O. Chinnappa Reddy

ORDER

1. The services of ten clerks working in the Octroi Section of the Gram Panchayat of Dhari were terminated by notices dated September 25, 1967 with effect from November 1, 1967. An industrial dispute was referred by the Government of Gujarat to the Special Labour Court. By an award dated November 13, 1968, the Special Labour Court directed the reabsorption of the ten clerks in future vacancies. The workmen filed a writ petition in the High Court of Gujarat. By a consent order dated June 18, 1969 made in the writ petition, the ten workmen were directed to be reinstated and an amount equivalent to two-thirds of their back wages was also directed to be paid to them. The workmen were reinstated on July 1, 1969. But later on, the same day, they were retrenched from service. The workmen questioned the retrenchment and the dispute was once again referred for adjudication to the Special Labour Court. This time an objection was raised by the Gram Panchayat that the Octroi Department of the Panchayat was not an industry within the meaning of Section 2(j) of the Industrial Disputes Act. The Labour Court found on merits that the action of the Panchayat was mala fide but all the same held that the reference was incompetent as the Octroi Department was not an industry. On a writ petition filed by the workmen, the High Court upheld the finding that the action of the Panchayat was mala fide. The High Court also found that the Octroi Department was an industry within the meaning of Section 2(j) of the Industrial Disputes Act. On those findings, the High Court allowed the writ petition and directed reinstatement of the workmen with back wages. In this civil appeal under Article 136 of the Constitution, it was argued on behalf of the Panchayat that levy and collection of octroi duty was a sovereign function and, therefore, the Octroi Department of the Panchayat was not an industry within the meaning of Section 2(j) of the Act. We do not propose to express any opinion on this question since we are of the view that on the finding that the action of the Panchayat was mala fide, the High Court could directly interfered with the retrenchment of the workmen under Article 226 of the Constitution if the workmen had straightaway approached the Court without raising an industrial dispute. Merely because they raised an industrial dispute and the Labour Court took the view that the Octroi Department was not an industry, the workmen are not disentitled to the relief ultimately given to them by the High Court. We, therefore, uphold the judgment of the High Court. In regard to back wages, having regard to the long period that has elapsed since the resolution of retrenchment, the fact that the workmen appear to have been gainfully employed in the meanwhile and the poor finances of the Panchayat regarding which we are satisfied, we think that in the peculiar circumstances of the case, the requirements of

justice will be sufficiently met if we give a direction that each of the workmen shall be paid one-third of the back wages upto date and that they shall be reinstated forthwith. They will be entitled to full wages from September 1, 1987. In other respects, the judgment of the High Court is confirmed. The workmen are entitled to their costs.