State Of Gujarat And Ors. vs Pratamsingh Narsinh Parmar on 31 January, 2001

Equivalent citations: [2001(89)FLR323], JT2001(3)SC326, (2001)ILLJ1118SC, (2001)9SCC713, (2001)2UPLBEC956, AIRONLINE 2001 SC 275, (2001) 2 ESC 294, 2002 SCC (L&S) 269, (2001) 2 UPLBEC 956, (2001) 4 ANDH LD 23, (2001) 1 LAB LJ 1118, (2001) 89 FAC LR 323, (2001) 1 CUR LR 968, (2001) 2 SCT 1081, 2001 (9) SCC 713, (2001) 2 LAB LN 41, (2001) 3 JT 326, 2001 LAB LR 732, (2001) 4 SUPREME 227, (2001) 3 JT 326 (SC)

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Bench: B.N. Agrawal

ORDER

1. This appeal by the State of Gujarat is directed against the judgment of the Division Bench of the Gujarat High Court which upheld the judgment of the learned single Judge of the said High Court. The question for consideration in this appeal is, whether the Forest Department in the State of Gujarat wherein the respondent was appointed as a Clerk can be held to be "an industry" within the meaning of the said expression under the Industrial Disputes Act-(for short "the Act") so that an order of termination, without complying with the provisions of Section 25F of the Act would get vitiated.

2. Be it stated that the appointment to the post of Clerks, Clerks-cum-Typists and Typists in the State of Gujarat is governed by a set of rules framed under proviso to Article 309 of the Constitution of India called "Gujarat Non-Secretariat Clerks, Clerks-Typist and Typists (Direct Recruitment Procedure) Rules, 1970 (for short "the Recruitment Rules"). In 1982, the Conservator of Forests wanted two clerks to be appointed but, as in accordance with the prescribed procedure no candidate could be made available, the respondent was appointed on a purely temporary basis on 8.9.1982 and continued as such till 28th March, 1984 on which date he was relieved since another candidate duly selected in accordance with the Recruitment Rules was appointed on 23rd of March, 1984. The respondent approached the High Court by filing a writ petition which was registered as S.C.A. No. 1777/84. It was averred in the writ petition that since the respondent has been duly, selected by a process of selection and has been continuing ever since his date of appointment, the termination without complying with the provisions of Section 25F of the Act vitiates the order of termination. The State in its counter-affidavit took the stand that the selection of the respondent was not on regular basis and the Forest Department to which the respondent had been recruited, cannot be held to be "an industry" within the meaning of Section 2(2)(j) of the Act and as such the question of compliance with the provisions of Section 25F of the Act does not arise.

3. The learned single Judge, without examining the nature of duty discharged by the respondent as well as the nature of job of the organisation in which the respondent was recruited, following the judgment of this Court in Bangalore Water Supply & Sewerage Board v. A. Rajappa 1978(2) SCR 213, came to the conclusion that the impugned order of termination is vitiated for non-compliance of the provisions of Section 25F of the Act. Having come to the aforesaid conclusion, the order of termination was set aside against which judgment the State had moved in appeal to the Division Bench of the High Court. The Division Bench also took into consideration yet another judgment of this Court in the case of Chief Conservator of Forests and Anr. v. Jagannath Maruti Kondhare and Ors. and came to the conclusion that this Court has taken the view that the work undertaken by the Forest Department cannot be regarded as part and parcel of the sovereign function of the State and as such the single Judge did not commit any error in setting aside the order of termination for non-compliance of Section 25F of the Act.

4. Mr. Dholakia, the learned senior Counsel appearing for the State of Gujarat, contended before us that both the learned single Judge as well as the Division Bench committed serious error in holding that the Forest Department of the State of Gujarat is "an industry" and thereby applying the provisions of the Act to the order of termination of an employee under the said Department. He further contended that the case upon which reliance has been placed, this Court on consideration of the affidavits of the Chief Conservator of Forests examined the nature of job that was being discharged by the employee concerned and the scheme that had been undertaken by the Department wherein the employee had been recruited and then came to hold that the said scheme cannot be regarded as a part of the sovereign function of the State. It has nowhere been stated that the Forest Department itself would be "an industry". Mr. Anand, learned senior Counsel appearing for the respondent, on the other hand, contended that in view of the positive assertions made in the writ petition, there has been no denial by the State in its counter-affidavit and, therefore, the Court was fully justified in relying upon the judgment of this Court in coming to the conclusion that the establishment to which the respondent was appointed is "an industry".

5. If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes "an industry". Ordinarily, a Department of the Government cannot be held to be an industry and rather it is a part of the sovereign function. To find out whether the respondent in the writ petition had made any assertion that with regard to the duty which he was discharging and with regard to the activities of the organisation .where he had been recruited, we find that there has not been an iota of assertion to that effect though, no doubt, it has been contended that the order of dismissal is vitiated for non-compliance of Section 25F of the Act. The State in its counter affidavit, on the other hand, refuted the assertion of the respondent in the writ petition and took the positive stand that the Forest Department cannot be held to be an industry so that the provisions of Section 25F of the Act cannot have any application. In the absence of any assertion by the petitioner in the writ petition indicating the nature of duty discharged by the petitioner as well as the job of the establishment where he had been recruited, the High Court wholly erred in law in applying the principles enunciated in the judgment of this Court in Jagannath Maruti Kondhare (supra) to hold that the Forest Department could be held to be "an industry".

6. The learned single Judge as well as the Division Bench of the High Court have failed to carefully examine the ratio of this Court's judgment in the Jagannath Maruti Kondhare's case (supra), in as much as in para 15 of the said judgment, the Court has quoted the assertions made in the affidavit of the Chief Conservator of Forests and then in para 17, the Court held that the scheme undertaken cannot be regarded as a part of the sovereign function of the State. We are afraid that the aforesaid decision cannot have any application to the facts of the present case where there has not been any assertion of fact by the petitioner in establishing that the establishment to which he had been appointed is "an industry". In this view of the matter, we have no hesitation to come to the conclusion that the learned single Judge as well as the Division Bench committed serious error of law in holding that to the appointment in question, the provisions of the Act apply. We would accordingly set aside the judgment of the Division Bench as well as that of the learned single Judge and hold that the writ petition would stand dismissed.

7. Mr. Anand then submitted that by virtue of an interim order, this Court had observed that the pendency of the appeal in this Court does not stand on the way of the State Government to consider the case of regularisation of the respondent since he has continued for a pretty long time. We do not think it appropriate to make any observation on that score since the impugned judgment proceeded on the basis of applicability of the Act and we have already held that the judgment is erroneous in law. This appeal is accordingly allowed with no order as to costs.