

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 6120 of 2018

FOR APPROVAL AND SIGNATURE: Sd/-

HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

BOTAD TALUKA SAHKARI KHARID VECHAN SANGH LIMITED
 Versus
 BHAGIRATHBHAI KANUBHAI KHACHAR & 1 other(s)

Appearance:

MR RUTVIJ S OZA(5594) for the Petitioner(s) No. 1
 for the Respondent(s) No. 2
 KHUSHBU D CHHAYA(8093) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

Date : 05/04/2022

ORAL JUDGMENT

1. Rule. Learned Advocate, Ms. Chhaya, waives service of rule for Respondent No.1

2. This is a petition under Article 227 of the Constitution of India, whereby, the petitioner has challenged the judgment and award

dated 04.01.2018, passed by the learned Presiding Officer, Labour Court, Bhavnagar, in Reference (LCB) No. 178 of 2002, granting reinstatement with continuity of service from the date of termination of services of Respondent No.1, i.e. from 01.04.2002, as well as 20% backwages.

3. Looking to the issue involved in this petition, with the consent of the learned Advocates for the parties, this matter is taken-up for final hearing and disposal at the admission stage, itself.

4. The brief facts of the case are that Respondent No.1-workman raised an industrial dispute before the competent authority, which, then referred the matter to the Labour Court, Bhavnagar. सत्यमेव जयते

4.1 As per the Statement of Claim filed by Respondent No.1-Workman before the Labour Court, he came to be appointed on the post of clerk in the petitioner-Cooperative Society on 18.01.1999 and lastly, he was getting salary of Rs.2300/- per month.

4.2 It was alleged that the Petitioner-Cooperative Society without complying with the mandatory provisions of Sections 25F and 25G of the Industrial Disputes Act, 1947 (in brief, 'ID

Act'), orally terminated the services of Respondent No.1-Workman.

4.3 Respondent No.1-Workman, therefore, raised an industrial dispute, where, the petitioner-Cooperative Society filed its reply and denied the allegations leveled by Respondent No.1-Workman.

4.4 Both the sides led oral as well as the documentary evidences before the concerned Labour Court and thereafter, the Labour Court passed the impugned judgment and award dated 04.01.2018.

4.5 Hence, the petitioner-cooperative Society filed the present petition.

5. Learned Advocate, Mr. Oza, appearing for the Petitioner-Cooperative Society assailed the award passed by the Labour Court, mainly contending that Respondent No.1-workman was not appointed after following the due procedure and the recruitment procedure, instead, it was nothing but a back-door entry.

5.1 It was submitted that the then Chairman of the petitioner-Cooperative Society appointed Respondent No.1-Workman, without giving any appointment order.

5.2 It was, further, submitted that as the petitioner-Cooperative Society incurred huge financial losses, it went into liquidation and an administrator was appointed.

5.3 As stated above, as the petitioner-Cooperative Society had suffered huge financial loss, with a view to avoid unnecessary expenditure, Respondent No.1-Workman was asked not to attend the work and accordingly, he stopped attending the work at the petitioner-Cooperative Society with effect from 01.04.2002.

5.4 It was, thus, submitted that the Petitioner-Cooperative Society has not breached any of the mandatory provisions of Sections 25F and 25G of the ID Act.

5.5 It was also submitted that the impugned order of reinstatement of Respondent No.1-Workman came to be passed in the year 2018, i.e. nearly after 16 years. It was, therefore, submitted that the Labour Court has committed a grave error in passing the impugned award.

5.6 It was also pointed out that in the interregnum, Respondent No.1-Workman was gainfully employed with Fire Wall Industrial Security & Services, which was hired by HDFC Bank, Botad. It was, therefore, submitted that

the Labour Court ought not to have granted back-wages to Respondent No.1-Workman.

5.7 It was, therefore, submitted that the impugned award be quashed and set aside.

5.8 In the alternative, learned Advocate, Mr. Oza, appearing for the petitioner-Cooperative Society submitted that, if, this Court is not inclined to accept the submissions made on behalf of the Petitioner-Cooperative Society, then, some lump-sum compensation be awarded to Respondent No.1-Workman in lieu of reinstatement with continuity of service and back-wages for the breach of provisions of Sections 25F and 25G of the ID Act and the same shall meet the ends of justice.

6. On the other hand, learned Advocate, Ms. Chhaya, appearing for Respondent No.1-Workman submitted that the Labour Court has committed no error, while passing the impugned judgment and award, and therefore, this Court may not exercise the discretion in favour of the petitioner-Cooperative Society under Article 227 of the Constitution of India.

6.1 It was submitted that there are specific findings recorded by the Labour Court that the Petitioner-Cooperative Society violated / not

complied with the mandatory provisions of Sections 25F and 25G of the ID Act before terminating the services of Respondent No.1-Workman. It was, therefore, submitted that the Labour Court has rightly granted reinstatement with continuity of service and 20% back-wages.

6.2 However, learned Advocate, Ms. Chhaya, under the instructions, submitted that considering the time of almost 16 years, which has elapsed after the termination of services of Respondent No.1-Workman in the year 2002, he shall be satisfied, if, he is granted lump-sum compensation of Rs.3,00,000/-, in lieu of reinstatement with continuity of service and 20% back-wages.

6.2.1 In support of her submission, she has placed reliance on a decision of the Hon'ble Apex Court in the case of '***DIVISIONAL CONTROLLER, MAHARASHTRA STATE ROAD TRANSPORT CORPORATION VS. KALAWATI PANDURANG FULZELE***', Dated: 31.01.2022, rendered in Civil Appeal No. 463 of 2022.

6.2.2 Learned Advocate, Ms. Chhaya, submitted that in the case before the Hon'ble Apex Court, the concerned workman had worked for only four years before the termination of his services, where, the Apex Court granted a lump-sum

compensation of Rs.3,00,000/-, in lieu of reinstatement and back-wages.

6.2.3 Learned Advocate, Ms. Chhaya, therefore, submitted that Respondent No.1-Workman be paid Rs.3,00,000/- compensation, in lieu of reinstatement, continuity of service and back-wages.

7. Having heard the learned Advocates for the parties and having perused the material on record, it emerges that Respondent No.1-Workman worked with the petitioner-Cooperative Society for only three years, i.e. from the year 1999, till termination of his services in the year 2002.

7.1 It is also not in dispute that, lastly, Respondent No.1-Workman was getting Rs.2300/- per month by way of salary.

7.2 It is also an undisputed fact that the services of Respondent No.1-Workman came to be terminated on 01.04.2002, orally.

7.3 Now, the case of the petitioner-Cooperative Society is that, since, the petitioner-Cooperative Society had incurred huge financial loss and the work was not available,

with a view to avoid unnecessary expenditure, the petitioner-Cooperative Society informed Respondent No.1-Workman about the said aspect and thereafter, Respondent No.1-Workman stopped attending his work with Petitioner-Cooperative Society. However, the fact remains that, as per the findings recorded by the Labour Court concerned, before terminating the services of Respondent No.1-Workman, the petitioner-Cooperative Society did not comply with the mandatory provisions of Sections 25F and 24G of the ID Act.

7.4 Keeping in view the aforesaid factual aspects, if, the impugned award passed by the concerned Labour Court is carefully seen, it reveals that the Reference filed by Respondent No.1-Workman was decided in the year 2018, i.e. nearly after 16 years from the date of termination of services of Respondent No.1-Workman.

7.4.1 Further, as per the findings recorded by the Labour Court, in the interregnum, Respondent No.1-Workman was gainfully employed with Fire Wall Industrial Security & Services on contract basis, which was hired by HDFC Bank, Botad, for security purpose.

7.4.2 Thus, this Court is of the considered opinion that the Labour Court has committed no error in passing the impugned judgment and award, granting reinstatement with continuity of services and 20% back-wages to Respondent No.1-workman.

7.5 At this stage, learned Advocate, Ms. Chhaya, appearing for Respondent No.1-Workman, under the instructions, submitted before this Court that Respondent No.1-Workman is ready and willing to accept lump-sum compensation, in lieu of reinstatement with continuity of services and 20% back-wages.

7.6 In view of the above, it would be relevant to refer to the observations made by the Hon'ble Apex Court in the case of '**DIVISIONAL CONTROLLER, MAHARASHTRA STATE ROAD TRANSPORT CORPORATION**' (Supra), more particularly, in Paragraphs-6 & 7, thereof;

“6. It is true that as such all the three courts below (except the Industrial Court) held the termination of the respondent – workman in breach of Sections 25-F and 25-G of the Industrial Disputes Act and, therefore, the Labour Court ordered reinstatement with back wages. However, it is required to be noted that even as per the appointment order produced by the respondent herself, her appointment was on contractual basis at a fixed salary/honorarium of Rs. 500/- per month. Though, it is a case on behalf of the appellant that her appointment was a fixed term appointment, however, considering the

appointment order, the appointment was till further orders. Be that it may, the fact remains that her appointment was on contractual basis and on a fixed salary/honorarium of Rs.500/- per month. It also cannot be disputed that she worked approximately for four years as a sweeper. As such there were no specific averments/allegations in the complaint on any unfair labour practice. Even there was no specific finding recorded by the Labour Court that there was any unfair labour practice adopted by the MSRTC. The only finding recorded by the Labour Court was that the termination was in breach of Sections 25-F and 25-G of the Industrial Disputes Act.

7. Having heard the learned counsel for the respective parties and considering the nature of appointment of the respondent namely as contractual appointment on a fixed salary/honorarium of Rs.500/- per month and she worked for approximately four years, we are of the opinion that in lieu of reinstatement and back wages, if a lumpsum compensation of Rs.3,00,000/- (Rupees Three Lakhs only) is awarded, it will meet the ends of justice. In the peculiar facts and circumstances of the case, when the appointment was purely on contractual basis and on a fixed salary/honorarium of Rs.500/- per month, the order of reinstatement with back wages was not warranted and instead if the lumpsum compensation is awarded in lieu of reinstatement and back wages as observed hereinabove, it will meet the ends of justice.”

7.6.1 In the case before the Hon'ble Apex Court, considering the fact that the concerned person had worked on contractual basis, on fixed salary of Rs.500/- per month, for the period of only four years as a sweeper, the Apex Court awarded lump-sum compensation, in lieu of granting reinstatement, back-wages etc..

7.7 In the present case, as observed herein above, Respondent No.1-Workman worked with the

Petitioner-Cooperative Society for only three years, and therefore, the ends of justice would be met, if, he is granted lump-sum compensation in lieu of reinstatement with continuity of service and back-wages.

8. Resultantly, this petition is partly allowed. The petitioner-Cooperative Society is **DIRECTED** to give **Rs.2,50,000/-** towards lump-sum compensation to Respondent No.1-Workman, **in lieu of** reinstatement with continuity of service and 20% back-wages within a period of **FOUR WEEKS** from the date of receipt of a copy of this order.

8.1 The judgment and award dated 04.01.2018, passed by the learned Presiding Officer, Labour Court, Bhavnagar, in Reference (LCB) No. 178 of 2002, stands **MODIFIED** to the aforesaid extent.

8.2 It is clarified that considering the peculiar facts and circumstances of this case, this order is passed and the same shall **NOT** be treated as a precedent.

Rule is made absolute to the aforesaid extent.

UMESH/-

Sd/-
(VIPUL M. PANCHOLI, J)