IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 34 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 658 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 716 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 45 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 82 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 19528 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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GEMALBHAI MOTIBHAI SOLANKI
Versus
DEPUTY EXECUTIVE ENGINEER

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Appearance:
MR DIPAK R DAVE(1232) for the Petitioner(s) No. 1
for the Respondent(s) No. 1
MR.KURVEN DESAI, AGP for the Respondent(s) No. 1 in SCA NOS.34 and 658 of 2021
MR.UTKARSH SHARMA, AGP for the Respondent(s) No. 1 in SCA NOS.716 and 45 of 2021
MR.SOAHAM JOSHI, AGP for the Respondent(s) No. 1 in SCA NOS.82 and 19528 of 2021

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 17/06/2022

COMMON ORAL JUDGMENT

1 Rule returnable forthwith. With consent of the learned advocates appearing for the respective parties, these matters are taken up for final hearing today.

2 In all these petitions, the awards of the Labour Court in the respective petitions are under challenge by the petitioners, by which, the Labour Court has awarded compensation to each of the petitioners rather than reinstatement with backwages as prayed for by the petitioners.

3 For the purposes of facts and arguments, Mr.Dipak Dave, learned counsel for the petitioners, has relied on the facts of Special Civil Application No. 34 of 2021. The petitioner, Gemabhai M. Solanki, filed a Statement of Claim before the Labour Court, Godhra, at Exh.4. It was his case before the Labour Court that he was engaged by the respondents as a daily wager from 12.01.1980. He was working at the Bhadar Canal Sub-Division. It was his case that during the course of month, he would work for a period ranging from 22 to 25 days, for which, though no appointment orders are issued, attendance sheets were maintained. Their services were terminated without following the procedure under Sec.25(F) of the Industrial Disputes Act. They were paid Rs.30/- per day. Their salaries /wages were paid by drawing vouchers. It was his

case that his services were put to an end from 02.12.2000 without following the procedure and without awarding compensation. Violation of Secs.25(G) & 25(H) was also pleaded. The respondent – employer, filed a Written Statement at Exh.8. It was their case that the work at the Bhadar Canal Project was closed that they would not fall within the definition of "Industry" within Sec.2(j) of the Industrial Disputes Act. That no attendance sheet or appointment letters needed to be issued to such employees as they were working as daily wagers. The petitioner was examined at Exh.11. In the reference which was decided by this Court, namely, Reference No. 108 of 2005, at Exh.6, on a demand made by the workmen, attendance records of the last three years were produced by the employer. At that time, the Labour Court was therefore faced with the issue of taking a decision whether the petitioner- workman deserves to be reinstated and also if his termination was bad. On the aspect of delay, the Labour Court observed that there was a delay of three years in raising the dispute.

3.1 On the issue of whether the workman had successfully proved that there was violation of Sec.25(F) based on the workman having completed 240 days of service taking into consideration Sec.25(B) and whether retrenchment was in accordance with Sec.25(F) of the Act, perusal of the award of the Labour Court would indicate that considering the decision of the Hon'ble

Supreme Court on the issue of burden of proof, the Labour Court found that it was undisputed that the petitioner had worked for over a period of 240 days in each year of service till the date of termination in the year 2010. The only documents that were produced by the employer was for the period from January 2007 to December 2009.

4 Considering the decision of the Hon'ble Supreme Court in the case of ***Director, Fisheries Terminal Division vs. Bhikubhai Meghjibhai Chavda.,*** reported in ***AIR 2010 SC 1236,*** the Labour Court came to the conclusion that the petitioner had worked for over a period of 240 days and that they were engaged for a particular period; that the work on which they were engaged was discontinued was held to be not proved. In other words, therefore, specifically finding violation of Sec.25(F),(G) & (H), the Labour Court awarded compensation in the range of Rs.44,000 to Rs.70,000/- in each of the references relying on a decision in the case of ***Gujarat State Civil Supplies Corporation Ltd vs. Abdul Kadar Ibrahim Bakali,*** rendered in Special Civil Application No. 4643 of 2010 dated 25.07.2017. Reliance was also placed on a decision in the case of ***Gopalbhai Muljibhai Charan vs. Range Forest Officer.,*** rendered in ***Special Civil Application No. 7821 of 2019*** dated 24.04.2019. Based on these decisions, the Labour Court proceeded to award compensation of Rs.72,000/-.

5 Mr.Dipak Dave, learned counsel for the petitioners, in each petition would submit that once the Labour Court categorically came to the conclusion that the termination was bad, and on the basis of evidence even that the petitioners had completed 240 days in each year of service and also having drawn adverse inference against the respondents in view of the decision of the Hon'ble Supreme Court in **Fisheries Terminal (supra),** that the work was available, meagre compensation of Rs.72,000/- could not have been awarded. Reinstatement ought to have followed once the Labour Court had found that there was breach of Sec.25(F) which ought to have been followed. He would rely on a decision of the Co-ordinate Bench rendered in Special Civil Application No. 10316 of 2020 dated 13.09.2021 wherein the awards of the Labour Court at Godhra awarding compensation of Rs.72,000/- was under challenge. Taking the Court to the oral order, he would submit that on similar facts therefore, this Court set aside the orders of compensation relying on the decisions in the case of ***Kalamuddin M. Ansari vs. Government of India.,*** reported in ***2016 Lawsuit (guj) 508,*** and directed that the petitioners be reinstated with continuity of service without backwages. Reliance was also placed on a decision in Special Civil Application Nos. 14527 of 2018 and allied matters dated 20.01.2022.

5.1 Mr.Dipak Dave, learned counsel for the petitioners, would further submit that the petitioners are ready and

willing to give up their rights as regards backwages.

6 Learned AGPs for the State, would support the awards of the Labour Court. In support of their submissions, the learned AGPs would submit that no error was committed by the Labour Court in granting compensation of Rs.72,000/-. He would submit that apart from a delay of two years in raising the dispute, the work at the canal had been outsourced, and therefore, even after a lapse of over 20 years, reinstatement was not possible. They would rely on the decisions as considered by the co-ordinate Bench of this Court rendered in the case of ***Gopalbhai Muljibhai Charan vs. Range Forest Officer., (supra)*** in Special Civil Application No. 7821 of 2019.

7 Considering the submissions made by the learned counsels for the respective parties, Mr.Dipak Dave, and learned AGPs for the State, while deciding the legality and validity of the stand of the respondents on the question of termination, perusal of the award of the Labour Court would indicate in no uncertain terms that the Labour Court has come to the conclusion that there was violation of Sec.25(F), (G) & (H) of the Industrial Disputes Act. That finding was arrived at after considering the evidence on record, inasmuch as, also drawing adverse inference against the respondents in light of the decision in the case of **Fisheries Terminal (supra).** The findings of the Labour Court have attained

finality, inasmuch as, no challenge to the awards has been made by the respondent – employer. The question then arises is that whether the Labour Court should have fallen short of awarding reinstatement with or without backwages.

7.1 Mr.Dipak Dave, learned counsel for the petitioners, would rely on a decision of the Hon'ble Supreme Court in the case of ***Gauri Shanker vs. State of Rajasthan.,*** reported in ***2015 (12) SCC*** Before the Hon'ble Supreme Court, the facts would indicate that the workmen were engaged with the Forest Department in Rajasthan. The tenure of service was for over a period of five years and it was their case that they had rendered 240 days of service in each calendar year and their termination was in violation of the provisions of Sec.25 (F), (G) & (H) of the Industrial Disputes Act. A reference was raised. The dispute was referred to the Labour Court. On evidence, it was found that the workman had worked for a particular tenure. The Labour Court, after answering in favour of the workman, passed an award directing compensation in lieu of reinstatement. That award was challenged before the Hon'ble Supreme Court. The submission of the learned counsel appearing for the workman their was that once the Labour Court, which is a fact finding Court, recorded the finding of fact on the basis of pleadings and evidence on record and held that the termination order was in violation of Secs.25(F), (G) & (H) of the Industrial Disputes Act, the Labour Court ought to have awarded

reinstatement rather than compensation. It was, therefore, for the Hon'ble Supreme Court to answer the issue whether the Labour Court was justified in not awarding reinstatement and backwages. It would be fruitful to reproduce paras 20 to 24 of the judgement of the Hon'ble Supreme Court in the case of **Gauri Shankar (supra),** which read as under:

> *"20. It is not in dispute that the workman was employed with the respondent- Department in the year 1987 and on the basis of material evidence adduced by both the parties and in the absence of the non-production of muster rolls on the ground that they are not available, which contention of the respondent-Department is rightly not accepted by the Labour Court and it has recorded the finding of fact holding that the workman has worked from 1.1.1987 to 1.4.1992. The Labour Court has drawn adverse inference with regard to non-production of muster rolls maintained by them, in this regard, it would be useful to refer to the judgment of this Court in the case of Gopal Krishnaji Ketkar v. Mohd. Haji Latif & Ors.[6] wherein it was held thus:*
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> > *"5. .....Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. In Murugesam Pillai v. Gnana Sambandha Pandara Sannadhi, Lord Shaw observed as follows:*

> *"A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to, the, Courts the best material for its decision. With regard to third parties, this may be right enough-they have no responsibility for the conduct of the suit but with regard to the parties to the suit it is, in their Lordships' opinion an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession which would throw light upon the proposition."*

This passage was cited with approval by this Court in a recent decision-- Biltu Ram & Ors. v. Jainandan Prasad & Ors. In that case, reliance was placed on behalf of the defendants upon the following passage from the decision of the Judicial Committee in Mt. Bilas Kunwar v. Desraj Ranjit Singh :-

> *"But it is open to a litigant to refrain from producing any documents that he considers irrelevant; if the other litigant is dissatisfied it is for him to apply for an affidavit of documents and he can obtain inspection and production of all that appears to him in such affidavit to be relevant and proper. If he fails so to do, neither he nor the Court at his suggestion is entitled to draw any inference as to the contents of any such documents."*

21. The said finding of the Labour Court is re-affirmed by the learned single Judge which also affirmed the finding that the action of the respondent- Department in terminating the services of the workman w.e.f. 1.4.1992 is a case of retrenchment as defined under Section 2(oo) of the Act as the termination of the services of the

workman is otherwise for misconduct by the respondent-Department. Further, undisputedly the non-compliance of the mandatory requirements as provided under the provisions of Sections 25F clauses (a) and (b), 25G and 25H of the Act read with Rules 77 and 78 of the relevant Rajasthan Industrial Dispute Rules, 1958 has rendered the order of termination passed against the workman void ab initio in law. The Labour Court in the absence of any material evidence on record in justification of the case of the respondent-Department has rightly recorded the finding of fact and held that the order of termination passed against the workman is bad in law, the same being void ab initio in law it has passed an award for reinstatement of the workman in his post in exercise of its original jurisdiction under provision of Section 11 of the Act.

22. The Labour Court has rightly followed the normal rule of reinstatement of the workman in his original post as it has found that the order of termination is void ab-initio in law for non compliance with the mandatory provisions of the Act referred to supra. However, the Labour Court is not correct in denying backwages without assigning any proper and valid reasons though the employer did not prove either its stringent financial conditions for denial of back wages or that workman has been gainfully employed during the period from the date of order of termination till the award was passed in favour of the workman except granting Rs.2,500/- as compensation for the suffering caused to the workman. The same is erroneously modified by the learned single Judge who recorded the finding of fact for the first time by holding that the workman is a casual employee intermittently working in the respondent-Department.

23. The learned single Judge of the High Court has exceeded his jurisdiction under Articles 226 and 227

of the Constitution of India as per the legal principles laid down by this Court in the case of Harjinder Singh (supra) wherein this Court has held thus:-

> *"21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to sub-serve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J, opined that*
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> *"the concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State"*

- State of Mysore v. Workers of Gold Mines AIR 1958 SC 923."

The said principle has been reiterated by this Court in Jasmer Singh v. State Of Haryana & Anr. (Civil Appeal NO. 346 of 2015 decided on 13.1.2015).

24. Therefore, in view of the above said case, the learned single Judge in exercise of its powers under Articles 226 and 227 of the Constitution of India

erroneously interfered with the award of reinstatement and future salary from the date of award till date of reinstatement as rightly passed by the Labour Court recording valid and cogent reasons in answer to the points of dispute holding that the workman has worked from 1.1.1987 to 1.4.1992 and that non-compliance of the mandatory requirements under Sections 25F, 25G and 25H of the Act by the respondent-Department rendered its action of termination of the services of the workman as void ab initio in law and instead the High Court erroneously awarded a compensation of Rs.1,50,000/- in lieu of reinstatement. The learned single Judge and the Division Bench under their supervisory jurisdiction should not have modified the award by awarding compensation in lieu of reinstatement which is contrary to the well settled principles of law laid down in catena of cases by this Court."

7.2 The Hon'ble Supreme Court held that once the Labour Court had come to the conclusion of violation of Sec.25(F), (G) & (H) of the Industrial Disputes Act, reinstatement ought to have followed.

8 Considering the law laid down by the Hon'ble Supreme Court in the case of **Gauri Shanker (supra),** which was considered by the Co-ordinate Bench of this Court in Special Civil Application No. 10316 of 2020. This Court in para 7 of the decision held as under:

"7. In this writ petition, the petitioner has challenged the award dated 09.04.2019 granting compensation against the reinstatement. The petitioner has also claimed the benefits of Government Resolution date 17.10.1988. It is the case of the petitioner that the petitioner – workman is also entitled to benefits of Government Resolution

dated 17.10.1988 with continuity of service. However, the learned advocate appearing for the petitioner, on instructions, has submitted that the workman will not claim the back wages. The court has also perused the impugned award passed by the Labour Court. The workman has completed almost more than six years of service before he was terminated in the year 1997. The muster roll, which was examined by the Labour Court, reveals that the petitioner was appointed in the year 1991 and he was terminated in the year 1997. After relying upon the judgment of the Labour Court as well as this Court, the labour Court has concluded that the termination is in violation of Section 25F of the I.D.Act. The continuity of service of the workman is also proved under Section 25B of the I.D.Act. Thus, the only issue remains whether the compensation of Rs.70,000/- awarded by the Labour Court to the petitioner workman is just and proper."

9 For the aforesaid reasons as held by the Co-ordinate Bench of this Court, compensation in lieu of reinstatement will be detrimental to the petitioners who have worked for over a period of 20 years.

10 Accordingly, as held by this Court in the judgement of ***Chhatrasing Marutising Bariya vs. Dy. Executive Engineer & Ors.,*** the petitions are allowed. Under the circumstances, the impugned award passed by the Labour Court is erroneous to the extent of granting compensation. The respondents are directed to reinstate the workmen in service with continuity of service. However, it is clarified that they will not be entitled to any backwages as they have given up their claims. After their reinstatement, it will be open for the petitioners –

workmen to file a representation claiming the benefits of Government Resolution dated 17.10.1988. The order reinstating the petitioner workmen shall be passed within a period of three months from the date of receipt of this order. The amount of compensation, if already paid to the workmen, the same shall be adjusted while fixing their pay.

11 As far as petitioners of Special Civil Application No. 45 of 2021 and Special Civil Application No. 82 of 2021 are concerned, they have attained the age of superannuation. The Court accedes to the request of quashing and setting aside the order of lump-sum compensation and instead grant the reinstatement till the date of superannuation with continuity of service. 10% backwages has been forgone by the employees with the grant of continuity to those employees who have attained the age of superannuation. They shall be paid consequentially the retirement benefits on the strength of modified award in not later than twelve weeks' time from the date of receipt of copy of this order.

12 With the aforesaid directions, the present writ petitions are allowed. The impugned awards passed by the Labour Court, are modified to the aforesaid extent. Rule is made absolute to the aforesaid extent.

(BIREN VAISHNAV, J)

ANKIT SHAH