

(2016) 12 GUJ CK 0047

In the Gujarat High Court

Case No : Special Civil Application No. 3663 of 2014

Anand Municipality

APPELLANT

Vs

Arunaben Dhirajbhai Solanki

RESPONDENT

Date of Decision : 28-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 LLJ 9

Hon'ble Judges : Mr. K.M. Thaker, J.

Bench : Single Bench

Advocate : Mr. Deepak P Sanchela, Advocate, for the Petitioner No. 1; K. M. Chavan, Advocate, for the Respondent No. 1; Mr. Paritosh Calla, Advocate, for the Respondent No. 2; Notice Served, for the Respondent Nos. 1 and 2

Final Decision : Partly Allowed

Judgement

Mr. K.M. Thaker, J.(Oral)— Heard learned advocates for petitioner and respondent.

2. In present petition, Anand Municipality has challenged Award dated 26.12.2013 passed by learned Labour Court, Anand in Reference No.48 of 2006, whereby the learned Labour Court has directed the petitioner Nagar Palika to reinstate the claimant in service on his original post with continuity of service and 10% back wages.

3. So far as factual background is concerned, it has emerged that original claimant raised industrial dispute with the allegation that the Municipality illegally terminated his service with effect from 26.12.2005 and that, therefore, he should be reinstated in service with all benefits.

3.1 Appropriate Government referred the dispute for adjudication to the learned Labour Court at Anand. The dispute was registered by learned Labour Court in Reference No.48 of 2006.

3.2 In the statement of claim, the claimant narrated certain incident which allegedly occurred on 19.12.2005 and he alleged that on account of the said incident, where he was not at fault in any manner, the concerned Officer terminated his service by oral instruction and that while discontinuing his service, the Nagar Palika did not follow prescribed procedure and committed breach of statutory provisions as well as principles of natural justice. With such allegation, the claimant demanded that he should be reinstated in service with all consequential benefits.

3.3 The Municipality opposed the reference and resisted the demand by the claimant. In its written statement, the Nagar Palika contended that actually the service of the claimant was transferred from Zone-4 to Zone-3, however, the claimant was not willing to report for work in Zone-3 and he did not want to work at Zone-3 and that, therefore, he stopped reporting for work and insisted that he should be continued only in Zone-4 and that if he is transferred to Zone-3 then he is not interested in job. Nagar Palika contended that it has not terminated service of the claimant and it has no intention to terminate service of the claimant and that, therefore, there was no need or occasion to conduct domestic inquiry and / or to comply under Section 25(F) of Industrial Disputes Act or any other provision. The Nagar Palika also contended that since the claimant was not reporting for work at Zone-3 i.e. at the transferred place, the said period was considered as leave without pay, however, Nagar Palika never terminated his service and that, therefore, demand is unjustified and reference should not be entertained.

3.4 When the parties concluded their respective pleadings, learned Labour Court received oral and documentary evidence from the contesting parties. Upon conclusion of evidence from both sides, the learned Labour Court heard submissions of learned advocates for the contesting parties thereafter learned Labour Court passed impugned award with above mentioned directions.

4. Mr. Sanchela, learned advocate for petitioner Nagar Palika submitted that Municipality had merely transferred the claimant from one zone to another i.e. from Zone-4 to Zone-3, however, on the ground that he should not be transferred to any other place and he does not want to work at transferred place and he should be continued at the same place, the claimant stopped reporting for duty. He submitted that learned Labour Court failed to appreciate the said aspect and the impugned direction is contrary to the evidence as well as unjustified and that, therefore, the said direction may be set aside.

5. Per contra, Mr. Chavan, learned advocate for the workman submitted that there is no error in the award. The learned advocate for respondent submitted that Nagar Palika failed to establish that it had ever addressed any intimation to the claimant asking the claimant to report for duty and learned Labour Court has taken note of the said fact on record in the award that Nagar Palika failed to establish that it had forwarded intimation asking the claimant to report for work. According to learned advocate for the claimant, the conclusion by learned Labour

Court are based on material available on record and that, therefore, the award does not suffer from any infirmity and may not be interfered with.

I have considered submission by learned advocates for petitioner and respondent and I have also considered the impugned award and material available on record.

6. At the outset, it is relevant to mention that after hearing learned advocate for petitioner at admission stage, this Court passed following quoted order on 25.03.2014:

"1. Heard Mr. Deepak Sanchela, learned advocate for the petitioner.

2. Over and above the pleadings on record attention is invited to the fresh notice issued by the petitioner Municipality dated 14.03.2014 to the respondent workman. Notice returnable on 06.05.2014."

7. Thereafter on 07.07.2014, this Court passed below quoted order:

"1. Challenge in this petition is made to the award of the Labour Court, Anand in Reference LCAT No.47 and 48 of 2006 dated 26.12.2013, whereby the respondent workmen are ordered to be reinstated in service with 10% back wages.

2. The Municipality has issued notice dated 14.03.2014 to both the respondents workmen to join the duty, without prejudice to the rights and contentions of the Municipality. However, the respondent workmen have chosen not to report for duty.

3. Mr. K.M. Chavan, learned advocate for the respondent workmen has submitted that, 10% back wages are not paid so far and the respondents are offered to join duty at the zone, other than the zone, where they were initially working. Learned advocate for the respondents states that, the reinstatement by the municipality in the same town but in different zone is not acceptable to them, and therefore, the respondents have not joined.

4. Rule. The impugned award is stayed qua back wages. The readiness of the Municipality regarding reinstatement, even otherwise is on record. To be heard in due course."

8. From the said order dated 07.07.2014, it clearly emerges that (a) the Court has not stayed the operation and implementation of the award, directing the Nagar Palika to reinstate the respondent; (b) that the Nagar palika seems to have addressed notice to the respondent to report for duty; and (c) at the relevant time i.e. in July, 2014, the respondent chose not to report for duty.

8.1 Thus, the direction to reinstate the claimant is not stayed by Court.

8.2 Now, during the hearing of the petition, learned advocate for the claimant clarified that the respondent has already reported for duty and he is taken back in service.

9. Having regard to above mentioned aspect and also having regard to the fact that right from initial stage the stand of Nagar Palika was that it has not terminated service of the claimant, even otherwise there is no justification for the Nagar Palika to oppose the order directing reinstatement of the claimant. Besides this, the claimant is already reinstated in service since last about 2 years and he is working with Nagar Palika since last 2 years and also having regard to the award, this Court is not inclined to interfere with the order directing reinstatement of the respondent.

9.1 On this count, it is relevant to note that it has emerged from the record that the claimant was appointed as Sweeper with the Nagar Palika in November, 1999.

9.2 Before alleged termination, the claimant had worked for more than 12 years.

9.3 Under the circumstances, when learned Labour Court has passed direction to reinstate the claimant and when the learned advocate for the petitioner has failed to make out ground against the said direction and also having regard to the fact that the Nagar Palika itself claimed before learned Labour Court it has not terminated service of the claimant, the order directing reinstatement is not disturbed.

10. On examination of the record, it has emerged that some of the observations, discussions and final conclusion by learned Labour are contradicting each other.

10.1 At some places in the award it has emerged that the learned Labour Court has recorded that the petitioner Nagar Palika had not informed the claimant about the date or place at which he is transferred and the date and place at which he has to report for work.

10.2 On the other hand, learned Labour Court itself has recorded in the order that the order whereby the claimant is transferred is placed on record at Exh-12/5.

10.3 When the order transferring the claimant is available on record then the observation to the effect that the employer had not informed the claimant about the place of transfer and the date on which he should report at transferred place, cannot be sustained. Obviously, the order (mark 12/5) would contain such relevant instruction.

10.4 Besides this, from the discussion and award and, from the narration of the gist of written statement it has emerged that right from the initial stage the Nagar Palika had made clear that the claimant was transferred from Zone-4 to Zone-3 and he was instructed to report for work in Zone-3, however, claimant refused to report for work at Zone-3.

10.5 Nagar Palika also claimed that the claimant opposed the transfer on the ground that since there is slaughter house in Zone-3, he would not go and work there.

10.6 According to the Nagar Palika, on such ground the respondent stopped

reporting for duty.

10.7 In this view of the matter, the observation by learned Labour Court that the Nagar Palika had not informed the claimant about the place of transfer and the date when he should report for work, cannot be sustained.

11. At the same time, stand of the claimant to oppose transfer from one Zone to another is also not justified and cannot be sustained.

12. Further, the claimant failed to establish the allegation with regard to the incident which allegedly occurred on 19.12.2005. Such allegation are not proved by the claimant with help of any cogent, satisfactory and adequate evidence.

13. Learned Labour Court has also recorded that it is established that the Nagar Palika had issued order transferring from one Zone to another and that the Officer who issued the order is competent authority to pass said instruction.

14. Thereafter, learned Labour Court has taken into account the deposition of the claimant wherein he seems to have claimed that after his service was discontinued by oral instruction on 26.12.2005, he had reported for duty but the Mukaddam was not marking his attendance.

14.1 On the basis of such deposition by claimant, learned Labour Court reached to the conclusion that service of the claimant was orally terminated.

14.2 Having reached that conclusion, learned Labour Court also held that the claimant had worked for 240 days and that, therefore, provision under Section 25(F) was applicable and attracted, however, Nagar Palika did not comply with the condition prescribed by under Section 25(F).

14.3 Learned Labour Court accordingly held that the Nagar Palika committed breach of Section 25(F).

14.4 It is in view of the said conclusion by the learned Labour Court that the order directing reinstatement of claimant in service on original post came to be passed.

15. As mentioned above, there is no justification to interfere with the said direction.

16. From the Memo of Petition, it has emerged that the claimant joined the service in Nagar Palika in November, 1999.

16.1. The alleged incident occurred in December, 2005.

16.2 Thus, at the time when the service of the claimant came to be discontinued, he had worked with Nagar Palika for almost 06 years.

16.3 In this background, the direction by learned Labour Court to consider claimant's service as continuous for the period from 2006 to 2013, cannot be faulted.

17. However, in light of the facts and circumstances of present case, more particularly the fact that the claimant's service was transferred from one Zone to another is established and also in view of the fact that claimant had, at the relevant time, refused to work at the transferred place or raised objection against his transfer from Zone-4 to Zone-3, the direction to pay 10% back wages cannot be sustained.

18. Under the circumstances, following order is passed:

(a) The order directing reinstatement of the claimant with continuity of service is not disturbed.

(b) However, direction awarding 10% back wages is found unsustainable and, therefore, the said direction is set aside.

(c) Since the respondent claimant is already reinstated to work with Nagar Palika, any further direction with regard to reinstatement is not required.

(d) Consequently, petition is partly allowed. Rule is made absolute to the aforesaid extent.