

(2010) 10 GUJ CK 0050

In the Gujarat High Court

Case No : Special Civil Application No. 11322 of 2010

Executive Engineer

APPELLANT

Vs

Vijaykumar Prataprai Bhatt

RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (2010) 10 GUJ CK 0050

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : Sejal K. Mandavia, for the Appellant; Mukesh B. Dave, for the Respondent

Judgement

M.R. Shah, J.—By way of this petition under Article 227 of the Constitution of India, the Petitioner - Executive Engineer has prayed for an appropriate writ, order and/or direction, quashing and setting aside the impugned judgement and award dated 01/17-07-2010 passed by Learned Presiding Officer and Labour Court, Jamnagar in Reference (LCJ) No. 62 of 2002, by which, the Labour Court has directed the Petitioner to reinstate the Respondent on his original post with continuity in service.

2. Ms. Mandavia, learned advocate appearing on behalf of the Petitioner has vehemently submitted that as the appointment of the Respondent was as ad-hoc employee and on fixed term and till the regular employee is appointed and, therefore, the case will squarely covered u/s 2(oo)(bb) of the Industrial Disputes Act and, therefore, Labour Court has materially erred in holding that while terminating the services of the Respondent, there was a breach of Section 25(F) of the Industrial Disputes Act. It is further submitted that even otherwise considering the recent decision of the Hon'ble Supreme Court rendered in the case of Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others, and considering the nature of post on which the Respondent was

appointed and No. such post is available on which the Respondent can be reinstated in service, Labour Court has materially erred in directing the Petitioner to reinstate the Respondent on his original post with continuity of service. It is submitted that even assuming that there was a breach of Section 25(F) of the Industrial Disputes Act, Labour Court instead of directing the Petitioner to reinstate the Respondent, Labour Court ought to have awarded reasonable monetary compensation in lieu of reinstatement and with continuity in service.

3. Mr. Mukesh Dave, learned advocate appearing on behalf of the Respondent has submitted considering the fact that the Respondent had worked for three years, he may be awarded a reasonable monetary compensation, which may be deemed fit to this Court and impugned judgement and award passed by the Labour Court be modified to that extent. Learned advocates appearing on behalf of the respective parties do not invite any further reasoned order.

4. In view of the above broad consensus between the learned advocates appearing on behalf of the respective parties and stand taken by Mr. Dave, learned advocate appearing on behalf of the Respondent as recorded hereinabove and considering the fact that the Respondent had worked for three years on ad-hoc basis and even assuming that there was a breach of Section 25(F) of the Industrial Disputes Act, in that case also, the impugned judgement and award passed by Labour Court directing the Petitioner to reinstate the Respondent on his original post cannot be sustained as No. such post is available on which the Respondent can be reinstated. It is to be noted that as such prima facie this Court is of the opinion that as the appointment of the Respondent was on fixed term and till regular employee is appointed, Section 25(F) of the Industrial Disputes Act would be applicable and there may be breach of Section 25(F) of the Industrial Disputes Act, however, considering the recent decision of the Hon'ble Supreme Court rendered in the case of Senior Superintendent Telegraph (Traffic), Bhopal, v. Santosh Kumar Seal and Ors. (supra) and considering the fact that the Respondent had worked for 3 years and considering the stand taken by the learned advocates appearing on behalf of the respective parties, it appears to the Court that in lieu of reinstatement if the Respondent is awarded lump sum monetary compensation of Rs. 15,000/-, it will meet the ends of justice.

5. In view of the above and for the reasons stated hereinabove, the petition succeeds in part and the impugned judgement and award dated 01/17-07-2010 passed by Learned Presiding Officer and Labour Court, Jamnagar in Reference (LCJ) No. 62 of 2002 is hereby modified to the aforesaid extent that in lieu of reinstatement and with continuity in service as awarded by the Labour Court, the Petitioner to pay Rs. 15,000/- to the Respondent by way of lump sum monetary compensation, which shall be paid by the Petitioner to the Respondent within a period of eight weeks from today, failing which, it will carry interest at the rate of 9% per annum. Rule is made absolute to the aforesaid extent. No. costs.