

(2011) 11 GUJ CK 0017

In the Gujarat High Court

Case No : Special Civil Application No. 14522 of 2003

Galpha Laboratories Ltd.

APPELLANT

Vs

Ramanbhai Patel

RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 11 GUJ CK 0017

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : Varun K. Patel, for the Appellant; Rajesh P. Mankad, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice D.H. Waghela

1. The petitioner has invoked Articles 226 and 227 of the Constitution in effect to challenge award and order dated 15.3.2003 of labour Court, Bharuch, whereby the respondent is ordered to be reinstated with 50% back wages, continuity of service and cost of Rs.1,000/-. The labour Court has in the impugned judgment arrived at the findings of fact, after proper appreciation of evidence, that respondent was employed by the petitioner since 1.11.1990 and he was orally and summarily discharged from service on 26.5.1992 without following procedure or payment of any compensation. In view of the admission of the respondent that he was earning Rs.500/- to Rs.1000/- by plying a rickshaw, the labour Court has reduced the back wages to 50%.

2. Learned counsel, Mr. Varun Patel, appearing for the petitioner vehemently argued that the respondent was, in fact, employed at the relevant time by another independent company and the labour Court was required to decide the issue of relationship of master and servant between the petitioner and the respondent. He submitted that the finding of fact in respect of employment of

the respondent by the petitioner was perverse. He referred to and relied upon the evidence on record of the labour Court to submit that the respondent had himself named two companies as his employer. However, it is found by the labour Court, on perusal and appreciation of the evidence, that the documentary evidence of identity card of the respondent was stamped by present petitioner and even the reference of the industrial dispute made by Assistant Commissioner of Labour, Bharuch, was made for resolving the dispute between the petitioner and the respondent. The respondent had also filed a purshis (Exh.23) to declare that the petitioner was his employer and it is found as a finding of fact that the respondent was employed by the petitioner. It was also deposed by the respondent (Exh.17) that when he entered the services of the petitioner, there was only one gate and common management of both the companies, which he had named in his statement of claim.

3. Learned counsel, Mr. Patel, relying upon judgment of the Apex Court in J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, also submitted that order of reinstatement and back wages is not automatic or natural consequence of violation of relevant provisions of the Industrial Disputes Act and the Court was required to apply its judicial mind to the facts and circumstances to decide whether continuity of service and all consequential benefits should be awarded or not. It is also necessary for an employee to plead that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. It is also, however, observed in the same judgment that when the employee asserts on oath that he was not employed or engaged in any gainful business the burden will shift to the employer. There was, however, no obligation on the terminated employee to search or secure alternative employment. It is clarified by the Apex Court that decision related to back wages payable on illegal retrenchment or termination may have no application to the case where termination is by way of punishment for misconduct in a departmental enquiry.

4. Having regard to the finding of fact recorded in the impugned award and the evidence relied upon by the labour Court, the award could not, by any stretch, be termed as perverse or illegal. Even in awarding back wages to the respondent, the labour Court has weighed the evidence of irregular and uncertain income of the respondent as admitted by him. In such circumstances, this Court would not be justified in exercising its extraordinary jurisdiction either under Article 226 or under Article 227 to interfere with the just and reasonable award made by the labour Court in accordance with law. Therefore, the petition is dismissed and Rule is discharged with no order as to costs.