

(2010) 04 GUJ CK 0014
In the Gujarat High Court

Case No : Special Civil Application No's. 1272, 1273 and 1274 of 2010

Gandhinagar District Cooperative Milk Producers Union Ltd.	APPELLANT
Vs	
Shobhnaben B. Bhatt	RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 3 GLH 613

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Hasmukh Thakker, for the Appellant; D.S. Vasavada, for the Respondent

Judgement

Mr. H.K. Rathod, J.—Heard learned advocate Mr. Hasmukh Thakker on behalf of petitioner, learned Advocate Mr. D. S. Vasavada appearing for respondent employee. The petitioner has challenged order passed by Controlling authority as well as Appellate Authority under provision of Payment of Gratuity Act. The order passed by Controlling Authority is dated 18/4/2009 and order passed by Appellate Authority is dated 8/12/2009. The Controlling Authority, Ahmedabad has granted remaining amount in favour of employee with 10% interest, which order of Controlling Authority has been confirmed by Appellate Authority.

2. Learned Advocate Mr. Thakker submitted that service of respondents were terminated by way of retrenchment, against which, respondent made reference to Labour Court, Ahmedabad. During pendency of reference, settlement was arrived between administration of petitioner Dairy and respondent, which culminated into an award by Labour Court. As per condition of settlement, petitioner agreed to reinstate respondent :- petitioner Dairy from date of starting of plant of petitioner on position, on which, respondent was working. The respondent would also be paid salary as per fitment to be decided by petitioner. The respondent had agreed to forgo salary of intervening period 13/8/1980 to 21/4/1983. The respondent was reinstated in service on and from 22/4/1983.

3. Thereafter, resignation was tendered, upon which, petitioner had paid amount of gratuity for period from date of reinstatement till date of resignation. Against which, application was preferred by respondent before Controlling Authority, wherein Controlling Authority has calculated amount of gratuity on the basis of date of joining in service of respondent and difference of amount has been ordered to be paid by petitioner with 10% simple interest. Against which, appeal was preferred by petitioner which has been also dismissed.

4. Learned Advocate Mr. Thakker submitted that amount has been deposited by petitioner before filing appeal to Appellate Authority in office of Controlling Authority.

5. Learned Advocate Mr. Thakker raised only one contention before this Court that when back wages of interim period in settlement denied to workmen, question of giving benefit of earlier service period for calculating amount of gratuity can not be granted. In short, his submission is that -s moment back wages of interim period has been forgo by respondent, then workman is not any amount of gratuity for interim period while Considering entire service as continuous service, service. The page 15, being a settlement arrived between parties are agreed to settlement, respondent was reinstated in service without back wages of interim period and his pay was protected in new Pay scale. The Labour Court has passed an award as per settlement on 31/3/1983.

6. Thereafter, Controlling Authority has examined matter whether respondent is entitled amount of gratuity on the basis of continuity of service or not? The Controlling Authority has come to conclusion that back wages of interim period has been forgo by. workmen, but that does not mean that continuity of service is also forgo because a moment order of reinstatement is passed and respondent is reinstated in service, it include continuity of service impliedly. Therefore, on that basis, amount of gratuity calculated by Controlling Authority and difference of amount has been ordered by Controlling Authority with 10% simple interest.

7. Similarly, this aspect has been examined by Appellate Authority considering date of joining in case of Khodabhai Kamabhai Patel 13/11/1973 and date of resignation 13/06/2008, in case of Shivabhai Ambalal Patel date of joining 12/5/1975 and date of resignation 31/5/2008, in case of Shobhnaben B. Bhatt date of joining 30/8/1975 and date of resignation 20/12/2006. The Appellate authority has considered that matter has been settled between parties where claim of back wages has been forgo by respondent employee and there is no such negative direction incorporated in settlement, which denied benefit of continuity of service to each respondent. In absence of negative condition which is not incorporated in terms of settlement, interpretation is that each respondent has been reinstated in service with continuity of service. Therefore, each respondent workman is entitled amount of gratuity from date of joining till date of resignation, which has been rightly calculated by Controlling Authority and confirmed by Appellate Authority and whatever amount has been paid by petitioner has been deducted and remaining amount has been ordered by

controlling Authority with 10% interest. For that, according to my opinion, either of authority has not committed any error and contention which has been raised by learned Advocate Mr. Thakker can not be accepted.

8. Learned Advocate Mr. Thakker has relied upon one decision of Apex Court, In case of Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C.) and Others Vs. Abdul Kareem, , where question of reinstatement is directed by Labour Court without back wages on interim period, But, in award passed by Labour Court no specific direction entitling workmen to consequential benefit and it has been held workmen could not claim benefit and national increment during period remain out of service.

9. I have considered aforesaid decision. The facts of present cases are altogether different. In reported case claims who was made for notional increments though back wages has been specifically denied. In facts of present cases is that while granting reinstatement in service it include continuity of service or not. There is no negative condition incorporated in settlement that continuity of service is not granted. Then it presumed that it impliedly include continuity of service because it is not reemployment in service. Therefore, this decision is not applicable to facts of present cases.

10. Very same question has been considered by this Court in case of Pratikshaben B. Utarankar and anr. v. State of Gujrat & Ors. reported in 2004 (1) GLH 501, where decision of Apex Court in case of. Gurpreet Singh and State of Punjab and Ors. reported in 2002 (92) FLR 838 has been considered. The relevant pares 8 is quoted, as under

"8. The controversy involved in the present petition has been earlier dealt with by this Court in the order dated 7th March, 2002 passed in Special Civil Application No. 13758 of 1993. The relevant observations made by this Court In aforesaid decision are referred as under

"I have considered the submissions made by both I have considered the submissions made by both the learned Advocates. There are ways of granting order of reinstatement by the labour Court. If the order of reemployment would have been passed by the labour Court, then, naturally, continuity of service would not have been there but once reinstatement has been granted, it would include continuity of service too, impliedly. This aspect has been considered by the Apex Court in case of Sanatkumar Dwivedi versus Dhar Jila Sahakari Bhoomi Vikas Bank Maryadit and Others reported in 2001 AIR SCW In para 3 of the said decision, the Apex Court has observed as under:--

"3. It is clarified that this order will not be treated to be resulting in any break in service of the appellant. He will be deprived of only the back wages. The continuity of service and all other notional benefits on that basis will be available to him. It appears that when the order of reinstatement was granted, except depriving him of back wages, it necessarily meant that the continuity of service was implicit in the reinstatement. Even condition Nos. 1 and 2 of the order of

reinstatement clearly indicate that he is reinstated in service with continuity as pay scales and other benefits were also directed to be given."

It is further observations that; "Recently, the Apex Court has considered the same question in case of Gurpreet Singh Vs. State of Punjab and Others, . The relevant observations made by the Apex Court in 1 and 2 of the said judgment are reproduced as under:-

"Leave granted. The Plaintiff is in appeal against the impugned judgment of the High Court of Punjab and impugned judgment of the High Court of Punjab and services stood terminated and he filed the suit for declaring the order of termination null and void. The suit was dismissed. The lower appellate Court, however, on re appreciation of the materials on record, came to the conclusion that the order passed by the D.I.G. must be held to be illegal and consequently directed that the plaintiff should be reinstated in service. Having directed so, the first appellate Court categorically held that the plaintiff will not be entitled for any arrears of salary for the period for which he has not served. The plaintiff assailed the appellate decree by filing a second appeal claiming that he would be entitled to the arrears of Salary. The High Court by the impugned order not only confirmed the decree of the lower appellate Court that the plaintiff will not be entitled to any arrears of salary but also further added that the plaintiff will not get his continuity of service. The plaintiff therefore is in appeal before this Court, 2. Having heard the learned Counsel for the parties and on examining the materials on record, we fail to understand how the continuity of service could be denied once the plaintiff is directed to be reinstated in service on setting aside the order of termination. It is not a case of fresh appointment but it is a case of reinstatement. That being the position, direction of the High Court that the plaintiff will not get continuity of service cannot be sustained and we set aside that part of the impugned order. So far as the arrears of salary is concerned, we see no infirmity in the direction which was given by the lower appellate Court taking into account the facts and circumstances including the fact that the suit was filed after a considerable length of time. That part of the decree denying the arrears of salary stands affirmed and this appeal stands allowed in part to the extent indicated above.

11. In case of M.C. Chamaraju Vs. Hind Nippon Rural Industrial (P) Ltd., . The relevant para 15 is quoted as under :-

"15. There, is another aspect also which, is relevant. The act has been enacted with a view to grant benefit to workers, a weaker Section in industrial adjudicatory process. In interpreting the provisions of such beneficial legislation, therefore, liberal view should be taken. The benefit has been extended by the authorities under the Act to the workman by recording of finding that the applicant (appellant herein) had completed requisite service of five years to be eligible to get gratuity. In that case, even if another view was possible a Division Bench should not have set aside finding recorded by the authorities under the Act and confirmed by a single Judge by allowing the appeal of the employer."

12. In View of above observation made by this Court after considering decisions of Apex Court in case of reinstatement, continuity of service is impliedly included otherwise petitioner may agree for re-employment if earlier service is not to be counted. So, there is a vast difference between re employment and reinstatement. In case of rainstatement, it includes continuity of service but in case of re-employment, Continuity of service is not included. In facts of this case, when settlement arrived between parties order of reinstatement has been passed as agreed by respective parties which include continuity of service as rightly both below has considered it. On that basis, benefit of gratuity has been calculated and after deducting whatever payment made to concern respondent remaining amount of gratuity has been rightly ordered with 10% interest. For that, contention raised by learned Advocate Mr. Thakker can not be accepted.

13. According to my either of authority has not committed any error in deciding application and in appeal proceeding, which would require interference by this Court while exercising power under Art 227 of Constitution of India. Hence there is no substance in each petition, each petition is dismissed. It is directed to Controlling Authority, Ahmedabad to pay amount which is deposited by petitioner by A/c payee cheque in favour of each respondent employee immediately after proper verification.