

(2017) 02 GUJ CK 0196
In the Gujarat High Court
Case No : 9168 of 2015

Govindbhai Haribhai Solanki & ors

APPELLANT

Vs

Executive Engineer

RESPONDENT

Date of Decision : 17-02-2017

Acts Referred:

Citation : (2017) 02 GUJ CK 0196

Hon'ble Judges : G.R. Udhwani

Bench : Single Bench

Advocate : T.R. Mishra, H.S. Munshaw

Judgement

1. Rule returnable forthwith. 2. In Special Civil Application No. 11622 of 2015 notice for final disposal returnable on 14.9.2015 was issued and the impugned judgement and award was stayed. 3. Special Civil Application No. 9168 of 2015 has been filed by two workmen for grant of full benefits under Government Resolution ("G.R." for short) dated 17.10.1988 whereas the other petition is filed by the employer questioning the grant of benefits under G.R. dated 17.10.1988 by the Labour Court in contravention of the said G.R. For convenience, the contesting parties herein are referred to as the "employer" and the "workmen". 4. Special Civil Application No. 9168 of 2015 has been filed by two workmen. Both the workmen are said to have worked with the employer since 1983 as daily wagers. Both of them came to be terminated on 7.1.1989 and eventually, came to be reinstated by common judgement and award dated 26.3.2015 passed by the Labour Court, Bhavnagar, in Reference (L.C.B.) Nos. 219 to 226 of 1989. The said common judgement and award was passed in respect of 8 workmen which included the petitioners herein. Special Civil Application No. 6017 of 2000 came to be preferred by employer challenging the said judgement and award which was partly allowed and the award came to be modified while denying the back wages to the workmen and confirming their reinstatement with continuity of service. 5. After the order in Special Civil Application No. 6017 of 2000, Majadur Kalyan Sangh (Union) raised a demand and eventually reference D. No. 9 of

2009 came to be made claiming the benefits under G.R. dated 17.10.1988 for certain workmen which included the workmen herein. Since the reference was made in 2009, the benefits under the said G.R. came to be awarded to the two workmen herein amongst others with effect from August, 2009. It may be noted that before August, 2009, Govindbhai Haribhai Solanki - workman had already superannuated and retired. 6. The employer has assailed the said judgement and award on the ground that the workman Govindbhai Haribhai Solanki had not actually worked between 1989 and 2006 and having attained the age of superannuation of 60 years in the year 2009, has already retired. It is contended that the said workman had hardly worked for 3 years and thus, was not entitled to any benefit under G.R. dated 17.10.1988. Apropos workman Javalben Palaben Kantaria, it has been contended that she has been reinstated in the year 2006 pursuant to the orders of this court and has retired on 17.1.2016 on attaining the age of superannuation of 60 years and having put in 9 years of service, would not be entitled to full benefits under the G.R. dated 17.10.1988. It was contended by the learned counsel for the employer that since the back wages have been denied to the workmen, such length of service must be ignored for pension as well or for regularisation because the denial of back wages was presumably for the gainful employment. It was contended that taking a contrary view would amount to dual employment for the workmen and unreasonable benefits may accrue to the workmen without their doing actual work for the employer. It was contended that continuity of service awarded by the Labour Court must be treated only for the purpose of the Industrial Disputes Act and when it comes to the claim of benefits under G.R. dated 17.10.1988; it being a policy decision of the Government having nothing to do with the provisions of the Industrial Disputes Act, actual working of the workmen with the employer as prescribed in the G.R. must be taken into consideration. It was also contended that Pension Rules require 20 years of qualifying service and that when it comes to claim of the pension and gratuity, actual work or actual service rendered by the employee for the employer is the criteria. 7. Per contra learned counsel for the workmen while relying upon the decisions in *The Director General, I.C.M.R. v. D.K. Jain & Anr.* 2007 AIR SCW 2408; *State of Gujarat & Anr. v. Mahendrakumar Bhagvandas & Anr.* 2011 (2) GLR 1290; *Amreli District Panchayat v. Pravinkumar Nanalal Trivedi* in Letters Patent Appeal No. 901 of 2016 decided on 3.10.2016; *Pannalal Bhavanishanker Shukla v. District Panchayat Irrigation Survey Department* in Special Civil Application No. 169 of 2011, decided on 19.9.2011; *Bhagirathsinh Bharatsinh Rana v. State of Gujarat* in Special Civil Application No. 19157 of 2015 and cognate matters, decided on 26.2.2016, would contend that once reinstatement with continuity of service was ordered, the workmen would be entitled to all the benefits ignoring the break in service. It was contended that back-wages have also been denied to the workmen and if other benefits like pension and gratuity are also denied, the award awarding reinstatement and continuity of service would stand nullified. 8. On consideration of rival submissions and the material on record as also the cited cases, it is required to be noted that the fact that the workmen were awarded reinstatement with

continuity of service but without back wages by judgement and award dated 17.1.2000 as modified by order dated 2.8.2006 in Special Civil Application No. 6017 of 2000, with effect from 7.1.1989, is required to be borne in mind. When reinstatement was awarded from the specified date i.e. 7.1.1989 with continuity of service, it must be given its due meaning. It is stated that in Special Civil Application No. 6017 of 2000 wherein said award was challenged, it was not stayed and thus, the award continuously operated obliging the employer to reinstate the workmen with continuity of service with effect from the date afore stated. Having failed to perform its obligation to reinstate the workmen, the employer cannot be permitted to now contend that the workmen had worked only for the period between 1983 and 1989 and subsequently from the actual date of reinstatement in the year 2006. The termination of the services of the workmen was found to be illegal by judicial forum which was confirmed by this court and that what was declared as illegal would get obliterated on the date of such illegality as if such illegal order was never passed. Reinstatement and continuity of service must be understood in that context. The expression "continuity of service" would lose its significance if its operation is confined to the limited purpose for Industrial Disputes Act as contended by the learned counsel for the employer when the court which passed order of reinstatement with continuity of service does not confine its meaning to the provisions of the Industrial Disputes Act only, there can be no justifiable reason to restrict the meaning of `continuity of service" as contended by the learned counsel for the workmen. As indicated above, once the action was found to be illegal and reinstatement was ordered, the workman is required to be considered as if in service irrespective of the break given to him on account of termination of service. Further, it was no fault of the workmen that they were not reinstated immediately in the year 2000 when the order of reinstatement was passed by the Labour Court. When the termination was found to be illegal and reinstatement and continuity of service is granted, it must be presumed that had the workmen been allowed to work continuously from the date of initial appointment, they would have complied with the conditions prescribed in the G.R. dated 17.10.1988. It is the employer who prevented them from doing so and therefore, it cannot lie in its mouth to now contend that they have not actually worked. True that this court denied the back-wages to the workmen but that was only because no cogent reasons were assigned by the Labour Court for grant of back-wages and back-wages were mechanically granted without considering the relevant factor. No specific finding was rendered by the Labour Court that the workmen were ever gainfully employed. The contention of the learned counsel for the employer that the back-wages were denied to the workmen presumably on their being gainfully employed is not supported by the facts on record. Be that as it may, continuity of service and back-wages are two distinct and different aspects. Continuity would necessarily imply absence of interruption. Denial of back-wages may be for certain specified reasons. Denial of back-wages would not amount to break in service for it has nothing to do with break in service. 9. In Gurpreet Singh v. State of Punjab & ors.(2003) 20 SCC (L

& S)) the Apex Court held in paragraph No. 3 thus: "Having heard the learned counsel for the parties and on examining the material 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 with 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 stand allowed in part to the extent indicated above." 10. This court in *Kasambhai M. Ajmeri v. District Development Officer in Special Civil Application No. 7588 of 2004* decided on 12.11.2014, was confronted with the case where the workman after being in service for the period between 8.7.1987 and 31.12.1988 i.e. about 16 months came to be terminated with effect from 19.12.1988 and on successful reference, he was ordered to be reinstated with full back wages and continuity of service, was reinstated on 11.5.1994 and was again terminated on 13.12.1994 i.e. after working for about 7 months and again succeeded by judgement and award dated 6.6.2001 and was reinstated on 22.7.2002 with continuity of service and full back wages, observing in paragraph No. 5.10 thus: "Considering the aforesaid and more particularly when the Labour Court granted reinstatement with continuity of service and back wages, the petitioner is required to have continued in service from the date of his initial appointment i.e. from 8.7.1987 for all purposes. When the Labour Court in two References i.e. in Reference (LCK) Nos. 189 of 1988 and 158 of 1995 granted reinstatement with full back wages and continuity of service the period from the date of termination till reinstatement is required to be considered for all purposes and as if the services of the petitioner were not terminated. Any contrary view would nullify the aforesaid two judgement and awards passed by the Labour Court granting continuity of service." Benefits under G.R. dated 17.10.1988 were also granted to the workman in paragraph No. 5.12 thus: "In view of the above, as such the petitioner would be entitled to the benefits conferred under Government Resolution dated 17.10.1988 on completion of 5 years, 10 years and 15 years of service as a daily wager considering his service from the date of his initial appointment i.e. 8.7.1987 and on completion of 5 years, 10 years and 15 years as a daily wager considering his service from 8.7.1987 i.e. from the date of his initial appointment as daily wager and on completion of 5 years, 10 years and 15 years from 8.7.1987, the petitioner shall be entitled to the benefits conferred under Government Resolution dated 17.10.1988. If the contention on behalf of the respondents that the aforesaid period is to be counted from 22.7.2002, the same would nullify the aforesaid two judgement and awards passed by the Labour Court confirmed by this court by which the Labour Court has granted reinstatement with continuity of service. If the contention on behalf of the respondents is accepted, in that case it would amount to give premium to

illegality committed by the respondents which has been quashed and set aside by the learned Labour Court. If the respondents would not have terminated the services of the petitioner illegally, which led to two References, the petitioner workman would have continued in service as daily wager from 8.7.1987." 11. Thus, similar controversy has been set to rest by the Division Bench of this court in the above judgement and there can be no reason for this court to take a different view. In view of above, the argument that being a policy decision in the G.R. dated 17.10.1988, the employer would be entitled to consider the actual number of working days for the purpose of extending the benefits under the said G.R. to the workmen has no merits. There are no merits also in the arguments that actual service of 20 years as per the Pension Rules must be taken into consideration for extending the pensionary and other retiral benefits to the workmen since the policy contained in G.R. dated 17.10.1988 renders the workmen entitled to pensionary and other benefits on satisfying the relevant criteria. In *Tribhovanbhai Jerambhai v. Dy. Executive Engineer* 1998(2) G.L.H. 1, the court held at paragraph No. 8 thus: "Rule 248 of the Bombay Civil Services Rules provide that Government may by general or special order permit service other than pensionable service for performing which a government servant is paid from State revenues or from local fund to be treated as a duty counting for pension. In issuing such order the Government is to specify the method at which the amount of duty shall be calculated and may impose any condition which it thinks fit. Thus Government has necessary power to provide for pension even in cases where service other than pensionable service may become eligible for grant of pension." 12. In the facts of the present case, the back-wages have been denied to the workmen. Therefore, for the period for which the back-wages have been denied, the workmen would be entitled to notional benefits under G.R. dated 17.10.1988 while treating them as in continuous service from their initial date of appointment. 13. In above view of the matter, in the opinion of this court, the Labour Court was not justified in awarding benefits under G.R. dated 17.10.1988 to the workmen only from the date of reference. The judgement and award, therefore, is required to be modified and it is required to be ordered that the workmen would be entitled to the benefits under G.R. dated 17.10.1988 by treating them in continuous service from the initial date of their appointment till the date of their superannuation with a rider that for the period for which back wages were denied to them, they would be entitled to only notional benefits under G.R. dated 17.10.1988. Accordingly, ordered. 14. In view of above discussion, Special Civil Application No. 9168 of 2015 deserves to be allowed and Special Civil Application No. 11622 of 2015 must fail. Accordingly, Special Civil Application No. 9168 of 2015 is allowed. Rule is made absolute. Special Civil Application No. 11622 of 2015 is dismissed. Rule is discharged.