
(2008) 09 GUJ CK 0041

In the Gujarat High Court

Case No : Special Civil Application No. 7980 of 2004

Gujarat Water Supply and Sewage Board

APPELLANT

Vs

Harigar Bhimgar Gusai

RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2008) 09 GUJ CK 0041

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : H.S. Munshaw, for the Appellant; C.L. Soni, for Respondent 1, for the Respondent

Judgement

S.R. Brahmbhatt, J.—Heard learned advocates for the parties.

2. Petitioner, Gujarat Water Supply and Sewage Board, hereinafter referred to as the Board for the sake of brevity, challenges impugned award dated 8-1-2004 passed by Labour Court, Gandhidham in Reference No. 166 of 2001 whereunder the respondent-workman has been ordered to be reinstated with continuity of service with full back wages.

3. The facts, in brief, deserve to be set out as under:

Respondent workman was terminated on 16-11-96. He was in the employment of the Board from 1-6-1990. The termination of the respondent workman was required to be seen in view of the stand taken by the Board in its written statement before the Labour Court. The concerned workman raised industrial dispute and ultimately it came to be referred to competent Court being Labour Court, Gandhidham, which came to be numbered as Reference Case No. 166 of 2001. The Labour Court after appreciating evidence led by both the sides, came to the conclusion that the workman deserves to be reinstated with full back wages and continuity of services and passed order on 8-1-2004. The same is impugned as stated herein above.

4. Mr. Munshaw has submitted that impugned award deserves to be quashed and set aside as the workman appears to have been not vigilant and interested in pursuing his remedy and, therefore, he approached the Court belatedly and it itself is sufficient to come to the conclusion that the workman was not interested in serving the Board. He submitted that fact remains to be noted that workman was in employment of the Board since 1-6-90 and services were put to an end on 16-11-96. He approached belatedly and raised industrial dispute only after period of four years as can be seen as Reference, which was filed in the year 2001. Delay itself is indicative of workman not interested in pursuing his remedy. Mr. Munshaw, however, could not point out any compliance of mandatory provision of the Industrial Dispute Act before the services of workman came to be terminated.

5. Mr. Soni appearing for respondent-workman in presence of workman concerned and under the instruction of concerned workman, submits that respondent workman is prepared to give up entire amount of back wages as granted by the order of Labour Court and submits that reinstatement be ordered within stipulated period. This concession is given under the instruction of respondent workman who is present in the Court. Shri Soni further submitted that in identicle matters of other workmen, this Court rejected the petition filed by the Board being Special Civil Application No. 7836 of 2004 to 7844 of 2004, though in that case workmen were not granted back wages. Present workman is on better footing in as much as he had put in five years services before the unfortunate termination came into being. Therefore, he is entitled to be treated with those who are covered by the earlier award so far back wages is concerned.

6. This Court has heard parties, and perused papers. Labour Court has in unequivocal terms recorded clear finding that there was absolutely no compliance with mandatory provision of Section 25(F) of the Industrial Dispute Act. It is not in dispute that workman was serving with the Board since 1-6-90 to 16-9-1996. Non-compliance with mandatory provision leaves no room for any other view but that the impugned termination was bad and to quash the action which was per se illegal and, therefore, there cannot be any manner of doubt that the action of termination was contrary to the mandatory provision of law rendering the same absolutely unsustainable.

7. The aspect of belatedly raising industrial dispute deserves consideration. Mr. Soni relied upon decision of this Court in the case of Deputy Executive Engineer, Panchayat Sub-Division-2 v. Jitgendrakumar Ranchhodbhai Bhatt reported in 2002(3) GLH 434, which is applicable to the present case so far as belatedly reference is concerned. The plea can be taken care in view of the concession given by the workman concerned, and therefore, the petition deserves to be allowed partly and the awrd deserves to be modified to the extent that the workman is not entitled to any back wages as he has given up expressly before this Court. The order impugned shall be modified only to that extent.

8. The petition, therefore, partly allowed. Rule is made absolute to the aforesaid extent only. No order as to costs.

9. The order has been confirmed so far as reinstatement is concerned. The petitioner is directed to reinstate the concerned workman within a period of four weeks from the date of receipt of this order.

10. Direct service permitted.