

(2014) 08 GUJ CK 0059

In the Gujarat High Court

Case No : Special Civil Application No. 5700 of 2014

Haresh Bijalbhai Sondharva

APPELLANT

Vs

District Development Officer

RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2015) 144 FLR 343 : (2015) 1 GLR 615

Hon'ble Judges : Paresh Upadhyay, J

Bench : Single Bench

Advocate : Jainish P. Shah, Advocate for the Appellant; H.S. Munshaw, Advocate for the Respondent

Judgement

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Paresh Upadhyay, J.—Challenge in this petition is made by the workman to the award passed by the Labour Court, Amreli in Reference (LCA) No. 4 of 2012 dated 20.11.2013. The Labour Court has held that, the action of the respondent authorities of terminating the service of the petitioner was illegal. It further held that, the petitioner workman was entitled to reinstatement with full back wages. However, finally the Labour Court has moulded relief, by awarding lump-sum compensation of Rs. 50,000/- in lieu of reinstatement and back wages. It is this last part of the award which is challenged by the workman, contending that the Labour Court, after having held that he was entitled to reinstatement with back wages, should have granted that relief of reinstatement with back wages.

2. It is recorded that, the very same award was challenged before this Court by the employer as well, in Special Civil Application No. 162 of 2014, however the said petition was dismissed by this Court vide judgment dated 10.01.2014, without even issuing notice to the workman, who was respondent therein. Thus the argument of the employer, that the termination was legal or that the workman was not entitled to reinstatement is not only not accepted by the Labour Court, but is not accepted by this Court also, as per the judgment in

Special Civil Application No. 162 of 2014. It is in these circumstances, this petition is considered by this Court.

3. Mr. Jainish P. Shah, learned advocate for the petitioner workman has submitted that, he was engaged as a Class-IV employee, by the respondent authority on daily wage basis on 09.11.1998. He was asked to work as a Watchman/Peon etc., which he was doing. The petitioner was working as a full timer. Not only that, for years the petitioner was given duty to attend the District Development Officer, who always has been an IAS Officer and who is the highest Authority of the district, where the working hours would be 15 to 18 hours a day. It is recorded that payment of overtime is not the subject matter of this petition. It is submitted that the service of the petitioner was abruptly discontinued on 01.04.2006, without following any process of law. It is submitted that, initially the petitioner had challenged the said termination before this Court by way of a petition being Special Civil Application No. 28951 of 2007, which came to be disposed of by this Court vide order dated 11.03.2008, whereby the petitioner was to make representation to the Authorities and the same was to be considered, keeping in view the observations of this Court inter-alia to the effect that, the Authority shall also keep in view the long service of the petitioner. It is submitted that the said representation was made on 31.03.2008 and the petitioner waited. Since the Authorities did not do anything, the petitioner moved the labour machinery and that is how the dispute was referred by the Appropriate Authority of the Government to the Labour Court, Amreli, with the terms of Reference as to whether the petitioner should be reinstated in service with back wages. It is this Reference on which the impugned award came to be passed. It is contended that the Labour Court has recorded finding to the effect that, the discontinuance of service was illegal. The Labour Court has found that there was violation of Section 25F of the Industrial Disputes Act, 1947. It is submitted that the Labour Court has further found that the Authorities did not consider the case of the petitioner for regularization of service, as per the policy of the Government as a one time measure. It is submitted that the Labour Court has already recorded finding to the effect that the petitioner was entitled to reinstatement and back wages. It is submitted that under these circumstances, this Court may modify the award of the Labour Court to the extent it has denied the reinstatement with back wages.

4. On the other hand, Mr. Munshaw, learned advocate for the respondent Authorities (the employer) has submitted that, the very appointment of the petitioner was as a daily wager, he was not appointed after following due process of law. It is submitted that, that is the factor which had weighed with the Labour Court and under these circumstances, this Court may not interfere. It is further vehemently contended that the impugned award dated 20.11.2013 has already attained finality in the petition filed by the employer i.e. in Special Civil Application No. 162 of 2014 and therefore, now it is not open to this Court to examine the merits of the same award. Attention of this Court is invited to the various orders passed by the employer giving appointment to the petitioner on

six hours basis from time to time. It is submitted that this petition be dismissed.

5. Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds as under.

5.1 The case of the petitioner workman, as accepted by the Labour Court, is that he was working as a Peon at the chamber of the District Development Officer. The said service was for about 15 to 18 hours a day. He is not claiming overtime for the period for which he had worked over the normal stipulated hours for any other employee, but his assertion that he be atleast not treated as a part timer, is accepted. The Authorities have already exploited the petitioner by paying him on six hours basis only, since only then his appointment could be within their competence, but the fact remains that he had worked for years together, as a Peon and the services were abruptly terminated without paying any compensation, and the same is already found to be illegal by the Labour Court. The Labour Court has already framed three issues as recorded in Para-9 of the award. The first was as to whether the termination was illegal. This is answered in affirmative. Thus the termination was held to be illegal. The second issue framed was as to whether the workman was entitled to reinstatement with back wages. Even this issue is answered in affirmative. Thus the Labour Court held the workman to be entitled to reinstatement with back wages. Under these circumstances, it is held that, this was not the case where the exercise of moulding relief by giving lump-sum compensation should have been resorted to by the Labour Court. For this reason, the award needs to be modified by granting reinstatement with appropriate back wages.

5.2 There is one more reason to do so. The Labour Court recorded that, at the time of initial engagement of the petitioner, procedure was not followed by the employer. It is the settled position of law that, it is not open to an employer to contend that, it is he who had to follow certain procedure, which he had not followed, and therefore the workman is not entitled to relief. Reference in this regard can be made to the decision of Hon"ble the Supreme Court of India in the case of Bhartiya Seva Samaj Trust Tr. Pres. and Another Vs. Yogeshbhai Ambalal Patel and Another, . If the reasons recorded by the Labour Court are seen, keeping in view this proposition of law, in the facts of this case, it is held that, the very basis not to grant reinstatement is illegal.

5.3 So far the contention of the respondent that the impugned award has already attained finality in Special Civil Application No. 162 of 2014 is concerned, it would tilt the balance against the respondent employer himself. It was the petition filed by the present respondent Authorities, wherein it was contended that this was not the case where even compensation could have been awarded, since according to the employer, neither the termination of service of the workman was illegal, nor he was entitled to reinstatement, and therefore he ought not to have been awarded any compensation. It is this contention which is negated by this Court, without even issuing notice to the workman. Further, in the petition filed by the employer, the award could not have been modified to the

detriment of the petitioner himself, and therefore no interference was made by this Court. However, that can not be stretched to contend that it would not be open to the concerned workman to agitate that he ought to have been granted relief of the reinstatement with back wages. This argument is therefore rejected. Non interference by this Court in the award passed by the Labour Court, at the instance of the employer, can not mean confirmation of the said award leading to estoppel against the workman to challenge the very award, to the extent it is against him. Further, in the present case, even no notice was issued to the workman, and on this additional point also, that judgment can not bind him.

5.4 Whether the petitioner was working part time or full time is a factual aspect. This is already gone into by the Labour Court. It has held that the workman was entitled to reinstatement. This Court does not see any reason to interfere in the said finding. Since on behalf of the employer, it was vehemently insisted that, as per their record the petitioner was a part-timer, to satisfy the conscience on this vital issue, the petitioner workman was asked to remain present before this Court. The workman was asked certain questions by this Court in presence of the learned advocate for the respondent authorities, and he could state the names of the District Development Officers, in chronology with approximate period during which they had worked, which was between years 2000 to 2006. The list of officers who had worked as District Development Officers at Amreli at the relevant time was separately made available to this Court. There was no material discrepancy in the replies given by the workman as compared to the said list. It is recorded that, this Court had also the benefit of observing the demeanor of the petitioner and considering that, it is recorded that, the Labour Court has committed no error in accepting the assertion of the workman that he was a full time employee and was working as a Peon on the chamber of the District Development Officer. The date of joining the service by the petitioner was 09.11.1998 and there is no dispute on this point.

5.5 Coming to the question of back wages, it is recorded that the date of discontinuance of service is 01.04.2006. Thereafter the workman had preferred a petition before this Court being Special Civil Application No. 28951 of 2007, wherein the merits of the matter were not gone into, however he was asked to make representation, which was made immediately, which remained unattended by the Authorities and thereafter he moved the labour machinery. These factors would show bonafide of the workman. Even if the part of this period is to weigh against the workman, the back wages can be reduced appropriately. Considering the totality, this Court finds that, ends of justice would meet if back wages is denied to the workman to the extent of 50%.

6. In the result, the following order is passed.

6.1 This petition is partly allowed.

6.2 The award passed by the Labour Court, Amreli in Reference (LCA) No. 4 of 2012 stands to the extent it holds that, the action of the respondent authorities

of terminating the service of the petitioner was illegal. The said award further stands confirmed, in part, to the extent it holds that, the petitioner workman was entitled to reinstatement with back wages. The said award is quashed and set aside to the extent it moulded relief, by awarding lump-sum compensation of Rs. 50,000/- in lieu of reinstatement and back wages.

6.3 The petitioner workman is held to be entitled to reinstatement with continuity of service from his initial date of appointment i.e. 09.11.1998, with all consequential benefits. He is held to be entitled to 50% back wages.

6.4 The respondent authorities are directed to reinstate the petitioner workman within a period of two months from today. The wages from the date of the award till actual reinstatement shall be paid within a period of three months from today. The arrears of back wages i.e. from the date of termination till the date of award, shall be paid to the petitioner workman within a period of four months from today.

6.5 The amount of compensation of Rs. 50,000/-, as awarded by the Labour Court, is not received by the petitioner workman and therefore, no order is required to be passed to refund it to the employer or adjustment thereof against the back wages.

6.6 Rule made absolute to the above extent, with no order as to costs.

7. After this judgment is pronounced, request is made on behalf of the employer that, this judgment be stayed for some time to enable the employer to move the higher forum. This request is rejected, considering the fact that two months time is granted to the respondent to reinstate the petitioner workman.