

(2022) 09 GUJ CK 0179
In the Gujarat High Court

Case No : R/Letters Patent Appeal No. 453, 454, 455, 457, 458, 518, 519, 520 Of 2022, In R/Special Civil Application No. 20281, 20298, 20299, 20332, 20333, 20295, 20297 Of 2018, Civil Application (For Stay) No. 1 Of 2021

Lahar Associates(Contractor)	Vs	APPELLANT
Bathibhai Shakrabhai Sodha		RESPONDENT

Date of Decision : 29-09-2022

Acts Referred:

Industrial Dispute (Gujarat) Rules 1966 — Rule 80
Industrial Disputes Act, 1947 — Section 25F

Citation : (2022) 09 GUJ CK 0179

Hon'ble Judges : N.V.Anjaria, J;Bhargav D. Karia, J

Bench : Division Bench

Advocate : Rutul P Desai, Gandhi, Shailesh C Sharma

Final Decision : Dismissed

Judgement

N.V.Anjaria, J

1. All these Letters Patent Appeals arise from common judgment dated 12.12.2019 of learned Single Judge, dismissing the respective Special Civil Applications. The Special Civil Application was directed against the judgment and award of Labour Court, Nadiad, in different Reference Cases. Though the Reference Cases were different, they involved similar facts and identical issue. All the present Letters Patent Appeals, in that view, are also treated for disposal by this common judgment.

2. Heard learned senior advocate Mr. Prashant Desai with learned advocate Mr. Rutul Desai for the appellants, learned advocate Mr. Shailesh Sharma for respondent no.1 and learned advocate Mr. Keyur Gandhi for Gandhi Law Associates for respondent no.2 in all the Letters Patent Appeals, at length.

2.1 Learned advocates for the parties stated that they argued the Letters Patent

Appeals finally. They stated that the pleadings were completed and no further were required to be added or supplemented.

2.2 The first captioned Letters Patent Appeal No. 520 of 2022 is referable to Special Civil Application No. 20281 of 2018, which in turn was directed against judgment and award dated 02.01.2018 of the Labour Court in Reference (LCN) Case No. 268 of 2000.

2.3 The Labour Court partly allowed the Reference. The applicant was held entitled to relief of payment of lumpsum compensation of Rs. 1,50,000/- in lieu of reinstatement and backwages. It was directed by the Labour Court that the amount would be paid to the workman concerned within 60 days, where-after, it will carry interest at the rate of 9%.

3. The term of reference before the Labour Court was whether the workman concerned should be reinstated on his original post with backwages. The first parties in the reference were Lahar Associates-Appellant-petitioner, who was the contractor; Hindustan Coca Cola Bottling North-West Pvt. Ltd., was the principal employer.

3.1 Looking at the prayer in the main Special Civil Application, in each case the petitioner Lahar Associates-the contractor prayed to set aside judgment and award in the Reference Case concerned. In first captioned case it was judgment and award dated 02.01.2018 in Reference (LCN) Case No. 268 of 2000. In all cases, similar awards of lumpsum compensation of Rs. 1,50,000/- were passed.

3.1.1 The details relating to different Letters Patent Appeal in this group such as the name of the employee, date of termination, period of service, etc., are tabularised hereunder,

Sr. No

LPA No.-Name of Appellant

Name of Employee

Termination date-Period of Service-Per day wages

Lumpsum compensation awarded by Tribunal

1.

453/2

Lahar Associates

Dineshbhai Gendabhai Sodha Parmar

01.01.2020

2 Yrs.

69.40

1,50,00/-

2.

454/2

Lahar Associates

Pravinbhai Japabhai Sodha Parmar

01.01.2000

2 Yrs.

69.40

1,50,00/-

3.

45 /2

Lahar Associates

Murtaza Ali Ahmadali Kureshi

01.01.2000

2 Yrs.

69.40

1,50,00/-

4.

457/2

Lahar Associates

Shaileshkumar Ramanbhai Sodha

01.01.2000

2 Yrs.

69.40

1,50,00/-

5.

458/2

Lahar Associates

Ikbalhusain Amirmiya Malek

01.01.2000

2 Yrs.

69.40

1,50,00/-

6.

518/2

Lahar Associates

Nazirmiya Ahmedmiya Malek

01.01.2020

2 Yrs.

69.40

1,50,00/-

7.

519/2

Lahar Associates

Azgarmiya Gulamraso I Khokhar

01.01.2020

2 Yrs.

69.40

1,50,00/-

8.

520/2

Lahar Associates

Bathibhai S Sodha

01.01.2020

2 Yrs.

69.40

1,50,00/-

3.1.2 Before the Labour Court, in the Statement of Claim, at exhibit 3, the second party workmen stated that they were working as the employee of the contractor since many years, but, under the guise of contractual employee, the work of the principal employer was required to be done. The workmen were

given work of collecting and sorting of the cold drink bottles, which according to the workmen was work of permanent nature. It was their case that the work was not such to be performed through the contractor, yet the principal employer had engaged the contractor.

3.1.3 It was the grievance that the workmen were given salary lower than the employee of the principal employer and other benefits were also not extended to them, which were given to the regular employees. It was the grievance that the services of the workmen were illegally terminated and after termination, other employees were employed. Noticeably, in the Statement of Claim, though the grievance about the termination was mentioned, the date of termination of services was not indicated.

3.2 The principal employer-respondent no.3, filed its reply to the Statement of Claim at exhibit 6, wherein it was contended that no employer-employee relationship existed between it and the workmen. It was then contended that since the date of termination was not mentioned, they miserably failed to prove the case. It was stated that the workman concerned never discharged duties as employee of respondent no.3 and that the labour contractor employed him with others. For the work of loading, unloading, housekeeping, the contractor was employed. The work performed by such employees of the contractor was of sorting of bottles of soft-drinks. The case of the workmen that adequate salary was not paid to them, etc., was specifically denied by respondent no.3.

3.3 Labour contractor-appellant also filed its reply at exhibit 26. It was stated that the labour contractor had obtained necessary license under the law and accordingly engaged in supplying the manpower. It was stated that as per the agreement with respondent no.3 Company, the manpower was supplied and allocation of work, supervision over the duties, payment of salary to them, etc., were done by the contractor. It was stated that since the respondent no.3 Company wanted additional number of persons, such persons were also supplied. It was the case that all were in temporary employment and upon non-availability of work, they were discharged from services. The appellant-labour contractor further stated that none of the persons had completed 240 days in a year and the never enjoyed the status of permanent employee.

3.4 The Labour Court after considering the rival case, recorded its findings inter alia that the workman concerned had discharged duties for 2 years and his services came to be terminated with effect from 01.01.2000 by opponent no.1-labour contractor. It was recorded that the contract of respondent no.1 was continued till 2013-14. It was recorded that due to the not remaining present on part of respondent no.1, long period of 17 years passed by in the proceedings of reference. It was recorded on the basis of evidence that the workmen were receiving Rs.69.40 ps. as daily wage at the time when the services came to be terminated.

3.4.1 The finding was arrived at that in terminating the services of the workman

concerned, there was breach of section 25F of the Industrial Disputes Act as the workman had put in continuous service, as defined in law. However, on consideration of various factors including the aspect that the contract between respondent no.1 and principal employer had come to an end in 2000, reinstatement in original post was found to be not possible, resultantly, the labour court awarded lumpsum compensation to the workman in each case.

3.5 While assailing the judgment and award of the Labour Court, the petitioner contractor stated that it was a registered contractor under the Contract Labour (Regulation and Abolition) Act, 1970 and had entered into contract with respondent no.2 company employing 141 workmen in total, out of which, 32 workmen were engaged as supervisors; the contract was entered on 01.03.1998 and thereafter, fresh contracts were executed with similar conditions. It was stated that petitioner resorted to retrenchment of 32 employees on 11.07.2001 and paid to them the retrenchment compensation while discharging them from services. It was sought to be contended that respondent had completed 240 days of service, and had also chosen to join other contractor.

3.6 The learned Single Judge noticed the facts including that since the second respondent company decided to put an end to the contract of providing supervisory and clerical staff for the work, 32 employees were rendered excess and came to be retrenched by the petitioner-contractor. It was recorded that under Rule 80 of the of the Industrial Dispute (Gujarat) Rules 1966, necessary information was forwarded to the competent authority. Learned Single Judge further noted that while retrenching 32 employees, amount of retrenchment compensation, one month's notice pay, due salary, the amount of gratuity, privilege leave salary, bonus as well as the difference in the salary were paid and thus all legal dues till the date of retrenchment were discharged. It was recorded that some of the employees did not accept the amount, but subsequently, received the same.

3.6.1 The submission on the part of the petitioner contractor that workmen did not complete 240 days in a year concerned, did not find favour by learned Single Judge and it was observed that there was no proof with regard thereto. It was observed that the employees were engaged in supervisory work when the services were ended. Learned Single Judge was of the view that in totality of the facts and circumstances, inspite of granting reinstatement, lumpsum compensation would meet the ends of justice and that it would strike the balance.

3.6.2 Learned Single Judge observed,

18. The Court after taking into consideration the rival contentions and averments, framed the issue as to whether the termination was illegal and whether the relief of reinstatement and other reliefs were necessary or not. The Labour Court, Nadiad having held in favour of respondent No.1 that the termination was illegal. Instead of granting the relief of reinstatement with back wages and continuity of service granted the lumpsum compensation of

Rs.1,50,000/- and in Reference (L.C.N.) No.13 of 2002 granted the lumpsum compensation of Rs.1,31,708/-. According to the Labour Court, respondent No.1 was a daily wager, his services came to be terminated in the year 2000. If such services were not terminated as the contract had continued upto 2013-2014, he could have worked till then. The age of respondent No.1 at the time of termination and his age at the time of deciding the reference was also considered. The Labour Court, Nadiad also took note of the possible rights and essential commodities and other factors. The only because the contract of respondent No.1 had not continued beyond 2013-2014, the Court deemed it appropriate to award the compensation to the workman by way of a lumpsum compensation."

4. The very contentions which are canvassed before learned Single Judge came to be advanced by the appellant inter alia that the Labour Court committed error in granting lumpsum compensation and confirming such direction of learned Single Judge. It was contended that it could not have been held that there was breach of Section 25F of the Industrial Disputes Act on the part of the appellant. It was contended that the workmen were never regular employees and there was no evidence to show that they had worked continuously. It was submitted that lumpsum compensation was awarded by Labour Court on presumptive basis that respondent would have continued the services of the employee concerned in future years.

4.1 On the other hand, learned advocate for the respondent supported the impugned judgment and award of the Labour Court as well as that of learned Single Judge, by submitting that the same did not warrant interference in exercise of the jurisdiction under Letters Patent.

5. It is an admitted fact, also noted by learned Single Judge, that there was no contention raised that the contract was bogus or that it was a sham arrangement. The status of the parties as labour contractor registered under the Contract Labour (Regulation and Abolition) Act, 1970 and respondent no.2 being principal employer was not in dispute. It was also not in dispute that the appellant-petitioner had supplied manpower to the principal employer who were the workmen, and they sought reference seeking reinstatement on the original post on the ground that they were required to be treated as employees of the principal employer in view of their nature of work and that they were not paid the due salary and were not given the attendant benefits made available to the regular employees. Before the Tribunal, the legal relationship was not in dispute and it was also not in dispute that the workmen were employed through the contractor.

5.1 Though it was attempted to contend that in awarding lumpsum compensation, the Labour Court exceeded its jurisdiction, considering the facts of the case, term of reference and legal relationship between parties, noted as above, the award could have been passed only against the contractor. On that score, no error was committed by the labour court and learned Single Judge in

confirming the order.

5.2 Coming to the aspect of lumpsum compensation, it is open to the Labour Court or Industrial Tribunal to pass in given set of facts and circumstances award of compensation in lieu of the reinstatement. In *Bharat Sanchar Nigam Ltd. Vs. Man Singh* [(2012) 1 SCC 558], there was non-compliance of Section 25F of the Industrial Disputes Act, in case of daily wager who was granted the relief of payment of compensation and not reinstatement.

5.3 It was reiterated by the Supreme Court that although the order of retrenchment passed under Section 25F may be set aside, but award of reinstatement should not be passed. It was observed that daily wager had worked for short period. The appellant of the said case was directed to pay Rs.2,00,000/- each to the respondents as compensation instead of reinstating them.

5.4 When the relief of granting lumpsum compensation in lieu of reinstatement is applied by the labour forum or the courts, certain relevant factors are required to be kept in mind. All these circumstances without being exhaustive, are the fact that the workman's status is daily rated and that he is not employed permanently, that he is not holding permanent post, the nature of employment, span of service put in, manner and method of appointment, etc. The gap between the date of termination till the time when the question of granting relief arose is also relevant factor. There may be other special or peculiar aspects of the case which may have to be taken into account.

5.5 The above criteria emanate from the decision of the Supreme Court in *Jasbir Sing vs. Haryana State* [(2009) 15 SCC 327], which was relied on. The Apex Court observed as under,

"In the last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate. (See *U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey* [2006 (1) SCC 479], *Uttaranchal Forest Development Corpn. v. M.C. Joshi* [2007 (9) SCC 353], *State of M.P. v. Lalit Kumar Verma* [2007 (1) SCC 575], *M.P. Admn. v. Tribhuban* [2007 (9) SCC 748], *Sita Ram v. Moti Lal Nehru Farmers Training Institute* [2008 (5) SCC 75], *Jaipur Development Authority v. Ramsahai* [2006 (11) SCC 684], *GDA v. Ashok Kumar* [2008 (4) SCC 261] and *Mahboob Deepak v. Nagar Panchayat, Gajraula* [2008 (1) SCC 575].)" (para 9)

6. In light of the above principles, if the aspects involved in the present case of the present workmen are adverted to, there is no gainsaying that each of the workmen worked for only two years. At the time of their termination, they had been receiving Rs. 69.40 ps as daily wage. Their services were terminated on 01.01.2000, and thus, 18 years have passed at the juncture Labour Court would

be granting relief to them. They were employees of the contractor.

6.1 Looking to all above aspects and circumstances, the Labour Court was eminently justified in not granting relief of reinstatement, instead awarding lumpsum compensation. In totality of facts, lumpsum compensation of Rs.1,50,000/- could be said to be proper and reasonable looking to the length of service put in by the workmen and other relevant factors as highlighted. This Court is in agreement with the reasons supplied by learned Single Judge. The judgment of learned Single Judge could not be said to be booking any error whatsoever.

7. All the Letters Patent Appeal stand meritless and are summarily dismissed. As the Letters Patent Appeals are dismissed as above, the respective Civil Applications do not survive for any orders.

They all are accordingly disposed of.