

(2014) 05 GUJ CK 0010

In the Gujarat High Court

Case No : Special Civil Application No. 1274 of 2007

L.S. Patwa High School

APPELLANT

Vs

Sher Biladkhan Bismillakhan

RESPONDENT

Date of Decision : 01-05-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 17(B), 17B

Citation : (2014) LabIC 3568

Hon'ble Judges : Kaushal Jayendra Thaker, J

Bench : Single Bench

Advocate : K.M. Patel, Sr. Advocate and Varun K. Patel, Advocate for the Appellant; Amrish K. Pandya and Sanjay Prajapati, Advocate for the Respondent

Judgement

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Kaushal Jayendra Thaker, J.—By way of this petition, the petitioners have challenged the judgment and award of the Labour Court, Visnagar, Dated: 04.11.2006, rendered in Reference (LCK) No. 538/1993, whereby, the Labour Court set aside the order of the petitioners dated 13.07.1993 and directed them to reinstate the Respondent-workman on his original post along with continuity of service and 50 per cent, back-wages and other consequential benefits. The brief facts giving rise to the present petition are that the Respondent was engaged as a watchman by the petitioners for the purpose of looking after the school premises, since, the school premises had no boundary, at that point of time. The Respondent-workman was getting a monthly salary of Rs. 250/- per month. According to the petitioners, the work of the Respondent-workman was hardly of two hours before commencement of the school activities. It is, further, the case of the petitioners that after March 1993, Respondent-workman stopped reporting for his duty on his own and later on instituted the aforesaid reference before the Labour Court. The stand taken by the petitioners before the Labour Court was that, since, compound wall is constructed surrounding the school premises, services of the Respondent-workman are, even otherwise, no longer required. On

the other hand, the case of the Respondent-workman was that his services were terminated by the petitioners by orally without following the due procedure of law. The Labour Court, then, passed the impugned order. Hence, the present petition.

2. Mr. Patel, learned Advocate for the petitioners, submitted that the Labour Court erred in passing the impugned order and it ought to have appreciated the fact that the Respondent workman was engaged as casual watchman for the purpose of looking after the school premises. He, further, submitted that the Labour Court committed an error in believing the case of Respondent-Workman that his services were terminated by the petitioners by an oral order and, in fact, it was the Respondent-workman, who, on his own, stopped reporting for duty. He, then, submitted that the Labour Court failed to appreciate the fact that in his Statement of Claim, the Respondent-workman nowhere pleaded that he was unemployed. He, therefore, prayed that the petition be allowed.

3. In support of his submission, Mr. Patel, placed reliance on the following decisions;

(1) Nagar Mahapalika (Now Municipal Corpn.) Vs. State of U.P. and Others, ;

(2) Municipal Council, Sujampur Vs. Surinder Kumar, ;

4. On the other hand, Mr. Pandya, learned Advocate for the Respondent-workman strongly supported the order of the Labour Court and submitted that the Labour Court passed the impugned award after taking into consideration the material placed before it, and hence, this petition being devoid of merit, be dismissed.

5. Heard learned Counsels for the parties and perused the material on record including the order of the Labour Court with their assistance. Before proceeding any further with the matter, the note of the fact may be taken that, at the time of recording of his deposition (Ex-hibit-9) before the Labour Court, the Respondent-workman clearly stated that, though, he made sincere efforts, he could not get the work and on account of that this Court vide order dated 19.09.2007, directed the petitioners to pay full last drawn wages to the Respondent with effect from 04.11.2006 in compliance of Section 17(B) of the I.D. Act, i.e. from the date of passing of the impugned order by the Labour Court.

6. Before the Labour Court, the deposition of the Respondent came to be recorded vide Exhibit-9. In his evidence, the Respondent-workman stated that it is not true that he was not engaged as a regular employee and that he worked upto March-1993 only. The Respondent-workman, further, denied that he on his own stopped reporting for duty. The Respondent-workman also stated that despite sincere efforts, he could not get any work.

7. As against this, the witness of the petitioners, namely Shri. Mohanlal Trikamlal Patel (Exhibit-24), in his evidence, admitted that the Respondent-workman was engaged as "Watchman" and he worked upto March-1993. According to this

witness, the Respondent had left the job on his own. However, at the same time, this witness fairly conceded that they did not send any written communication to the Respondent to report for duty. Further, from the evidence of another witness examined by the petitioners, namely Shri. Bachubhai Hiralal Soni (Exhibit-25), it transpires that no departmental inquiry was conducted against the Respondent-workman. The evidence of this witness, further, shows that the Respondent-workman was neither paid notice pay nor retrenchment compensation. It is on the basis of the above evidences that the Labour Court came to the conclusion that the petitioners failed to prove that the Respondent stopped reporting for duty on his own and that his services were terminated illegally, without following the due procedure of law. This Court is, therefore, of the opinion that the Labour Court committed no error in ordering reinstatement of the Respondent-workman with 50% per cent backwages. However, while holding so this Court cannot lose the sight of the fact that the order of the Tribunal was passed in the year 2006 and much water has flown away since then. On an inquiry from the Court, it is reported that the Respondent-workman has already attained the age of superannuation. Besides that, the fact remains that after so called termination of the services of the Respondent-workman, the petitioners have neither retained the persons junior to the Respondent-workman nor have employed any other person on his post. Hence, the case of the petitioners that after the construction of compound wall around the school premises, they do not require services of a watchman, deserves to be accepted. Under the aforesaid circumstances, ordering the petitioners to reinstate the Respondent-workman after this many years, especially when the purpose for which his services were obtained in the past no longer survives, would not serve any purpose. Instead, in view of the fact that the Respondent-workman has been paid full last drawn wages by the petitioners in compliance of the provisions of Section 17B of the Industrial Disputes Act, 1947, as per the order of this Court dated 19.09.2007, it would be just and proper, if, the petitioners are directed to pay some lump sum amount to the Respondent-workman in lieu of reinstatement, retrenchment etc.. In the result, this petition is partly allowed and the petitioners will pay an amount of Rs. 40,000/- (Forty Thousand Only) along with interest at the rate of NINE per cent per annum from the date of award of the Labour Court, i.e. 04.11.2006 to the Respondent-workman, over and above the amount paid by them to the Respondent-workman under Section 17B till date, in lieu of reinstatement and 50% backwages. The order of the Labour Court stands MODIFIED, accordingly. Rule is made absolute to the above extent.