

(2022) 09 GUJ CK 0064

In the Gujarat High Court

Case No : R/Special Civil Application No. 12757 Of 2019

Manavadar Nagarpalika Through Chief Officer

APPELLANT

Vs

Chandrikaben Devshibhai Baraiya

RESPONDENT

Date of Decision : 12-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 25F, 25G, 25H

Citation : (2022) 09 GUJ CK 0064

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Krishnan Ghevariya, Devnani, Neha M Kayastha

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. On the last occasion Ms.Kayastha learned advocate for the respondent was not present and today also, when the matter is called out, she is absent.

2. This petition under Article 226 of the Constitution of India challenges the order of the Labour Court passed in Recovery Application No.120 of 2018, by which, the application of the respondent – workman for recoveries for the period from 22.03.2016 to 14.10.2018 has been allowed.

3. Mr.Krishnan Ghevariya learned counsel for the petitioner would submit that initially the award setting aside termination in the year 2000 was allowed on 03.10.2015, by which, the respondent was allowed to be reinstated with continuity of service but without back-wages. That award of the Labour Court was challenged by filing Special Civil Application No.10025 of 2016. This Court on 09.03.2017 allowed the municipality's petition setting aside the award of the Labour Court in favour of the respondent and directing payment of compensation. On a challenge by the respondent-workman before the Division Bench of this Court in Letters Patent Appeal No.1769 of 2017, the Division Bench

remanded the matter to the learned Single Judge for a fresh consideration. That order of the Division Bench was passed on 28.03.2018. Pursuant to the remand, the learned coordinate bench of this Court by an order dated 11.09.2018, allowed the petition of the workman and directed reinstatement without continuity of service.

4. Mr.Krishnan Ghevariya would therefore submit that the workman was not entitled to the actual benefits for the years 2016 to 2018, when the award of the Labour Court was set aside and it was only in March 2018, on remand the issue was finally decided in September 2018 with a direction to reinstatement followed from the period 2016 to 2018. There was no direction that mandated the municipality to reinstate the petitioner.

5. The sequence of events therefore would indicate that after the award was passed in the year 2015, the same was a subject matter of challenge before this Court in Special Civil Application No.10025 of 2016. This Court on 09.03.2017 passed the following order:

"3 In *Bharat Sanchar Nigam Limited v. Bhurumal* (2014) 7 SCC 177, it is held that if in case of daily wager in public employment, breach only of section 25F of the Act is found, reinstatement would not be automatic but appropriate remedy would be compensation. Confronted with this situation, the learned counsel for the respondent workman submits that the respondent workman would be making a representation praying for compensation within one week from today and the learned counsel for the petitioner Municipality submits that if such representation is made by the respondent workman, the same shall be considered keeping in mind the observations made by the Labour Court and this court as regards breach of section 25F of the Act and necessary compensation would be computed and offered to the workman.

4. In above view of the matter, the petition is disposed of at the admission stage, with the direction to the petitioner Municipality to decide the representation, if made by the respondent workman, as indicated above. In so far as the finding regarding breach of section 25G and 25H and direction for reinstatement and continuity of service are concerned, they cannot be sustained and accordingly; that part of the award is quashed and set aside."

6. On a challenge by the workman, the Division Bench on 28.03.2018 in Letters Patent Appeal No.1769 of 2017 has held as under:

"6. Having regard to the fact and circumstances of the case and perusal of the order under challenge, we find that the Labour Court in no uncertain terms held that the employer committed breach of Sections 25F, 25G and 25H of the Industrial Disputes Act, 1947 based on appreciation of material on record namely registers maintained for the years 1995, 1997 to 1999 and that workman had in fact worked for 291, 310, 309 and 289 days respectively. By applying the parameters of various decision of the Apex Court and considering the provisions of the Industrial Disputes Act, 1947 it was deemed just and proper not to award

backwages but workman was directed to be reinstated in service with continuity and according to us the learned Single Judge ought not to have relegated the workman for the remedy of representation irrespective of any concession made by learned advocate appearing on behalf of the workman instead ought to have considered the case on its merit.

7. We have been persuaded by the submission made by learned advocate appearing on behalf of the appellant that error appears on the face of record as such warranting interference by this Court and according we find that a case is made out to quash and set aside the order impugned dated 09.03.2017 passed in Special Civil Application No. 10025 of 2016 and accordingly the impugned order dated 9. 03.2017 is hereby quashed and set aside and the matter is remitted to the learned Single Judge for taking decision afresh on merit and in accordance with law as soon as possible. Appeal is allowed accordingly."

7. The matter was therefore remitted back to the learned Single Judge for taking a fresh decision on merits.

8. That decision was taken only on 11.09.2018, wherein, the Court ordered reinstatement without continuity of service. Admittedly therefore there was no fault on the part of the petitioner-municipality for the periods for which the orders have been passed by the Labour Court in the Recovery Application at the hands of the respondent.

9. Accordingly, the order dated 12.02.2019 passed in Recovery Application No.120 of 2018 is quashed and set aside.

10.The petition is allowed. Direct service is permitted.