

(2009) 12 GUJ CK 0006
In the Gujarat High Court

Case No : Special Civil Application No's. 6505 and 13533 of 2009

Morbi Nagar Palika

APPELLANT

Vs

Pravinbhai Motilal

RESPONDENT

Date of Decision : 18-12-2009

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 25F, 25H

Citation : (2009) 12 GUJ CK 0006

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

Bench : Single Bench

Advocate : Niraj Buch, for Nanavaty, for the Appellant; M.G. Nagarkar, for the Respondent

Judgement

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

2. As both these matters are arising out of the challenge to award and order dated 22nd October, 2008, passed by the Presiding Officer, Labour Court, Rajkot in Reference (L.C.R.) No. 215 of 1991 they have been heard together and are being disposed of by this common oral judgment.

3. The Special Civil Application No. 6505 of 2009 is filed by the second party employer in Reference (L.C.R.) No. 215 of 1991 challenging the final direction of reinstatement without continuity of service and backwages in case of workman whose services were terminated on 10.6.1989 without following the due procedure of law and Section 25F of the Industrial Disputes Act, 1947.

The Special Civil Application No. 13533 of 2009 is filed by the workman challenging the award, as the same did not contain any direction with regard to continuity of service and the backwages, though orders reinstatement.

4. This Court on 12.8.2009, while issuing notice in Special Civil Application No. 6505 of 2009, passed the following order:

Shri Buch, learned advocate for Nanavaty Advocates for the petitioner submits that the original tenure of employment before the termination is such, which militates against the order of reinstatement. He submits that as the impugned award is challenged, the entire matter could be disposed of on an appropriate order being made with regard to some lump-sum amount in lieu of reinstatement. In view of this submission, let there be a notice for final disposal returnable on 27/8/2009. Direct service permitted.

Thereafter, the workman seems to have filed Special Civil Application No. 13533 of 2009. The employer petitioner in Special Civil Application No. 6505 of 2009 is a Municipality and as such is an instrumentality of the State which is governed by the rules and regulations applicable in respect of recruitments etc. The workman has claimed that he was serving as Rojmadar i.e. as a daily rated workman in the Municipality. In the statement of claim the workman contended that he was working in this Municipality for one year and more, his services came to be terminated with effect from 10.6.1989 without following any procedure of law and without paying any retrenchment compensation in lieu of notice, notice pay etc. The termination was brought about illegally and, therefore he raised industrial dispute which was referred to the competent Court wherein it was marked as Reference (L.C.R.) No. 215 of 1991. The Court after recording the evidence of both the sides came to the conclusion that the workman deserved to be reinstated as there was non-compliance with Sections 25F and 25H of the Industrial Disputes Act, 1947 and ordered his reinstatement without backwages and without continuity of service. It is stated hereinabove that both the parties have been aggrieved by this order and have preferred the respective petitions mentioned hereinabove.

5. Shri Kosthi, learned advocate appearing for the petitioner workman in Special Civil Application No. 13533 of 2009 contended that the order of reinstatement without backwages being an order contrary to the principle of law, it ought to have been viewed in its proper perspective and the Labour Court ought have granted not only the continuity in service but also backwages. Shri Koshti relied upon the decision of this Court in the case of Rajkot Municipal Corporation v. Kishor Govind reported in 1996(1) G.L.H 84 and in the case of Central Bank of India Vs. S. Satyam and others, He also relied upon the decision of the Apex Court in the case of Bank of Baroda v. Ghemarbai Harjibhai Rabari reported in AIR 2005 SCW 1817. In support of his contention he stated that when the breach of Section 25F is established by the workman, then the order of reinstatement as a matter of course is required to be passed and the workman who is advanced in age if not granted continuity of service, would face the same jeopardy of being retrenched once again with impunity. In order to prevent such tendencies in the employer the continuity of service is very essential relief which ought to have been granted by the Court. When the Court was granting reinstatement, breach of Section 25F of the Industrial Disputes Act, 1947 was writ large in the matter yet the Court did not consider it fit to grant continuity of service and backwages and, therefore to that extent the order is bad in law and is required to be

quashed and set aside. Therefore, this Court may pass appropriate order as it may deem fit.

In the alternative, Shri Koshti submitted that the petitioner workman is ready and willing to give up his backwages if he is being continued in service with continuity of service. Shri Buch learned advocate appearing for the employer Municipality contended that in view of many decisions of the Apex Court ,in respect of the relief to be granted, then passage of time, from the date of termination till the date of order is to be considered and the order of reinstatement is not technically to be passed. The Court is required to weigh all the attending circumstances while passing the order of reinstatement. In the instant case, therefore, at the initial stage while making submission for admission, the advocate had submitted that the matter could be disposed of on appropriate order being made with regard to lumpsum amount in lieu reinstatement.

6. Shri Koshti submitted that the order so far as reinstatement is concerned needs no interference as the Court has proceeded on the correct reasoning of drawing adverse inference and taking note of the conduct of the employer who has initially indicated that the documentary evidence in the form of record book be made available but subsequently changed the stand and stated that on account of earthquake and its aftermath, the record was not available. This being viewed as a smart practice adopted by the employer to the Court, the Court has rightly deprecated the same. This Court, under Article 227 of the Constitution of India, may not interfere with the same. Shri Koshti, learned advocate for the workman submitted that the testimony of the witness of the management goes to show that breach of Section 25H is also established in as much as it has come out of the cross-examination of the witness of the management that the employer had engaged fresh hands after termination of the present petitioner-workman.

7. This Court is unable to accept the submission of Shri Koshti for the following reasons:

1) The workman in his statement of claim has not specifically mentioned as to when he joined service of the employer. In the statement of claim, it is mentioned that he has served for more than 1 year thereafter his services came to be terminated. Assuming that the workman did perform his duty and worked for 3 years, then also it is very relevant to note that the period of only three years needed to be taken into consideration while ordering reinstatement. The termination is falling in the year 1989 and the order of reinstatement is made in the year 2008. The workman has not established as to what categories of fresh hands were engaged and in what capacity or whether his recruitment was done in accordance with law, all these fine questions have not even been addressed to by the Court and therefore merely on establishing of one fact of breach of Section 25F, which occurred way back in the year 1989, the workman ought not to have been reinstated.

8. In my view, in such a case, to meet with the ends of justice appropriate direction of awarding lumpsum payment in lieu of reinstatement deserves to be passed. At this stage, the grievance was made with regard to inaction on the part of the respondent employer in not taking any action after date of enforceability of the award till the petition was filed. The Court is, therefore, required to take that period while awarding lumpsum payment, in lieu of reinstatement.

9. Shri Buch, at this stage, under instructions, informed the Court that as on date Municipality is paying Rs. 140 per day to the daily wagers. Therefore, if the award had not been challenged, then the workman would have started receiving the wages of Rs. 140 per day from the date of enforceability of the award.

10. This Court is of the view that the aforesaid calculation is required to be borne in mind while awarding lumpsum amount that comes to Rs. 40,000/- for 10 months and retrenchment compensation would come to around 1 month's salary and now if he is not reinstated and an order of lumpsum amount is made, then the services that might have been rendered by him also needs to be taken into consideration. Accordingly, the workman was entitled to receive backwages of Rs. 1,00,000/- as lumpsum payment in lieu of reinstatement with all the benefits or claims. In stead of the order of reinstatement the award shall stand modified and the award now the workman is accorded Rs. 1,00,000/-.

11. In view of the above, the order impugned in this petition stands modified accordingly. Rule is made absolute to the aforesaid extent in Special Civil Application No. 6505 of 2009. Special Civil Application No. 13533 of 2009 deserves to be dismissed and is accordingly dismissed and disposed of. Rule is discharged in Special Civil Application No. 13533 of 2009. No order as to costs.