

(2010) 07 GUJ CK 0046
In the Gujarat High Court

Case No : Special Civil Application No's. 3822 and 4514 of 1998

Nirav Synthetics Pvt. Ltd.

APPELLANT

Vs

Ramanbhai Muljibhai Chauhan

RESPONDENT

Date of Decision : 30-07-2010

Acts Referred:

Citation : (2010) 07 GUJ CK 0046

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : D.G. Chauhan, in Special Civil application No. 4514/1998 and Mukesh H. Rathod, in Special Civil application No. 3822/1998, for the Appellant; Mukesh H Rathod, for Respondent 1 in Special Civil Application No. 4514/1998, D.G. Chauhan, for Respondent 1 and C.M. Shah, AGP for Respondent 2 in Civil Application No. 3822/1998, for the Respondent

Judgement

K.S. Jhaveri, J.—As common questions on law and facts are involved in these petitions, they are disposed of by this common judgment.

2. The petitioner of Special Civil Application No. 4514 of 1998 has prayed to quash and set aside the impugned award dated 12.07.1996 passed by the Labour Court, Anand in T. Application No. 410 of 1988, whereby the Labour Court has directed the petitioner to reinstate the respondent with continuity of service and full back wages and also prayed to quash and set aside the order dated 14.02.1997 passed by the Industrial Court, Ahmedabad in Appeal [IC] No. 38, whereby the the said appeal was rejected.

3. The petitioner of Special Civil Application No. 3822 of 1998 has prayed to direct respondent no. 1 to reinstate the petitioner with continuity of service and pay full back wages.

4. The short facts o the case are that the workman at the relevant time was working as Helper with the Company and he worked as such more than three years. The workman was earning daily wage of Rs.21.70 paise. The services of

the workman came to an end w.e.f. 01.08.1988. Being aggrieved by the said order, the workman preferred T. Application No. 410 of 1988 before the Labour Court, Ahmedabad. Before the Labour Court both the parties adduced evidence and after appreciating the material produced before it, the Labour Court allowed the application with the aforesaid directions. Against the said order, the Company preferred an Appeal being Appeal [IC] No. 31 of 1997 before the Industrial Court. The Industrial Court vide order dated 14.02.1997 rejected the said appeal. Hence, these petitions.

5. Heard learned Counsel for the respective parties and perused the documents on record. The learned Counsel for the Company states that the Company is closed since 16.06.1995. In view of the statement made by the learned Counsel for the petitioner, if the company is closed, then it shall pay the retirement dues to the workman as if he was in service.

6. So far as the question of back wages is concerned, the Labour Court has not given any cogent reasons for awarding back wages to the workman. In view of the principle laid down by the Apex Court in the case of Ram Ahsrey Singh and Another Vs. Ram Bux Singh and Others, a workman has no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case. Similar principle has been laid down by the Apex Court in the case of General Manager, Haryana Roadways Vs. Rudhan Singh, wherein, it has been held that an order for payment of back wages should not be passed in a mechanical manner but, a host of factors are to be taken into consideration before passing any such order.

7. It would also be relevant to refer to a decision of the Apex Court in the case of Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C.) and Others Vs. Abdul Kareem, wherein it has been held that a workman is not entitled to any consequential relief on reinstatement as a matter of course unless specifically directed by forum granting reinstatement. Looking to the facts of the case and the principle laid down by the Apex Court in the above decisions, I am of the opinion that the petitioner-workman cannot be said to be entitled for any back wages. Hence, the impugned award granting back wages deserves to be quashed and set aside.

8. In the result, the petitions are partly allowed. The impugned award qua back wages is quashed and set aside. The Company shall pay the amount of retirement dues to the workman, as if he was in service within a period of three months from today. The impugned award is modified accordingly. The ensuing monetary benefits from the date of award shall be released within a period of five months from the date of receipt of writ of this order. Rule is made absolute to the above extent with no order as to costs.