

(2010) 09 GUJ CK 0059

In the Gujarat High Court

Case No : Special Civil Application No. 10230 of 2004

Poonam Mafatbhai Solanki

APPELLANT

Vs

Aaja Metal and Tube Pvt. Ltd.

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 09 GUJ CK 0059

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : D.J. Bhatt, for the Appellant; Served by Affix., for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—By way of this petition under Article 227 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and order quashing and setting aside the impugned judgment and award dated 8.10.2002 passed by the Labour Court, Kalol passed in Reference (LCK) No. 142 of 1992 in so far as not awarding the full back wages as prayed for and awarding only 25% back wages.

2. Shri DJ Bhatt, learned advocate for the petitioner has vehemently submitted that the Labour Court has denied the 75% back wages and/or has awarded only 25% back wages solely on the ground that the reference was dismissed for default in the year 1998 and the case was lingering and/or pending since 1992 because of negligence on the part of second party i.e. petitioner. It is submitted that the same is as such factually incorrect. It is submitted that as such till 1995 the petitioner and/or representative union were remaining present, however for few years the post of Labour Judge, Kalol was vacant and that is why the matter was not being proceeded further. It is submitted that thereafter new learned Labour Judge took the charge in 1998 and without any fresh notice, reference was called out and it was dismissed for non prosecution. Therefore, it is submitted that denial of 75% back wages to the petitioner is absolutely illegal

and arbitrary, which deserve to be quashed and set aside and petitioner is entitled to 100% back wages.

3. Though served, nobody appears on behalf of respondent.

4. Having heard Shri Bhatt, learned advocate for the petitioner and considering the impugned judgment and award, more particularly last para of the judgment and award by which the reasons are assigned not to award the full back wages and considering the Rojkam it appears that learned Labour Court has committed an error in not awarding full back wages and holding the petitioner sole responsible for delay. It appears that the post of Labour Judge was vacant and that is why the matter was delayed. From the restoration application, it appears that petitioner and/ or their representative union were remaining present till learned Judge was available and thereafter since 1995 till 1998 the post of Labour Judge was remained vacant and thereafter the Reference was called out in 1998 and the same was dismissed for default, which came to be restored on the aforesaid ground. Considering the aforesaid facts and circumstance to award only 25% back wages cannot be sustained. However, it seems that there might be some delay and therefore, it appears that instead of 25% back wages if the petitioner is awarded 70% back wages, it will meet the ends of justice.

5. In view of the above and for the reasons stated above, petition succeeds. The impugned judgment and award dated 8.10.2002 passed by the Labour Court, Kalol passed in Reference (LCK) No. 142 of 1992 is hereby modified to the aforesaid extent that instead of 25% back wages the petitioner shall be entitled to 70% back wages from the date of termination till reinstatement. Rule is made absolute to the aforesaid extent. No costs.