

(2010) 10 GUJ CK 0109

In the Gujarat High Court

Case No : Letters Patent Appeal No. 2219 of 2010 in Special Civil Application No. 9384 of 2010 and Civil Application No. 11357 of 2010 in Letters Patent Appeal No. 2219 of 2010

Rajula Nagarpalika

APPELLANT

Vs

Pankajkumar Prataprai Chauhan and Another

RESPONDENT

Date of Decision : 04-10-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 33A

Citation : (2009) 122 FLR 572

Hon'ble Judges : M.D. Shah, J;A.L. Dave, J

Bench : Division Bench

Advocate : R.V. Desai, for the Appellant; None for Respondent 1-2, for the Respondent

Final Decision : Dismissed

Judgement

A.L. Dave, J.—By this appeal the Appellant challenges the order passed in Special Civil Appeal No. 9384 of 2010 on 12.08.2010

whereby the petition came to be dismissed.

2. The aforesaid petition was preferred against the award of Industrial Tribunal, Bhavnagar in Complaint I.T. No. 14 of 2002 whereby the

Industrial Tribunal vide order dated 19.04.2010 directed the Petitioner to reinstate the Respondent workman in service along with continuity of service.

3. The case history is necessary to be recorded as is reflected in the award. A complaint was lodged u/s 33A of the Industrial Disputes Act by the

Respondent stating that he has been working with the Appellant since 06.09.1998 as permanent employee continuously and though the nature of

work taken from him was of permanent nature, Appellant - institution has adopted unfair labour practice. It was also alleged that other similarly

situated employees were given status of permanent employee and were being paid more salary and more benefits. In the said matter, present

Appellant was served with the notice and despite several opportunities given, it did not file reply and, therefore, right of filing reply was closed and

award was passed against present Appellant. The said award was challenged by way of Special Civil Application No. 14703 of 2007 which was

disposed of by order dated 05.08.2008 whereby the Appellant was directed to pay Rs. 17,500/- to the workmen and while setting aside award,

directed further to dispose of complaint before 31.01.2009.

4. Matter was remanded to the Tribunal and reply was filed at Exh.26 contending that Industrial Disputes Act is not applicable to the Appellant -

institution. A contention was also raised that workman was daily wager and was taken on work as and when necessary and that he was not

regularly appointed workman and, therefore, by virtue of the order passed by this Court his services were terminated along with several other

employees who were not appointed regularly. The Tribunal found that services of the workman were terminated during the pendency of the

complaint u/s 33A and ultimately ordered reinstatement of the workman without any back wages or any other rights. This award was rendered on

19.04.2010 which was subject matter of challenge in the petition.

5. Learned Single Judge by order dated 12.08.2010 dismissed the petition while observing that there is clear case of violation of relevant

provisions of Industrial Disputes Act; that the Industrial Tribunal has rightly passed the award of reinstatement; and that he is in agreement with the

reasoning given by the Labour Court. The learned Single Judge also recorded the fact that, admittedly, termination was during pendency of the

complaint and no permission of the Industrial Tribunal was taken before terminating the services of the Respondent workman and that the learned

Counsel was unable to point out anything contrary to the said finding of the Labour Court.

6. Learned Counsel Mr. Desai for the Appellant has relied on following judgments to show that trend of judgments has recently been changed and

in case of termination of irregular appointee, reinstatement is not to be granted

as a rule but some compensation is to be awarded.

(1) Mysore Paper Mills Limited, Bhadravathi and Prasanna reported in 2010 III LLJ 2009

(2) Senior Superintendent Telegraph (Traffic), Bhopal v. Santosh Kumar Seal and Ors. reported in (2010) 6 SCC 773

(3) Himanshu Kumar Vidyarthi and Others Vs. State of Bihar and Others,

We have gone through the judgments and we agree with the submission made by learned Counsel, Mr. Desai, that there is a change in the recent

trend of judgments, but we may also observe that there is no absolute proposition of law settled by any of these judgments that in case of

termination, no reinstatement can be granted and compensation is only redressal. That apart, when attention of the learned Counsel was drawn

towards paragraph 12 of the award, he had no explanation to tender nor he could refute the factual part. Paragraph 12 of the award clearly

indicates termination was ordered during pendency of complaint before the Tribunal. Learned Counsel also agrees that discretion is left with the

Court whether to award reinstatement or to award compensation. He is not able to satisfy us for exercise of appellate jurisdiction against use of

judicial discretion by the Court. Element of arbitrariness or non-application of mind or legal perversity is not pointed to us. Under the

circumstances, we do not deem it proper to exercise our Appellant jurisdiction. The appeal must fail and stands dismissed.

As the appeal is dismissed, Civil Application also stands disposed of.