

**(2017) 01 GUJ CK 0003**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 8089 of 2016

Rakeshbhai Muljibhai Atri

APPELLANT

Vs

Suzlon Energy Limited

RESPONDENT

**Date of Decision :** 17-01-2017

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Industrial Disputes Act, 1947 — Section 25F

**Citation :** (2017) 153 FLR 470 : (2017) LabLR 540 : (2017) 1 LLJ 603

**Hon'ble Judges :** G.R. Udhwani, J.

**Bench :** Single Bench

**Advocate :** HCLS Committee and Mr. Gunvant B. Shah, Advocates, for the Petitioner No. 1; Mr. Aumm Kotwal, Advocate, for the Respondent No. 1

**Final Decision :** Partly Allowed

## Judgement

G.R. Udhwani, J.(Oral)&mdash;Denial of back wages while ordering reinstatement of the petitioner by judgement and award dated 4.2.2016 passed by the Labour Court, Junagadh, in Reference L.C.J. No. 13 of 2003 has given rise to this petition.

2. The learned counsel for the petitioner has taken this court through the impugned judgement and award where-from it is noticed that the petitioner workman was irregular in his attendance. After noting the said conduct of the workman, the Labour Court proceeded to find discrepancy in the attendance sheets in relation to the workman and discarded the same from evidence. It further reasoned that no inquiry was held and that section 25F of the Industrial Disputes Act was breached. The Labour Court further found gainful employment of the petitioner for the period 1.10.2009 and 31.3.2010 with the contractor of the respondent employer and on overall consideration of the case, it had awarded reinstatement with lumpsum compensation of Rs. 1,00,000/- to the workman. Aggrieved by the said award of lumpsum compensation in lieu of full back wages, the petitioner is before this court.

3. The learned counsel for the petitioner relied upon the following judicial pronouncements to canvass the proposition that on reinstatement, full back wages must follow.

1. State of U.P. v. Charan Singh (250 II CLR 150)

2. Jasmer Singh v. State of Haryana & Anr. (2015 AIR SCW 869)

3. Govindbhai Punambhai Vaghela C/o. Jitendra K. Ved v. Chief Manager & Ors. (56(3) G.L.R. 1972)

4. Opposing the petition, the learned counsel for the respondent invited attention of this court to the observations made by the Labour Court as regards irregular attendance of the workman and the apology tendered by him with an assurance to mend his conduct and be regular. The learned counsel also pointed out that although for a short period of six months the petitioner was gainfully employed with the contractor of the respondent employer, he was earning Rs. 7,500/- and contended that award of Rs. 1Lakh compensation, in the facts of the case, was justifiable. The learned counsel alternatively contended that if the back wages were to be awarded the same may be effected only from the date of the award of the Labour Court.

5. Having considered the rival contentions and the authorities cited at the Bar, the fact that the petitioner was habitually irregular in attendance is not disputed. If the employee was irregular in his attendance, it would be unreasonable to award him full back wages. Absenteeism does not seem to be negligible but the substantial one as indicated in paragraph No. 9.3 of the impugned judgement and award by the Labour Court. It appears that the Labour Court took into consideration the said absenteeism as also his gainful employment for a period of six months afore stated and has awarded lumpsum compensation of Rs. 1 lakh.

6. Concededly, the workman was paid Rs. 3,616/- per month on 30.9.2002 when he was terminated and he remained out of job until the order of reinstatement on 4.2.2006. The said period will roughly come to three and half years. The salary which the workman would have fetched had he been in service and had he been in regular attendance, would have been roughly Rs. 1,50,000/-. If the mean of his wilful absenteeism as evidenced by the Labour Court in paragraph No. 9.3 of the judgement and award is adjusted, in the opinion of this court, the reduction of the amount to Rs. 1 lakh from Rs. 1.5 lakh cannot be said to be unreasonable. Therefore, the award of Rs. 1 lakh, be it lumpsum amount or towards back wages, is not found to be unreasonable in the facts of the case.

7. The case law relied upon by the learned counsel for the petitioner only indicates that in absence of sustainable reasons, the back wages on reinstatement cannot be denied. In the instant case, as indicated above, there are cogent reasons for awarding lumpsum compensation instead of full back wages to the workman which requires no interference by this court under Article 227 of the Constitution of India.

8. As regards continuity of service, the Labour Court has not given any plausible reason for its denial. In absence of plausible reasons, when the action of the employer is found to be illegal, there can be no justification in not awarding the continuity of service to the workman. Accordingly, the impugned judgement and award is required to be modified and in addition to what has been awarded by the Labour Court, the continuity of service is also awarded. Under the circumstances, the petition must succeed to the above extent. The petition is allowed to the extent of granting continuity of service to the petitioner. Rest portion of the award of the Labour Court is confirmed. Rule is made absolute to the above extent only.