

(2015) 10 GUJ CK 0056

In the Gujarat High Court

Case No : Special Civil Application No. 4266 of 2014

Rameshbhai Babubhai Makwana

APPELLANT

Vs

Dhari Gram Panchayat and Others

RESPONDENT

Date of Decision : 13-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 25F, 25-F, 25F(b), 25-F(b)

Citation : (2016) 148 FLR 467 : (2015) 4 LLJ 615 : (2016) 1 LLN 121

Hon'ble Judges : V.M. Pancholi, J.

Bench : Single Bench

Advocate : Sikander Saiyed, Advocate, for the Appellant; P.J. Kanabar, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

V.M. Pancholi, J.—This petition is filed under Articles 226 and 227 of the Constitution of India, wherein, the petitioner has prayed that award dated 28.10.2013 passed by the Labour Court, Amreli, in Reference (LCA) No. 21 of 2010, be quashed and set aside and thereby the relief/s as originally prayed for be granted in the facts and circumstances of the present case. This matter was argued by the learned advocates for the parties as observed in the order dated 01.10.2015. However, due to paucity of time, the order was not passed on that day and the matter was kept for dictation of judgment. Thus, today, the matter is listed for dictation of judgment.

2. Learned advocate Mr. Sikander Saiyed appearing for the petitioner submitted that the petitioner joined the service of respondent - Gram Panchayat as daily wager on the post of helper to Mukadam on 14.07.1997. The petitioner worked for 12 years continuously without any break i.e. up to 23.06.2009. However, by order dated 24.06.2009, the respondent Panchayat terminated the services of the petitioner without any reason. In the said order, it is stated that notice pay of Rs. 5580/- as per minimum wages is paid for a period of one month and an

amount of Rs. 30,690/- is also paid by way of back-wages by cheque dated 24.06.2009. However, it is the case of the petitioner that at the time of termination of service, notice pay/retrenchment compensation as per Section 25F of the Industrial Disputes Act was not paid simultaneously by way of one transaction. It is the case of the petitioner that the post on which the petitioner was working still exists and it is a sanctioned post. Petitioner, therefore, requested orally to the respondent Gram Panchayat to take him back in service. However, no reply has been given by the respondent. Therefore, industrial dispute was raised by the petitioner, which was culminated into Reference (LCA) No. 21 of 2010. By the impugned award, the Labour Court awarded lumpsum compensation of Rs. 25,000/- to the petitioner. Petitioner has, therefore, preferred this petition.

3. Learned advocate Mr. Sikander Saiyed mainly contended that the Labour Court while deciding issue No. 1 i.e. whether the applicant was illegally terminated by the respondent, held that provisions of Section 25F(b) of the Industrial Disputes Act have not been complied with in totality. Thus, the Labour Court held that the services of the petitioner is illegally terminated without following mandatory provision and without payment of the compensation of retrenchment as per Section 25-F(b) and thereby the Labour Court answered issue No. 1 in affirmative. However, inspite of giving the finding in affirmative that the respondent has violated the mandatory provisions of Industrial Disputes Act, the Labour Court has committed an error in only awarding lumpsum amount of Rs. 25,000/- as compensation without granting reinstatement with back-wages.

4. At this stage, learned advocate Mr. Saiyed further contended that as per various decisions of Hon''ble Supreme Court as well as this Court, it is well settled that once termination is found to be illegal, the order of reinstatement must follow. Thus, once the Labour Court has held that the mandatory provisions of Section 25-F(b) of the Industrial Disputes Act are not followed by the employer, the Labour Court ought to have granted reinstatement with continuity of service and back-wages. Learned advocate for the petitioner further submitted that the Labour Court has not given cogent reasons for not granting reinstatement with back-wages and continuity of service.

5. Learned advocate Mr. Saiyed for the petitioner further submitted that as per the information received by the petitioner, out of 56 retrenched workmen, Anubhai Arjanbhai Parmar and Hamir Naran Parmar are serving with the respondent Panchayat as on date. Similarly, Bhikhabhai Manjibhai, Laxmanbhai Karsanbhai, Dulabhai, Mumeshbhai Ravjibhai and Shukla Harshadbhai Chhelshankar, are working at present with the respondent Panchayat. The work of daily wager is available with the respondent Panchayat and therefore this Court may entertain this petition and quash and set aside the impugned award and thereby directions be given to the respondent Panchayat to reinstate the petitioner with continuity of service and full back-wages.

6. Learned advocate Mr. Saiyed for the petitioner referred to and relied upon the

decision of Punjab & Haryana High Court rendered in the case of Subhash Chand v. Presiding Officer and Another, LNIND 2015 PNH 7971 : 2015-III-LLJ-427 (P&H).

7. On the other hand, learned advocate Mr. P.J. Kanabar appearing for the respondent - Panchayat submitted that the Labour Court has not committed any error while not granting reinstatement and back-wages to the petitioner. Labour Court has awarded lumpsum compensation of Rs. 25,000/- to the petitioner, which is just and legal in the facts of the present case. Learned advocate Mr. Kanabar further submitted that respondent Panchayat has followed the procedure prescribed under Section 25F of the I.D. Act and paid notice pay and unemployment compensation of Rs. 30,690/- to the petitioner and the same has been accepted by the petitioner. Thus, the Labour Court, after considering the facts of the present case, rightly awarded only lumpsum compensation to the petitioner and therefore this Court may not entertain this petition.

I have considered the arguments advanced by learned advocates for the parties. I have also gone through the material produced on record including the impugned award. From the record, it reveals that the Labour Court has framed the issue, whether the applicant was illegally terminated by the respondents or not. While deciding the said issue, Labour Court has specifically observed that the petitioner was appointed on 14.07.1997. Appointment order is also placed on record before the Labour Court. Thereafter the Labour Court discussed the provisions of Section 25-F and the decision rendered by the Hon'ble Supreme Court and Delhi High Court and after considering the facts of the present case, Labour Court specifically held that respondent has not followed the provisions of Section 25F(b) of the I.D. Act. However, though the Labour Court has held that the respondent has violated the provisions of Section 25-F(b) of the I.D. Act, only lumpsum compensation of Rs. 25,000/- has been awarded. It is required to be noted that petitioner has worked for more than 12 years and therefore he is entitled for reinstatement instead of lumpsum compensation as held by the Hon'ble Supreme Court in the case of Jasmer Singh v. State of Haryana and Another in Civil Appeal No. 346 of 2015, decided on 13.01.2015. Punjab & Haryana High Court in the case of Subhash Chand v. Presiding Officer and Another (supra) observed in para 7 as under:

"The Hon'ble Supreme Court has recently in Jasmer Singh v. State of Haryana and Another in Civil Appeal No. 346 of 2015 decided on 13.01.2015 while allowing the petition had given a categorical finding that where there is violation of Section 25-F of the I.D. Act instead of ordering compensation, workman is entitled to reinstatement, therefore, the petitioner is entitled to reinstatement with continuity of service. In the instant case, the petitioner-workman had rendered service of more than 17 years and is entitled for reinstatement on the principle of ratio decidendi in Jasmer Singh's case instead of awarding compensation."

8. Thus, in view of the aforesaid decision, once the Labour Court has held that

the respondent has violated the mandatory provisions of Section 25F of I.D. Act then the Labour Court ought to have reinstated the petitioner looking to his length of service. It is specific case of the petitioner that the respondent Panchayat retrenched 56 workmen. However, out of 56 such retrenched workmen, Anubhai Arjanbhai Parmar and Hamir Naran Parmar are still working with the respondent. Similarly, other four persons, who are juniors to the petitioner, are also working with the respondent. Moreover, during the course of argument, learned advocate Mr. P.J. Kanabar, under the instructions of the Panchayat, submitted that the post of helper to Mukadam on which the petitioner was working is still vacant. Thus, learned advocate Mr. Saiyed appearing for the petitioner submitted that the petitioner can be accommodated as daily wager on the post of helper to Mukadam on which he was appointed in July 1997.

9. Thus, in view of overall facts and circumstances of the case and in view of the fact that the petitioner has worked for more than 12 years without any break and without any complaint with the Panchayat and more particularly in view of the fact recorded by the Labour Court that the respondent has violated the mandatory provisions of I.D. Act, which is not challenged by the Panchayat by filing petition before this Court, this Court is of the opinion that petitioner is required to be reinstated. However, so far as back-wages is concerned, it is clear from the record that the petitioner workman has not averred that he was not gainfully employed elsewhere and therefore he is not entitled to back-wages. In view of the aforesaid discussion, the petition is partly allowed. The respondent Panchayat is directed to reinstate the petitioner with continuity of service without back-wages. Rule is made absolute to the aforesaid extent.