

(2013) 03 GUJ CK 0037

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1474 of 2012 in Special Civil Application No. 328 of 2012

Shivjanamsingh N. Kushvaha

APPELLANT

Vs

General Manager (Phones) and 2 Ors.

RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Citation : (2013) 03 GUJ CK 0037

Hon'ble Judges : Jayant M. Patel, J;G.R.Udhwani, J

Bench : Division Bench

Judgement

Jayant Patel, J.—The present appeal is directed against the order dated 13.1.2012 passed by the learned Single Judge of this Court in Special Civil Application No. 328 of 2012; whereby, the learned Single Judge for the reasons recorded in the order, did not interfere with the award passed by the Labour Court for granting lump sum contribution of Rs. 10,000/- in lieu of reinstatement. We have heard Mr. Gogia, learned counsel appearing for the appellant.

2. The contention raised on behalf of the appellant is that, the quantum of compensation awarded by the Labour Court in lieu of reinstatement was too meager and he submitted that in a case, like the present one, the Labour Court ought to have awarded Rs. 13,000/- as the compensation in lieu of reinstatement. It was submitted that the matter was argued accordingly before the learned Single Judge. However, learned Single Judge did not interfere with the award and hence, the present appeal.

3. Learned counsel, during the course of hearing, has brought to our notice the another decision of this Court in a case of Executive Engineer Minor Irrigation Department V/s. Mahmad Rafik Nazar Mahmad Makrani in Letters Patent Appeal No. 3057 of 2010 decided on 31.01.2011; wherein one of us (Jayant Patel, J.) was party to the decision. He submitted that, as per the decision of this Court, the compensation would be approximately Rs. 13,000/- per year as was

considered by the Apex Court in decision which was referred to in the said decision and plus the cost of litigation. He submitted that this Court may also interfere on the enhancement of the amount of compensation in the present appeal.

4. As such, it is hardly required to be stated that when any petition is preferred against the award passed by the Labour Court, the petition essentially under Article 227 of the Constitution and even if leniently viewed as if to be under Article 226 of the Constitution then also, the power of this Court under Article 226 and/or 227 of the Constitution are not that of appeal against the award passed by the Labour Court and this Court will have a supervisory jurisdiction to ensure that the functioning of the Labour Court is within the bounds of law and there is no transgressing of jurisdiction. When the Labour Court has found that the compensation of Rs. 10,000/-deserves to be awarded in lieu of reinstatement on account of the fact that the workman concerned worked for one year only, in our view, such could be said as an exercise of discretion by the Labour Court against which the submissions are made for interference. It is well settled that when any discretion has been exercised by any Court, unless such discretion is perverse on the face of it, or is by committing an error apparent on the face of record, this Court would not interfere in a petition under Article 226 and/or 227 of the Constitution of India.

5. If the facts are further considered, it does appear that the appellant-workman was engaged in the year 1983-84 and he worked for 357 days in that year and thereafter, his engagement was not continued. The dispute came to be raised in the year 1995 that is roughly after about 11 years. The exact date of raising of the dispute is not available but the reference is made in the year 1995. Even if it is considered that dispute is raised after 10 years, the said aspect would be relevant for the purpose of exercise of the discretion for awarding of compensation in lieu of reinstatement.

6. As observed earlier, Labour Court has recorded at paragraph No. 8 that considering the fact that the workman worked in the year 1983-84, the compensation of Rs. 10,000/- will meet the ends of justice. In our view, if the aforesaid aspect is considered in light of the fact that the dispute was also raised after 10 years, it could not be said that the discretion exercised by the Labour Court is perverse in any manner which may call for interference in exercise of power under Article 226 and 227 of the Constitution.

7. It is true that in case of Executive Engineer Minor Irrigation Department (Supra) the Division Bench of this Court while assessing the compensation, did observe that, as per the decision of the Apex Court in case of Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others, at Rs. 13,000/- for each year was awarded, but, in our view, even if such observations are considered, the said amount may come to Rs. 13,000/- per year. As against the same, the Labour Court has awarded Rs. 10,000/- with the further specific direction that if the amount is not paid within a period of 3

months, the same shall be payable with interest @ 9% p.a.

8. Learned counsel for the appellant submitted that he has no instructions as to whether amount is paid or not. If the amount is already paid, the difference would be Rs. 3,000/- and if the amount is not paid by now, it will be Rs. 11,000/- and therefore, the difference would be about Rs. 2,000/-. We find that considering the fact and circumstances, it is not a case where for a small amount of Rs. 3,000/- or Rs. 2,000/- as the case may be, interference should be made by us in the present appeal more particularly, when learned Single Judge has also undertaken the judicial scrutiny and has not interfered with the award of the Labour Court. In view of the aforesaid, we find that no case is made out for interference. Hence, the present appeal is not entertained and disposed of accordingly.