
(1991) 08 GUJ CK 0028
In the Gujarat High Court
Case No : Appeal from Order No. 349 of 1991

Shrinathji Mechanical Works	Vs	APPELLANT
State of Gujarat and Others		RESPONDENT

Date of Decision : 02-08-1991

Acts Referred:

Citation : (1991) 08 GUJ CK 0028

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : K.N. Patel, for the Appellant; T.R. Mishra, for the Respondent

Judgement

B.J. Shethna, J.—It is most unfortunate that the present respondent No. 3 - Anandprasad Bulikhadas Khatri who was working with the present appellant, Shrinathji Mechanical Works was illegally retrenched from the employment by the appellant in February, 1983, is so far not paid his hard-earned money and is not reinstated in service by the appellant, despite the fact that the poor workman was ordered to be reinstated with back wages with continuity of service by the competent Labour Court by its order dated 17.4.1986.

2. Against the aforesaid order the appellant preferred Civil Misc. Application which also came to be dismissed by the Labour Court on 10.10.1986. Against the said order writ petition was filed before this Court which also came to be dismissed by this Court on 25.6.1987. Thereafter, in an application before the Payment of Wages Authorities an award Rs. 48,800/- was passed and the appellant was ordered to pay court fee stamp of Rs. 4,880/- to be deposited with the State Government within 30 days from the date of the order, which was passed on 29.12.1988. The appellant has not paid said amount also. Therefore, recovery certificate for Rs. 53,680/- was issued by the Collector, Ahmedabad.

3. However, inspite of these facts, the appellant neither reinstated the respondent No. 3, nor paid the said amount to respondent No. 3 though he was running a factory. This Court in Spl. C.A. Nos. 7087/88 and 5245/85 directed the

Collector, Ahmedabad to recover the dues of respondent No. 3. Therefore, a notice was issued under the Land Revenue Code against the appellant against which the appellant filed Civil Suit No. 114/91 in the City Civil Court, Ahmedabad and without disclosing true facts, obtained an ex parte injunction from the City Civil Court on Notice of Motion Exhs.6 and 7. The learned Chamber Judge, City Civil Court, Ahmedabad who had earlier granted ex parte injunction, dismissed the Notice of Motion and vacated the ex parte ad interim injunction granted by him earlier with costs, when costs, when the above facts were brought to his notice. The learned-Chamber Judge observed in his impugned order that the plaintiff-present appellant has not approached the court with clean hands and therefore, dismissed the Notice of Motion. Even on merits the learned Judge held against the plaintiff-present appellant and observed that "the plaintiff has neither got a prima facie case nor the balance of convenience is in his favour". The learned Judge also observed that the appellant should not be allowed to raise any technical defence at this stage when a poor workman is not getting his hard earned money from such a mighty employer who, under one or the other pretext rushed to the court of law and tried to stall the payment to be made to the workman respondent No. 3.

4. Aforesaid order passed by the learned Chamber Judge is challenged in this appeal before this Court.

5. Mr. K.N. Patel, learned Advocate for the appellant has vehemently argued that the learned Judge has committed a grave error in not allowing the appellant plaintiff to raise the technical defences. Therefore, he urged that this appeal is required to be admitted and the order passed by the learned Judge is required to be stayed.

6. It is indeed most unfortunate that in our country even after 44 years of independence, poor persons have remained poor and though they have worked, their services are wrongly terminated and in spite of the fact that the competent court intervenes and sets aside such order of termination or retrenchment, the employer like the present appellant has so far succeeded in not paying a farthing to the respondent No. 3 who is entitled for his dues since 1986. A person like the present employer who approached the court for a relief which he is seeking against his employee the present respondent No. 3 even though he may have got a very strong case in his favour, either on merits or any other technical grounds which is none in this case is not entitled for any such equitable relief of injunction, as the present appellant employer has not come with clean hands before the court. It is high time now that Courts of law become conscious of the hard fact that in a poor country like ours, at the stage of considering whether the interim relief should be granted or not, assuming for a moment (of course there is no scope for such assumption in the instant case) that other things are equal, the balance should be tilted in favour of a have-not rather in favour of a have. Therefore, in my view the learned Judge was fully justified in dismissing the Notice of Motion and I fully agree with the view taken by the learned Judge in

dismissing then notice of motion Exts.6 and 7. Accordingly, this appeal fails and is dismissed.

7. Mr. Mishra learned Advocate who appeared on behalf of respondent No. 3 on caveat submitted that this is a fit case in which this Court should awarded special cost of Rs. 1000/ - to the respondent No. 3 herein because instead of paying the legitimate dues to the respondent No. 3 the appellant is spending money in court litigations and every time respondent No. 3 compelled to appear before the court.

7.1 In my view, the request made by Mr. Mishra for special costs of Rs. 1000/ - is most genuine and reasonable. It is high time when the court should come down very heavily upon such persons like the present appellant and award special costs so that it can set an example for other persons.

7.2 Accordingly, the appellant is directed to pay Rs. 1000/ - (one thousand) towards special costs to respondent No. 3 - Anandprasad Bulikhadas Khatri.

8. At this stage Mr. Patel L.A. for the appellant submitted that the implementation of this order may be stayed for a period of two months from today, as he wants to challenge this order before the Supreme Court.

8.1 Considering the peculiar facts and circumstances of this case and more particularly when a poor workman whose services were terminated in 1983 and though he was ordered to be reinstated in 1986 as far he is neither reinstated nor paid his legitimate dues and he is being harassed by the appellant in such a manner as he is dragged from court to court by the present appellant and these circumstances, if I stay my order even for a day it would be nothing but gross injustice to respondent No. 3 and a premium to the dishonesty of the appellant. Therefore, I reject the oral request made by Mr. Patel L.A. for the appellant for staying the implementation of this order.

8.2 If the appellant does not carry out the order passed by the Labour Court to reinstate the respondent No. 3 and to pay the back wages and fails to pay Rs. 1000/ - which is ordered to be paid as special costs to the respondent No. 3 by this order, within ten days from today, it will be open to the respondent No. 3 workman-Anandprasad Bulikhadas Khatri to take appropriate proceedings against the appellant.