

(2010) 07 GUJ CK 0042

In the Gujarat High Court

Case No : Special Civil Application No. 1207 of 2003

Talaja Taluka Kharid Vechan Sangh Ltd. and Another

APPELLANT

Vs

Rameshbharti Merambharti Goswami

RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Citation : (2010) 07 GUJ CK 0042

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : D.S. Vasavada and Sachin D. Vasavada, for the Appellant; Rajesh P. Mankad, for the Respondent

Judgement

K.S. Jhaveri, J.—By way of this petition, the petitioners have prayed to quash and set aside the impugned award dated 17.07.2000 passed by the Labour Court, in Reference [LCB] No. 323 of 1988, whereby the Labour Court had directed the petitioners to reinstate the respondent workman with continuity of service and full back wages.

2. The short facts of the case are that the respondent at the relevant time was working as Godown Keeper with the petitioners. The services of the respondent workman came to be terminated w.e.f. 01.11.1986. Being aggrieved by the said order, the respondent workman raised a dispute which was ultimately referred to the Labour Court for adjudication being Reference [LCB] No. 323 of 1988. Before the Labour Court, both the parties adduced evidence and after appreciating the material produced before it, the Labour Court allowed the reference with the aforesaid directions. Hence, this petition.

3. This Court on 10.10.2003 had passed the following order:

Heard the learned advocates.

Leave to amend the affidavit made by Shri Nandalalbhair Trivedi.

Rule. The learned advocate Mr. Mankad waives service of rule. Pending this

petition there shall be interim stay of the implementation and execution of the impugned award dated 17th July, 2000 passed in Reference LCB No. 323/1988 in so far as the back wages is concerned. There is no dispute that the petitioner No. 1 had appointed the respondent - workman as Godown Keeper. In that view of the matter, it is directed that the petitioner No. 1 shall reinstate the respondent workman in service as Godown Keeper forthwith but not later than 23rd October, 2003. The petitioner No. 1 shall also be liable to pay wages to the respondent - workman from the date of the award till he is reinstated in service.

4. Pursuant to the aforesaid order, the respondent workman was reinstated in service w.e.f. 10.02.2004. Thus, the impugned award qua reinstatement with continuity of service is confirmed. Therefore, the only question which is required to be considered is with regard to back wages only.

5. So far as the question of back wages is concerned, the Labour Court has not given any cogent reasons for awarding back wages to the workman. In view of the principle laid down by the Apex Court in the case of Ram Ahsrey Singh and Another Vs. Ram Bux Singh and Others, a workman has no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case. Similar principle has been laid down by the Apex Court in the case of General Manager, Haryana Roadways Vs. Rudhan Singh, wherein, it has been held that an order for payment of back wages should not be passed in a mechanical manner but, a host of factors are to be taken into consideration before passing any such order.

6. It would also be relevant to refer to a decision of the Apex Court in the case of Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C.) and Others Vs. Abdul Kareem, wherein it has been held that a workman is not entitled to any consequential relief on reinstatement as a matter of course unless specifically directed by forum granting reinstatement. Looking to the facts of the case and the principle laid down by the Apex Court in the above decisions, I am of the opinion that the petitioner-workman cannot be said to be entitled for any back wages. Hence, the impugned award granting back wages deserves to be quashed and set aside.

7. In the result, the petition is partly allowed. The impugned award qua back wages is quashed and set aside. The rest of the award is confirmed. The impugned award is modified accordingly. The ensuing monetary benefits from the date of award shall be released within a period of five months from the date of receipt of writ of this order. Rule is made absolute to the above extent with no order as to costs.