

(2010) 08 GUJ CK 0126

In the Gujarat High Court

Case No : Special Civil Application No. 1456 of 2004

Taluka Development Officer

APPELLANT

Vs

Velaji Lavji Thakor

RESPONDENT

Date of Decision : 04-08-2010

Acts Referred:

Citation : (2010) 08 GUJ CK 0126

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

Bench : Single Bench

Advocate : H.S. Munshaw, for the Appellant; Mukesh H. Rathod, for the Respondent

Judgement

K.S. Jhaveri, J.—By way of this petition, the petitioner has prayed to quash and set aside the impugned award dated 05.03.2003 passed by the Labour Court, Kalol in Reference [LCK] No. 306/1990, whereby the Labour Court has directed the petitioner to reinstate the respondent in service with 35% back wages.

2. The short facts of the case are that the respondent at the relevant time was appointed purely on temporary basis and he continued to work as temporary part time Kotwal. The services of the respondent came to an end w.e.f. 01.01.1988. Being aggrieved by the said order, the respondent raised a dispute which was ultimately referred to the Labour Court for adjudication being Reference [LCK] No. 306/1990. 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. Heard learned Counsel for the respective parties and perused the documents on record. The learned Counsel for the petitioner submitted that the respondent had attained the age of superannuation and therefore there is no question of reinstatement. However, the Labour Court while granting reinstatement had observed that the petitioner had not followed the due process of law before terminating the services of the respondent. Therefore, I am of the view that the

Labour Court has rightly passed the award qua reinstatement.

4. 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.

5. 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 respondent 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.

6. In the result, the petition is partly allowed. The impugned award qua back wages is quashed and set aside. The respondent workman is entitled for the benefits of reinstatement from the publication of the award. However, it will be open for the petitioner to deduct the amount paid u/s 17-B while calculating the salary to be paid on the basis of regular wages and shall also pay the total dues on the basis of average work. The impugned award is modified accordingly. The ensuing monetary benefits from the date of award shall be released within a period of four 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.