

**(2014) 01 GUJ CK 0003**  
**In the Gujarat High Court**

**Case No :** L.P.A. No. 1325 of 2013 in Spl. C.A. No. 12583 of 2013

Valimamad Jamalbhai Pipalvadia

APPELLANT

Vs

Dy. Executive Engineer and Another

RESPONDENT

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**Date of Decision :** 15-01-2014

**Acts Referred:**

**Citation :** (2014) 141 FLR 456

**Hon'ble Judges :** R.R. Tripathi, J; R.D. Kothari, J

**Bench :** Division Bench

**Advocate :** Guntant R. Thakar, Advocate for the Appellant; R.A. Rindhani, A.G.P, Advocate for the Respondent

**Final Decision :** Allowed

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## **Judgement**

R.R. Tripathi, J.—The appellant-original respondent No. 1 workman is before this Court being aggrieved by the judgment and order dated 27.9.2013 passed by the learned Single Judge in Special Civil Application No. 12583 of 2013, whereby, the learned Single Judge was pleased to allow the petition and quash the impugned award of the Labour Court without any order of costs.

The facts of the case are that the appellant herein approached the Labour Court with a case that he was serving with the first party i.e. Deputy Executive Engineer, Irrigation Department, Sub-Division, Morbi, District-Rajkot as a labourer. It is the case of the appellant that he was working since 1968, till his services came to be terminated in the year 1989. It is the case of the appellant that he was paid Rs. 1,500/- per month. It is also the case of the appellant that he was not paid any amount towards his rights. He was not served with a notice. He was not paid notice pay nor he was paid retrenchment compensation. The case of the appellant that the action of the opponent herein i.e. the first party is violative of Article 25-F, G and H. It is also the case of the appellant that after his services were terminated, he tried to get job elsewhere, but he could not get. His presence was marked in the muster-roll and he was paid wages, which documents are in possession of the first party.

What is important in the case of the workman appellant is that he was not given any earned leave account card, identity card, wages slip and that in the preceding 12 months from the date of termination of his services, he had worked for 240 days. It was therefore prayed that the action of the opponent first party be declared to be illegal and he should be ordered to be reinstated on his original post with continuity of service and wages for the intervening period, and the expenses of this Reference be also awarded.

2. The learned Presiding Officer of the Labour Court-1, Rajkot was pleased to make an award dated 28.1.2013 partly allowing the Reference (LCR) No. 178 of 2006. The learned Presiding Officer was pleased to order that within 30 days" from the date of publication of the award, the workman should be reinstated on his original post giving continuity of services but without any backwages for the intervening period. The learned Presiding Officer was pleased to order to the first party to pay amount of Rs. 750/- towards costs of the reference case.

3. The Deputy Executive Engineer, Water Supply Sub-Division, aggrieved by that judgment and order, challenged the same before this Court by filing Special Civil Application No. 12583 of 2013 which came up for hearing of the learned Single Judge, who by the order under challenge in this appeal dated 27.9.2013 allowed the petition and quashed the award of the Labour Court.

Learned advocate Mr. Thakar invited attention of the Court to Paragraph-6 of the judgment and order which reads as under:--

6.....Having heard learned Advocates for the respective parties and having gone through the material on record, this Court finds that the date on which the Labour Court awarded reinstatement, the respondent-workman was more than 62 years of age and therefore the same could not have been implemented. Further, the respondent-workman had approached the Labour Court after 17 years from the alleged date of termination. Though one of the view can be that merely delay in approaching the Labour Court itself should not disentitle the workman from getting relief, however, in the facts of this case, the delay was of about 17 years coupled with the fact that the award of the Labour Court is unimplementable in view of the fact that the respondent was about 62 years of age, when reinstatement was ordered. Under these circumstances, the award of the Labour Court needs to be quashed and set aside. In the peculiar facts of this case, more particularly, when there was delay of about 17 years on the part of the respondent workman in approaching the Labour Court, in my view, this is not the case where discretion needs to be exercised to mould relief by awarding some compensation to the respondent.

(Emphasis supplied)

4. Learned advocate for the appellant submitted that various decisions of the Hon"ble the Apex Court as set out in Paragraphs-7, 8 and 9 of the memo of petition were cited. Paragraphs-7, 8 and 9 are reproduced for ready perusal:--

7. The appellant further respectfully states that the learned Single Judge has failed to appreciate the contention taken in para-10, 11 and 13 of the reply filed in SCA No. 12583 of 2013 on 18.9.2013. The learned Single Judge has also failed to appreciate the law as laid down by the Hon''ble Supreme Court of India in the case of Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, , the The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others, , Sapan Kumar Pandit Vs. U.P. State Electricity Board and Others, , and considering above all three judgments Hon''ble Apex Court in the case of Shahaji Vs. Executive Engineer, P.W.D., , held that "Moreover, even if there was delay in making the reference to the Labour Court, if it came to the conclusion that the termination was illegal, it could have suitably moulded the relief to be granted to the workman in view of the delay. In such cases the award of back wages may either be not permitted, or curtailed. In Nedungadi Bank's case what was challenged before the High Court was the order making the reference. That was not a case where the Labour Court refused to entertain the dispute on the ground of delay. Having regard to the clear position in law we are left with no option but to allow this appeal and set aside the judgment and order of the High Court.

In view of the above judgments of the Hon''ble Supreme Court, this is the fit case to award lumpsum compensation instead of reinstatement as awarded by the learned Labour Court, Rajkot in award dated 28.1.2013 in Ref. (LCR) No. 178 of 2006.

8. The appellant further respectfully states that the learned Single Judge has allowed the SCA No. 12583 of 2013 considering the judgment of the Hon''ble Supreme Court in the case of Krishi Utpadan Mandi Samity, Manglor Vs. Pahal Singh, , but while giving judgment in the above mentioned case Hon''ble Supreme Court has not considered the previous Supreme Court judgments as mentioned in para-7 above. So, as per the law laid down by the Hon''ble Supreme Court in the case of State of Assam Vs. Ripa Sarma, , in Para-7-"....judgment rendered in ignorance of the earlier judgments of the Benches of co-equal strength, rendering the same per incuriam. Therefore, it cannot be elevated to the status of precedent."

The above mentioned submission is not properly appreciated by the learned Single Judge.

9. The appellant respectfully states that learned Single Judge has not properly considered the two judgments of the Hon''ble Supreme Court of India in the case of Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others, , and Incharge Officer and Another Vs. Shankar Shetty, , on the subject of grant of compensation instead of reinstatement considering the fact that appellant herein has already crossed the age of superannuation on 15.9.2010.

Learned advocate for the appellant submitted that it is the settled law that normally the Court take care of the delay caused in approaching the Labour

Court by moulding the relief and even the learned Single Judge was conscious of that, but then while exercising his discretion, the learned Single Judge was pleased to hold that "this is not the case where discretion needs to be exercised to mould relief by awarding some compensation to the respondent."

Learned advocate for the appellant submitted that the learned Judge of the Labour Court has taken all pains to consider the case of the appellant-workman as set out in Paragraph-3 of the award and thereafter, he has appreciated the contention raised by the workman in Paragraph-9, while discussing Issue No. 2.

Learned advocate for the appellant submitted that the learned Judge of the Labour Court was conscious of the fact that it is the case pleaded by the authorities that he was appointed by an oral order, his services were terminated by an oral order. That being so, the contention raised by the first party before the Labour Court that the workman has not produced any order of appointment or order of termination are self-contradictory.

Learned advocate for the appellant submitted that the learned Judge of the Labour Court has taken pains to record that the first party did not produce the muster-roll wherein presence was marked for the period for which the workman contended that he was in service i.e. [1968 to 1989]. Instead, the first party deemed it proper to produce muster-roll for selected period and that too for the period between 1973 to 1981 and thus, they kept away from the Labour Court the muster-roll for the first five years and last eight years. Besides, no justification is given for not producing the muster-roll of the entire period. Besides that, the witness of the first party, whose deposition is at Exh. 1, has admitted that the first party is not maintaining any seniority-list of the daily-wagers; that no appointment order or termination order was even given to the workman; that it is not within his knowledge that the workman was given notice, notice pay or retrenchment compensation. In addition to this, it is admitted by the witness that there are about 50 daily-wagers working on the date of deposition of the witness. It is further stated that they were given work for last 10 years according to requirement. In light of these facts, the learned Judge of the Labour Court has rightly come to the conclusion that there is breach of section- 25-F, G and H. Besides that, the learned Judge of the Labour Court has also held that there is a breach of Rule-81 of the Industrial Disputes Gujarat Rules, 1966 as they have not maintained any seniority list and not published on the notice board.

5. In view of the aforesaid clear-cut findings recorded by the learned Judge of the Labour Court, it was the duty of this Court to appreciate and grant the moulded relief so as to see that the interest of justice is best served.

6. The Court is conscious of the fact that the appellant has restricted his prayer for grant of lumpsum compensation to Rs. 1,50,000/-. But the fact remains that the appellant has put in 21 years of service with the Department and he cannot be deprived of his legitimate dues, which he is otherwise entitled to, under the

law. The Court is also conscious of the fact that the Hon"ble the Apex Court was pleased to grant lumpsum compensation in the cases cited by the learned advocate for the appellant, because in those cases as is recorded the workman had put in service of much lesser period. The present appellant has put in 21 years" of service.

7. The learned Judge of the Labour Court rightly not granted any backwages, which has taken care of delay in question. So far as the order of reinstatement is concerned, the workman is not able to get any benefit of the same because he has crossed the age of superannuation. But, then what is required to be considered is the period of 20 to 22 years when he was worst-off. He lived life high and dry. This Court is of the opinion that the judgment and order of learned Single Judge is required to be modified to an extent. The opponent No. 1 is directed to treat the appellant-workman in service till the age of his superannuation. But, the period from the date of his termination till he reached the age of superannuation should be only for the purpose of calculating the notional benefits. The appellant-petitioner will not be entitled to any backwages, which are not granted even by the learned Judge of the Labour Court. He shall be paid retiral dues by treating him to be in service till the age of his superannuation. Opponent No. 1 is directed to calculate the amount payable to the appellant-workman as early as possible but not later than six weeks from the date of receipt of this order and then pay the same within next four weeks to the appellant-workman.

Appeal is allowed to the aforesaid extent.

Direct service is permitted.