
(2010) 07 GUJ CK 0050

In the Gujarat High Court

Case No : Special Civil Application No. 7497 of 1999

Veraval Patan Joint Municipality

APPELLANT

Vs

Hiranand Kishanchand Kotak

RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B

Citation : (2010) 07 GUJ CK 0050

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

Bench : Single Bench

Advocate : R.M. Chhaya, for the Appellant; T.S. Nanavati, for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—By way of this petition, the petitioner has prayed to quash and set aside the impugned award dated 05.09.1998 passed by the Labour Court, Junagadh in Reference [LCJ] No. 1656 of 1990, whereby the Labour Court has directed the petitioner to reinstate the respondent on his original post with full back wages.

2. The short facts of the case are that the respondent at the relevant time was working as Driver on daily wage basis with the petitioner. The services of the respondent came to and after 1988. Being aggrieved by the same, the respondent raised a dispute which was ultimately referred to the Labour Court for adjudication being Reference [LCJ] No. 1656 of 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. The learned Counsel for the respondent has raised a preliminary contention that in view of the order dated 16.02.2000 passed by this Court and since there is non compliance of provisions of 17B of the Industrial Disputes Act, the main matter cannot be heard. In support of his say, he has placed reliance on the

decision of the Apex Court in the case of Workmen Reptd. By Hindustan V.O. Corporation Limited v. Hindustan Veg. Oils Corporation Limited reported in 2000 GLHEL SC 33777, wherein the Court has observed that an application u/s 17B should be disposed of before the principal petition and it should be disposed of most expeditiously.

4. So far the preliminary contention raised by the respondent is concerned, I am of the view that the same does not deserves consideration inasmuch as the respondent had not preferred any application for vacating the interim relief granted by this Court vide order dated 16.02.2000 for a period of almost ten years. It appears that the workman was not vigilant about his rights. Looking to the facts of the case, I am of the view that the employee who is not vigilant about his rights and that he had not preferred any application for compliance of provisions of Section 17B of the ID Act for almost ten years, the same cannot be revived at a belated stage. The said contention is, therefore, rejected.

5. Heard learned Counsel for the respective parties and perused the documents on record. It appears that the before the Court below the petitioner was not able to establish that the respondent had not worked for 240 days in a year. However, before terminating the services of the respondent, the petitioner had not followed the due process of law. Therefore, I am of the view that the Labour Court has rightly passed the award qua reinstatement with continuity of service.

6. So far as the direction with regard to grant of back wages is concerned, it is required to be noted that the Labour Court has given the benefit of doubt to the respondent while awarding back wages. No cogent reasons have been given by the Labour Court while awarding the same. Moreover, 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.

6.1. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, 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. Hence, the impugned award qua granting back wages is required to be quashed and set aside.

7. For the foregoing reasons, this petition is partly allowed. The impugned award of the Labour Court qua granting reinstatement with continuity of service is confirmed; and, the direction qua awarding back wages is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.