Bhavnagar Mun.Corp.Etc vs Jadeja Govubha Chhanubha & Anr on 3 December, 2014

Equivalent citations: 2015 AIR SCW 35, 2014 (16) SCC 130, (2015) 2 SERVLR 504, (2015) 1 JLJR 145, (2015) 2 JCR 29 (SC), (2015) 1 CURLR 1, AIR 2015 SUPREME COURT 609, (2015) 144 FACLR 177, (2015) 1 SCT 70, (2014) 13 SCALE 434, (2015) 1 SERVLJ 245, (2015) 1 PAT LJR 283, 2015 (1) KCCR SN 27 (SC)

Author: T.S. Thakur

Bench: R. Banumathi, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 10690-10691 OF 2014
(Arising out of S.L.P. (C) Nos. 36800-36801 of 2012)

Bhavnagar Municipal Corporation etc. ...Appellants

Vs.

Jadeja Govubha Chhanubha & Anr. ...Respondents

J U D G M E N T

T.S. THAKUR, J.

1. Leave granted.

2. These appeals arise out of a judgement and order dated 20th July, 2012 passed by the High Court of Gujarat at Ahmedabad whereby Letters Patent Appeal No.878 of 2012 filed by the appellant-Corporation has been dismissed and the order passed by the learned Single Judge of that Court partly modifying the award made in favour of the respondent affirmed.

3. The respondent, it appears, was employed as a Conductor in the Transport Department of the appellant-Corporation on daily-wage basis in October, 1987. He claims to have served in that capacity till 31st March, 1989 when his services were terminated. Aggrieved by the termination, the respondent raised an industrial dispute before the Assistant Labour Commissioner, Bhavnagar who tried to resolve the same by way of conciliation but since the conciliation proceedings also failed, Reference No.459 of 1990 was made to the Labour Commissioner at Bhavnagar for adjudication of the dispute between the parties. The Labour Court allowed the parties to adduce evidence in support of their respective versions and eventually came to the conclusion that the respondent had indeed worked as a Conductor with the appellant-Corporation between 3rd October, 1987 and 31st March, 1989. The Labour Court in the process rejected the appellant's case that the respondent had worked only for 58 days as Badli Conductor and was not, therefore, entitled to protection of Section 25F of the Industrial Disputes Act, 1947. The Labour Court placed reliance upon a Xerox copy of a certificate allegedly issued by an officer of the appellant-Corporation certifying that the respondent had worked as a Conductor for the period mentioned above. The Labour Court drew an adverse inference against the appellant-Corporation for its omission to produce relevant record to prove that the respondent-workman had worked only for 58 days hence not entitled to the benefit of any retrenchment compensation. The Labour Court on that basis held the termination of the respondent from service to be illegal and directed reinstatement with 65% back wages.

4. Aggrieved by the award made by the Labour Court the appellant- Corporation filed Special Civil Application No.11508 of 2002 which was heard and partly allowed by a learned Single Judge of the High Court of Gujarat at Ahmedabad by his order dated 24th April, 2012. The High Court referred to the evidence adduced by the parties before the Labour Court and came to the conclusion that the appellant-Corporation had not been able to prove its assertion that the respondent had worked for 58 days only. The High Court held that the findings recorded by the Labour Court to the effect that the respondent had worked between 3rd October, 1987 and 31st March, 1989 were supported by sufficient evidence and material on record. Having said so, the High Court opined that the award of back wages of 65% was not justified as the Labour Court had not given any cogent reasons while directing such back wages nor had the Labour Court examined whether the respondent was gainfully employed during the intervening period. The award to the extent it directed payment of 65% back wages was, therefore, held to be perverse by the learned Single Judge of the High Court which part was accordingly set aside and the writ petition partly allowed.

5. Dissatisfied with the order passed by the Single Judge the appellant- Corporation filed Letters Patent Appeal No.878 of 2012 which, as noticed earlier, was dismissed by a Division Bench of the High Court by its order dated 20th July, 2012. The Division Bench was of the view that the findings recorded by the Labour Court did not suffer from any infirmity to call for any interference specially when the other employees of the appellant- Corporation appear to have been absorbed by the Corporation upon closure of its Transport Department.

6. On behalf of the appellant-Corporation it was argued that the findings recorded by the Labour Court to the effect that the respondent had worked as a Conductor between 3rd October, 1987 and 31st March, 1989 was not supported by any evidence and was, therefore, perverse. It was contended that the solitary piece of evidence which the respondent had produced in support of his version was

a Xerox copy of a certificate allegedly issued by an officer of the appellant-Corporation who was never summoned as a witness. Apart from the said document and the self-statement of the respondent there was no other material to support the findings that the respondent had indeed worked for 240 days as alleged by him before his termination. On the contrary, it was proved by the documents placed on record by the appellant that the respondent was a Conductor who had worked for just about 58 days hence was not entitled to any protection under Section 25F of the Industrial Disputes Act, 1947. It was urged that the Labour Court had wrongly drawn an adverse inference against the appellant- Corporation, overlooking the settled legal position that the burden of proof lay on the workman to establish that he was in continuous employment for a period of 240 days to be entitled to question the termination of his employment without retrenchment compensation. The Single Judge of the High Court and so also the Division Bench failed to appreciate the essence of the controversy and fell in error in upholding the award made by the Labour Court.

7. On behalf of the respondent, it was contended that the findings recorded by the Labour Court do not suffer from any perversity to call for our interference. The Single Judge, according to the learned counsel, has examined the evidence on record and clearly held that there was sufficient material to support the findings that the respondent had worked for more than 240 days and was, therefore, entitled to the protection of Section 25- F and that since no retrenchment compensation had been paid at the time of the termination of his employment, the order of termination was illegal which entitled the respondent to reinstatement. It was also contended that although sufficient number of years had rolled back since the respondent last served with the appellant-Corporation, yet the respondent was entitled to be reinstated no matter the Transport Department of the appellant-Corporation where the respondent was working had been wound up. The fact that the similarly situated workmen in the department had been adjusted, according to the learned counsel, was a sufficient reason for the respondent to seek reinstatement with or without back wages.

8. It is fairly well-settled that for an order of termination of the services of a workman to be held illegal on account of non-payment of retrenchment compensation, it is essential for the workman to establish that he was in continuous service of the employer within the meaning of Section 25B of the Industrial Disputes Act, 1947. For the respondent to succeed in that attempt he was required to show that he was in service for 240 days in terms of Section 25B(2)(a)(ii). The burden to prove that he was in actual and continuous service of the employer for the said period lay squarely on the workman. The decisions of this Court in Range Forest Officer v. S.T. Hadimani (2002) 3 SCC 25, Municipal Corporation, Faridabad v. Siri Niwas (2004) 8 SCC 195, M.P. Electricity Board v. Hariram (2004) 8 SCC 246, Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan & Anr. (2004) 8 SCC 161, Surendra Nagar District Panchayat and Anr. v. Jethabhai Pitamberbhai (2005) 8 SCC 450, R.M. Yellatti v. Assistant Executive Engineer (2006) 1 SCC 106 unequivocally recognise the principle that the burden to prove that the workman had worked for 240 days is entirely upon him. So also the question whether an adverse inference could be drawn against the employer in case he did not produce the best evidence available with it, has been the subject-matter of pronouncements of this Court in Municipal Corporation, Faridabad v. Siri Niwas (supra) and M.P. Electricity Board v. Hariram (supra), reiterated in Manager, Reserve Bank of India, Bangalore v. S. Mani (2005) 5 SCC 100. This Court has held that only because some documents have not been produced by the management, an adverse inference cannot be drawn against it.

9. The Labour Court has, in the case at hand, placed reliance upon a Xerox copy of a certificate allegedly issued by an officer of the appellant- Corporation stating that the respondent was in the employment of the appellant-Corporation as a Conductor between 3rd October, 1987 and 31st March, 1989. While it is true that the Xerox copy may not be evidence by itself specially when the respondent had stated that the original was with him, but had chosen not to produce the same yet the fact remains that the document was allowed to be marked at the trial and signature of the officer issuing the certificate by another officer who was examined by the appellant. Strict rules of evidence, it is fairly well-settled, are not applicable to the proceedings before the Labour Court. That being so the admission of the Xerox copy of the certificate, without any objection from the appellant-Corporation, cannot be faulted at this belated stage. When seen in the light of the assertion of the respondent, the certificate in question clearly supported the respondent's case that he was in the employment of the appellant-Corporation for the period mentioned above and had completed 240 days of continuous service. That being so, non-payment of retrenchment compensation was sufficient to render the termination illegal. Inasmuch as the Labour Court declared that to be so it committed no mistake nor was there any room for the High Court to interfere with the said finding especially when the findings could not be described as perverse or without any evidence. The High Court was also justified in directing deletion of the back wages from the award made by the Labour Court against which deletion, the respondent did not agitate either before the Division Bench by filing an appeal or before us.

10. The only question that remains to be examined in the above backdrop is whether reinstatement of the respondent as a Conductor is imperative at this late stage. We say so because the appellant claims to have worked for a period of just about 18 months that too nearly three decades ago. The respondent today may be past fifty if not more. The Transport Department where he was working appears to have been wound up and transport work out sourced. That apart, this Court has in a series of decisions held that the illegality in an order of termination on account of non-payment of retrenchment compensation does not necessarily result in the reinstatement of the workman in service. This Court has, in cases where such termination is found to be illegal, directed compensation in lieu of reinstatement. We may at this stage refer to some of those decisions:

11. In Mahboob Deepak v. Nagar Panchayat Gajraula and Anr. (2008) 1 SCC 575, this Court held that since the appellant had worked only for a short period, interest of justice would be sub-served if the direction for reinstatement was modified and compensatory payment of Rs.50,000/- in lieu thereof directed to be substituted. Similarly in Sita Ram and Ors. v. Moti Lal Nehru Farmers Training Institute (2008) 5 SCC 75, this Court took into consideration the period during which the services were rendered by the workman and instead of reinstatement directed a lump sum payment of Rs.1,00,000/- in lieu thereof.

12. In Ghaziabad Development Authority and Anr. v. Ashok Kumar and Anr. (2008) 4 SCC 261, this Court made a similar order as is evident from the following passage:

> "10. We are, therefore, of the opinion that the appellant should be directed to pay compensation to the first respondent instead and in place of the relief of reinstatement in service. Keeping in view the fact that the respondent worked for

> about six years as also the amount of daily wages which he had been getting, we are of the opinion that the interest of justice would be subserved if the appellant is directed to pay a sum of Rs. 50,000/- to the first respondent."

[emphasis supplied]

13. To the same effect is decision of this Court in Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr. (2009) 15 SCC 327 where this Court held that while awarding compensation in lieu of reinstatement host of factors should be kept in mind. The Court said:

> 16. While awarding compensation, the host of factors, inter-alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances. In a case such as this where the total length of service rendered by the appellant was short and intermittent from September 1, 1995 to July 18, 1996 and that he was engaged as a daily wager, in our considered view, a compensation of Rs.50,000/- to the Appellant by Respondent No. 1 shall meet the ends of justice."

[emphasis supplied]

14. Reference may also be made to the decision of this Court in Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh Kumar Seal and Ors. (2010) 6 SCC 773, where this Court referred to the previous decisions on the subject to declare that even when a retrenchment order passed in violation of Section 25(F) may be set aside, reinstatement need not necessarily follow as a matter of Court. The following passage from the decision is apposite:

> 14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee."

[emphasis supplied]

15. To the same effect is the decision of this Court in Incharge Officer and Anr. V. Shankar Shetty (2010) 9 SCC 126, where this Court said:

> "5. We think that if the principles stated in Jagbir Singh and the decisions of this Court referred to therein are kept in mind, it will be found that the High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 years intermittently

> upto September 6, 1985 i.e. about 25years back. In a case such as the present one, it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion, the compensation of Rs. 1,00,000/- (Rupees One lac) in lieu of reinstatement shall be appropriate, just and equitable."

[emphasis supplied]

16. The case at hand, in our opinion, is one such case where reinstatement must give way to award of compensation. We say so because looking to the totality of the circumstances, the reinstatement of the respondent in service does not appear to be an acceptable option. Monetary compensation, keeping in view the length of service rendered by the respondent, the wages that he was receiving during that period which according to the evidence was around Rs.24.75 per day should sufficiently meet the ends of justice. Keeping in view all the facts and circumstances, we are of the view that award of a sum of Rs.2,50,000/- (Rupees Two Lacs Fifty Thousand only) should meet the ends of justice.

17. In the result, we allow these appeals but only in part and to the extent that the award made by the Labour Court and the orders of the High Court shall stand modified to the extent that the respondent shall be paid monetary compensation of Rs.2,50,000/- (Rupees Two Lacs Fifty Thousand only) in full and final settlement of his claim. The amount shall be paid by the appellant-Corporation within a period of two months from today failing which the said amount shall start earning interest @ 12% p.a. from the date of this order till actual payment of the amount is made to the respondent.

.....J. (T.S. THAKUR) .....J. New Delhi; (R. BANUMATHI) December 3, 2014