

Gujarat High Court

Rameshchandra vs Dy.Secretary on 28 September, 2011

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Gujarat High Court Case Information System

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SCA/14558/2011 4/ 4 ORDER

IN  
THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL  
CIVIL APPLICATION No. 14558 of 2011

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RAMESHCHANDRA  
LALJIBHAI PATEL & 1 - Petitioner(s)

Versus

DY.SECRETARY  
NARMADA WATER RESOURCES & 2 - Respondent(s)

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Appearance :  
MR  
MJ MEHTA for  
Petitioner(s) : 1 - 2.  
None for Respondent(s) : 1 -  
3.

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CORAM

:

HONOURABLE

MR.JUSTICE RAVI R.TRIPATHI

Date  
: 28/09/2011

ORAL  
ORDER

1. The present petition is filed by two petitioners claiming the following relief:

"...7(B). Your Lordships may be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus and/or any other appropriate writ/s, order/s and/or direction/s and be pleased to issue fresh directions by directing the respondents to re-engage the petitioners in service, as persons who are junior to the petitioners are still continued in service, in view of the order dated 15.05.2008 passed by this Hon'ble Court in Special Civil Application No.6111 of 2008 and 6112 of 2008..."

1.1 The order dated 15/05/2008 which is made the basis of this petition is produced as Annexure - G (page No.69). A plain reading of the order makes it clear, which reads as under:

'3. In view of the directions issued by Labour Court, Surat (at this juncture learned Advocate for the petitioner states that 'Surat' is wrongly mentioned in place of 'Rajkot') in Reference No.6 of 1994 / Reference No.7 of 1994 (New No.52 of 2007 and No.56 of 2007), where, Labour Court has passed an award on 30th January 2008 while rejecting the relief of reinstatement and partly allowed the reference with a direction to respondent that in future , if, the work, which was performed by petitioner, is available or arise, then, respondent shall have to issue before advertisement near the residence of petitioner and according to requirement of the work, on the basis of seniority, they should have to be provided work if the work is available.

This Court has passed an order on 11th April 2008 which is quoted as under:(emphasis supplied).

"1. Heard learned advocate Mr. H.S. Mulia appearing on behalf of petitioners.

2. Issue notice to respondents returnable on 7th May 2008.

3. Meanwhile, it is directed to respondents to consider the case of both the petitioners whose services were terminated earlier which is found to be illegal by Labour Court for re-engagement in the establishment, if any junior employee is continue in service, on or before returnable date.

4. It is further directed to respondents that if any vacancy is available with the respondents, then, respondent will consider the case of petitioners for re-engagement in the establishment.

5. It is further directed to respondents not to engage any new employee against the vacant posts.

6. Direct service is permitted."

4. In light of the directions issued by this Court on 11th April 2008, it is directed to respondent that if, any vacancy is available with the respondent and whenever the work is available and whatever the nature of the work with respondents, then, respondents shall have to consider the case of petitioner for re-engagement in establishment and meanwhile, it is directed to respondent not to engage any new employee or fresh hand against the vacancy/work till the petitioners are provided the work by respondent as per directions issued by Labour Court, Rajkot.

5. In view of above observations and directions, rule is made absolute to that extent with no order as to costs".

(emphasis supplied)

2. This order is now made to be the basis for claiming the relief. The Court is of the considered opinion that right from the beginning the petitioners have been presenting their case before the learned Judge of the Labour as well as before this Court 'halfheartedly'. This is observed on the basis that the learned Advocate for the petitioners states that their case before the learned Judge of the Labour Court was that while retaining the juniors in service, the services of the petitioners were terminated. Now, if that was so, there was no question of allowing the reference in terms as stated by the learned Advocate for the petitioners. Thereafter, the aforesaid petitions were filed before this Court being SCA No.6111 and 6112 of 2008 wherein order was passed on 11/04/2008, which is quoted in judgment and order dated 15/05/2008. In order dated 11/04/2008 certain directions were issued to the respondents and subsequently those petitions are allowed by making Rule absolute by judgment and order dated 15/05/2008. The direction which is issued on 11/04/2008 which is subsequently made part of the judgment and order dated 15/05/2008 is only on the ground that, '...if, any vacancy is available with the respondent and whenever the work is available and whatever the nature of the work with respondents, then, respondents shall have to consider the case of petitioner for re-engagement in establishment and meanwhile, it is directed to respondent not to engage any new employee or fresh hand against the vacancy/work till the petitioners are provided the work by respondent as per directions issued by Labour Court, Rajkot..."

3. In light of the aforesaid discussion and the fact that right from the beginning petitioners have pleaded their case 'halfheartedly' and have felt satisfied / contended with the aforesaid direction, no orders can be passed in this petition. This petition is in the nature of 'execution petition' for the order / direction issued by this Court on 11/04/2008 and reiterated in the judgment and order dated 15/05/2008 and the Court refuses to pass any order for implementation of the said directions after expiry of more than 'three years'.

3.1 In the result, the petition stands dismissed. But for the fact that petition is filed by the 'workmen', the Court would have dismissed this petition imposing exemplary cost, however on a request made by learned Advocate Mr.Mehta for the petitioners taking a lenient view in the matter, the cost is not imposed.

(RAVI R TRIPATHI, J.) sompura Top