

Gujarat High Court

Rajesh vs Gujarat on 6 May, 2010

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Gujarat High Court Case Information System

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CA/4968/2010 6/ 6 ORDER

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL

APPLICATION - FOR DIRECTION No. 4968 of 2010

In

SPECIAL
CIVIL APPLICATION No. 3016 of 2006

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RAJESH
R. CHAWADA - Petitioner(s)

Versus

GUJARAT
WATER SUPPLY & SEWERAGE BOARD - Respondent(s)

=====

Appearance
:
MR
BIPIN I MEHTA for
Petitioner(s) : 1, MR VICKY B MEHTA for Petitioner(s) : 1,
MR HS
MUNSHAW for Respondent(s) :
1,
=====

CORAM

:

HONOURABLE

MR. JUSTICE H.K.RATHOD

Date
: 06/05/2010

ORAL
ORDER

1. Heard learned advocate Mr.B.I.Mehta for applicant original respondent and learned advocate Mr.H.S.Munshaw for respondent original petitioner, in each civil application.
2. Present applications are preferred by applicant with a prayer to direct the original petitioner Board to reinstate each applicant in service or in the alternative, direct the original petitioner Board to pay current wages per month.
3. Initially, on 18.4.2007, this Court has passed following order :

Heard learned advocate Mr. Hemant S. Munshaw for petitioner and Mr. Bipin I. Mehta, learned advocate for the respective workmen who is appearing on caveat. Petitioner Board has challenged various awards passed by labour court granting reinstatement with continuity of service without back wages for intervening period. On 29.2.2006, rule was issued by this court by making it returnable on 20.12.2006. By same order, ad.interim relief against continuity of service was granted and it was clarified that the award qua reinstatement has not been stayed. It was observed that it will be open for petitioner to give any other equivalent work to the respondent workmen.

Applicant Board has filed these civil applications in the respective main matters and has prayed to modify order of this court dated 24.2.2006. It was submitted by Mr. Munshaw on behalf of the applicant Board that there is no vacancy available with the petitioner in which the present respondents can be accommodated. He has also submitted that there is shortage of fund, grant is not available from the Government and no work is available and, therefore, they are unable to

reinstate workmen concerned. It is also submitted by him that in various circle offices and division office of the Board, it has been inquired as to whether any vacancy is available or not but no vacancy is available and, therefore, ad.interim order of this Court may be modified suitably. Learned advocate Mr. Mehta has opposed the submissions and prayer made by Mr. Munshaw.

I have considered the averments made in the application and the submissions made by the learned advocates for the parties.

In light of these factual aspects of the matter, question required to be considered by this court is, whether reinstatement in fact is possible or not. When the petitioner is not able to reinstate workmen because of non availability of vacancy, in those circumstances, court can modify the ad.interim order by directing petitioner to pay benefit of section 17B of the ID Act, 1947 to workmen concerned. When the labour court has passed award of reinstatement with continuity of service and petitioner employer is unable to reinstate workmen, in that circumstances, by staying operation of the award of reinstatement during pendency of the matter, court can direct the employer to comply with the mandatory provisions of section 17B of the ID Act. In these matters, while issuing rule and granting ad.interim relief, operation of the award of reinstatement was not stayed by this court. Therefore, that part of the order is required to be modified.

Therefore, considering the inability on the part of the petitioner Board to reinstate workmen concerned considering various correspondence with the circle and division office, order of this court dated 24.2.2006 is modified by staying operation of the award of reinstatement. Consequently, petitioner is directed to pay the full wages last drawn inclusive of maintenance allowance, if any, available, under the service rules to the respondents workmen under section 17B of the ID Act, 1947 from the respective dates of awards till 30th April, 2006 within one month from the date of receipt of copy of this order. Petitioner is also directed to go on making such payments of full wages last drawn to each of the respondent workman regularly every month from 1st May, 2006 till the final disposal of the respective main matters without fail. Learned advocate Mr. Bipin I. Mehta appearing for workmen submits that each workman in this group will file affidavit under section 17B of the ID Act, 1947 with copy thereof to the petitioner. Subject to these observations and directions, order of this court dated 24.2.2006 is modified. These Civil Applications are disposed of.

3.1 Thereafter, on 25.4.2008, this Court has passed following order :

1. Heard learned advocate Mr.B.I.Mehta for the applicants and learned advocate Mr.Munshaw for the respondent.
2. The applicants are receiving last drawn wages of Rs.1300/- per month under Section 17B of the I.D.Act,1947. In the present applications, the request is that vacancy is available and work is also available and that the work has been carried out through Panchayat by the respondent Board and therefore, the case of the applicants is that let the Board may consider the applicants for reinstatement in service without prejudice to the rights and contentions of the applicants.

3. In light of the aforesaid background, it is directed to the respondent Board to consider the case of applicants for reinstatement during the pendency of these petitions without prejudice to their rights and contentions, if work and vacancy both are available and that work is to be carried out through Panchayat within a period of one month from the date of receiving the copy of this order.

4. Accordingly, present civil applications are disposed of.

4. In spite of aforesaid two orders passed by this Court, the applicants workmen are sufferer because they are getting only Rs.1300/- being a last drawn salary and though work was available with respondent original petitioner Board to operate motor with pumping station and also to get repaired the motors of all pumping stations. The respondent original petitioner Board is having several pumping stations and therefore, that work has been given on contract basis to M/s.Vraj Construction, Amreli and Awarth Infrastructure Pvt. Ltd., Jasdan. The above said contractor is required to engage at least 10 workers on one pumping station. The contractors have engaged workers at Mahi Yojna Pumping Station, Kotda Pitha, Khanpur, Santhali, Botad, Modhuka, Mahuva, Bhadala and Ajmer Pumping Stations. The respondent original petitioner Board has engaged Ami Engineering Corporation, Rajkot for Hirpar, Hadala and Bedi Pumping Stations. Number of contracts have been given for operating the motor of pumping stations as well as for repairing work of all pumping stations. In all 150 workers are working under contractors and these applicants are really made to suffer because though they are ready and willing to work but, respondent original petitioner Board is not prepared to reinstate them in spite of two orders passed by this Court with a recommendations to respondent original petitioner Board to consider case of applicants. The applicants are ready and willing to work and respondent original petitioner Board is in a position to give the work to each applicant in spite of giving some work to the Taluka Panchayat and Gram Panchayat, only Rs.1300/- has been paid under Section 17B of I.D.Act,1947. It is very difficult for applicants to maintain themselves in such a meagre amount. Therefore, request is to direct respondent original petitioner Board to pay current wages.

5. I have considered submissions made by learned advocate Mr.Munshaw that reinstatement is not possible because the work has been carried out by other employees.

6. In light of this background, it is very difficult for this Court to direct at this stage to respondent original petitioner Board to pay current wages because it is beyond the provisions of Section 17B of the I.D.Act,1947. Therefore, if the work is available with respondent original petitioner Board and such work has been carried out by workers of Board, then it is a legal obligation on part of petitioner Board being a State authority to consider case of each applicant for reinstatement subject to result of petitions as well as without prejudice to rights and contentions of petitioner Board in pending petitions.

7. Therefore, in the interest of justice, it is directed to petitioner Board to consider the case of each applicant for reinstatement with sympathetic approach and looking to the fact that work has been allotted to various contractors that means that work is available with petitioner Board but, petitioner Board does not want to reinstate the present applicants that impression has been created before this Court. Therefore, let the case of each applicant may be considered sympathetically by petitioner

Board for reinstatement subject to result of main petitions and without prejudice to the rights and contents of petitioner Board in pending petitions, within a period of one month from date of receiving copy of present order.

8. In view of aforesaid observations and directions, present applications are disposed of.

9. The Registry to notify main SCAs for final hearing on 13.5.2010 in admission Board.

(H.K.RATHOD, J.) ...mitesh...

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