

Gujarat High Court

Agricultural vs Bharatkumar on 27 April, 2011

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SCA/2098/2011 13/ 13 ORDER

IN  
THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL  
CIVIL APPLICATION No. 2098 of 2011

With

SPECIAL  
CIVIL APPLICATION No. 3963 of 2011

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AGRICULTURAL  
PRODUCE MARKET COMMITTEE THROUGH SECRETARY - Petitioner(s)

Versus

BHARATKUMAR  
DHIRAJLAL SANGHVI - Respondent(s)

=====

Appearance  
:  
MR  
VC VAGHELA for  
Petitioner(s) : 1,  
MR GM JOSHI for Respondent(s) :  
1,  
=====

CORAM

:

HONOURABLE

MR. JUSTICE H.K. RATHOD

Date

: 27/04/2011

ORAL

ORDER

Heard learned advocate Mr. VC Vaghela on behalf of petitioner, learned advocate Mr. GM Joshi appearing for respondents on caveat in both petitions.

Rule.

Learned advocate Mr. Joshi waives service of notice of Rule on behalf of respondent workmen. With consent of both learned advocates, present petitions are taken up for final hearing today.

In SCA no. 2098/2011, petitioner Market Committee has challenged award passed by Labour Court, Amreli in reference LCA no. 227/2005 dated 6/1/2011. The Labour Court, Amreli has granted Rs. 30,000/- in lieu of reinstatement and back wages of interim period being a compensation in favour of respondent workman.

The brief facts of SCA no. 2098/2011 is that respondent workman was working as clerk w.e.f. 10/10/2001 and his salary was Rs. 2,340/-. His service was terminated on 30/4/2005. At that occasion, section 25 F of I. D. Act, 1946 is not followed by petitioner and juniors were remained continued and subsequently new recruitment has been made. Therefore, demand notice was served by respondent workman on 14/5/2005 to petitioner. Against statement of claim, written statement

filed by petitioner vide exh 11 and raising contention by petitioner before Labour Court that respondent workman was not an employee of petitioner Market Committee. The respondent was working as "Dadia" - daily wager and monthly wages was paid to him. The amount has been sent through cheque, which was not accepted by respondent. Vide exh 15 workman was examined before Labour court. He has produced documentary evidence vide exh 16 to

19. Exh. 16 is demand notice and exh 17 and 18 is Registered AD acknowledgment receipt received by respondent and exh 19 is reply given by petitioner. Vide exh 42, Shri Sureshbhai Premjibhai Patel was examined and documentary evidence was produced by petitioner exh 44 to 50. Exh 44 is termination order dated 30/4/2005 which was sent to respondent by petitioner exh 45 has been refused by respondent. Exh 49 is copy of resolution dated 31/12/2009 also produced and vide exh 50 letter dated 18/2/2002 of Director of Agricultural Market Committee, Gandhinagar is produced on record.

Similarly, in SCA no. 3963/2011, Labour Court in reference no. 29/2005 exh 52 has granted Rs. 30,000/- being compensation in lieu of reinstatement and back wages of interim period on 10/1/2011 in favour of workman viz. Shri Jaisukhbhai Shayamjibhai Limbani. In present case, workman was appointed on 15/10/2002 receiving last drawn salary of Rs. 2,340/- and his service was also terminated on 30/4/2005. The demand notice was sent by respondent to petitioner on 14/5/2005. The petitioner has filed reply vide exh 11. In present case also same contention has been raised by workman that he was remained in service upto period of more than three years and he has completed 240 days continuous service. Even though, section 25 F of I. D. Act is not followed by petitioner. The workman was examined vide exh 15 before Labour Court and documents are produced vide exh 16 to 19 and on behalf of petitioner exh 42 Sureshbhai Premjibhai Patel was examined. Thereafter, documents have been produced by petitioner exh 44 to 50 including order of termination dated 30/4/2005 vide exh

44. The matter was heard by Labour Court and considering evidence, which are on record. The Labour Court has thought it fit that instead of granting reinstatement in favour of respondent workman as he was daily wager working w.e.f. 15/10/2002 and not appointed by regular procedure of recruitment rules. Therefore, after considering total length of service three years and two months and decision of Apex Court in case of Incharge Officer and Anr Vs. Shankar Shetty reported in 2010 (9) SCC 126, compensation of Rs. 30,000/- has been awarded in favour of workman in lieu of reinstatement and back wages of interim period.

The Labour Court has heard matter and considering submission made by both learned advocates. Thereafter, issues have been framed in para 12 and answer has been given in para 13. According to evidence of workman exh 15 he was appointed on 10/10/2001 in post of clerk and his service was terminated on 30/4/2005 and his last wages was Rs. 2,340/-. He was not given presence card, payslip and even not given appointment order by employer. At the time of termination his service, junior workman viz Dilipbhai Vora was remained continued in service and subsequently fresh recruitment has been made by petitioner. Therefore, Section 25 F of I. D. Act has been violated. He has made efforts to find out job but he was not able to get job. In cross examination, workman admitted that he was not appointed by following recruitment procedure and he was working as daily

wager. There was no advertisement issued by petitioner for post of clerk. The Secretary, Shri Sureshbhai Premjibhai Patel was examined on behalf of petitioner. According to his evidence, workman was working on seasonal basis as Dadia and at the end of month, wages was paid to workman and according to necessity of work, daily wagers are appointed by petitioner. Exh 44 being a termination order produced on record and notice pay which was sent to workman, was refused by workman also produced on record.

In light of aforesaid evidence on record and considering facts that workmen were remained continued in service from 2001 to 2005 and section 25 F of I. D. Act has not been followed by petitioner. The Labour Court has come to conclusion that looking to age of workmen and duration of service about more than three years and six months. Therefore, after considering decision of Apex Court in case of Incharge Officer and Ors Vs. Shankar Shetty reported in 2010 (9) SCC 126, Labour Court has considered that services of workmen were terminated on 30/4/2005. The evidence were given by workmen in the year 2008 last drawn salary was Rs. 2,340/-. Therefore, lumpsum amount has been fixed by Labour Court in lieu of reinstatement and back wages which comes to Rs. 30,000/-.

I have considered submissions made by both learned advocates and considering age of workmen. They were working as Dadia on daily wage basis. Recently Apex Court has considered such type of cases where daily wager's service was terminated, for non compliance of section 25 F, reasonable compensation has been worked out. For that in case of Incharge Officer and Anr Vs. Shankar Shetty reported in 2010 (9) SCC 126, relevant observation made in para 2 to 7 are quoted as under:

2. Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25 F of the Industrial Disputes Act, 1947 (for short 'ID Act')? The course of decisions of this Court in recent years has been uniform on the above question.

3. In the case of Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr. (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court - namely, U.P. State Brassware Corporation Ltd. & Anr. v. Uday Narain Pandey (2006) 1 SCC 479 : 2006 SCC (L&S) 250; Uttranchal Forest Development Corporation vs. M.C. Joshi (2007) 9 SCC 353 : (2007) 2 SCC (L&S) 813 ; State of M.P. & Ors. v. Lalit Kumar Verma (2007) 1 SCC 575 : (2007) 1 SCC (L&S) 504; Madhya Pradesh Admn v. Tribhuban (2007) 9 SCC 748: (2008) 1 SCC (L&S) 264; Sita Ram & Ors. v. Motil Lal Nehru Farmers Training Institute (2008) 5 SCC 75 : (2008) 2 SCC (L&S) 71; Jaipur Development Authority v. Ramasahai & Anr. (2006) 11 SCC 684 : (2007) 1 SCC (L&S) 518; Ghaziabad Development Authority & Anr. v. Ashok Kumar & Anr. (2008) 4 SCC 261 : (2008) 1 SCC (L&S) 1016 and Mahboob Deepak v. Nagar Panchayat, Gajraula & Anr. (2008) 1 SCC 575 : (2008) 1 SCC (L&S) 239 and stated as follows: (Para 7 & 14) "7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in

a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

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 25-F 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".

4. Jagbir Singh<sup>1</sup> has been applied very recently in the case of Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh Kumar Seal & Ors. (2008) 1 SCC 575 wherein this Court stated:

"In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice".

5. Shankar Shetty the respondent was initially engaged as daily wager by the appellants in 1978. He worked for 57 days in that year. The respondent had also worked for 316= days in 1979, 335= days in 1980, 242= days in 1981, 33= days in 1982, 10= days in 1983, 103 days in 1984 and 50 days in 1985. According to him he was terminated from service on September 6, 1985 without following the procedure prescribed in Section 25 F of the ID Act . He raised industrial dispute relating to his retrenchment which was referred for adjudication to the Labour Court, Mysore but later on the dispute was transferred to the Labour Court, Chickmagalur. The Labour Court, Chickmagalur by its award on December 21, 1994 rejected the respondent's claim. The Labour Court held that Section 25 F of the ID Act was not attracted since the workman failed to prove that he had worked continuously for 240 days in the calendar year preceding his termination on September 6, 1985.

6. The respondent challenged the award passed by the Labour Court by filing a writ petition before the Karnataka High Court. The Single Judge of the High Court overturned the finding of the Labour Court about non-applicability of Section 25 F and held that Section 25 F of the ID Act was attracted and the procedure provided therein having not been followed, the termination of respondent (petitioner therein) was illegal. The Single Judge, accordingly, vide his judgment and order dated August 13, 2001 directed reinstatement of the respondent into service but without back wages and continuity of service. The present appellants challenged the judgment and order of the Single Judge in writ appeal before Division Bench but without any success. On December 9, 2004, the writ appeal preferred by the present appellants was dismissed by the Division Bench.

7. We think that if the principles stated in Jagbir Singh<sup>1</sup> 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 25 years 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. We order accordingly. Such payment shall be made within 6 weeks from today failing which the same shall carry interest at the rate of 9 per cent per annum."

Learned advocate Mr. Vaghela has also relied upon one decision of this Court in SCA no. 8121/2010 decided on 28/12/2010 (CO: Honourable Mr. Justice, K. A. Puj) in similar circumstances, following observations made in para 18 to 22, which are quoted as under:

18. Having heard the learned counsels appearing for the parties and having considered their rival submissions in light of the impugned awards passed by the Industrial Tribunal as well as Labour Court and having further considered the authorities cited before the Court, the Court is of the view that the Industrial Tribunal has clearly erred in issuing directions for regularization of the services of the respondent workman. It is settled position in law and in number of decisions, this Court as well as Apex Court have held that the Court has no power to issue direction for regularization of the service of the workman. The Court cannot create any new post, which is not there. The issuance of direction of regularization of the respondent workman in the present case, amounts to creation of new post, which is barred under the law.

19. The ground of challenge against termination raised by Mr. Vaghela has also no substance. The respondent workman was wireman and he was not on sanctioned post. The Director of Municipalities has specifically issued direction not to engage daily wagers more than 10% of the permanent employees. The respondent workman, therefore, cannot be made permanent. In that view of the matter award passed by the Tribunal issuing direction to the petitioner Nagar Palika to make the respondent workman permanent and to pay him pay-scale is quashed and set aside.

20. So far as award passed by the Labour Court is concerned, it is true that services of the respondent workman were terminated on 5.5.2001. At the time of termination of his services provisions of Section 25F have not been complied with and he was neither issued notice nor paid notice pay or retrenchment compensation. However, the Court has, of late, taken the decisions that when the services of the respondent workmen are not by way of regular mode, their initial appointments are not in accordance with law and it is by way of back door entry. If they have got the employment in an establishment in this manner, in that case the provisions of Section 25F are not required to be complied with. At the most in such cases the concerned workman is entitled to some reasonable compensation. Reliance is placed before the Court on the decision of the Apex Court in the case of Senior Superintendent Telegraph (Traffic), Bhopal Vs. Santosh Kumar Seal and others, reported in (2010) 6 SCC 773, wherein it is held that it has been consistently held by the Supreme Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

The Court further held that in view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers for about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice.

21. The learned Single Judge of this Court in the case of Amreli Municipality Vs. Timaniya Maganbhai Gordhanbhai (Special Civil Application No.10712 of 2010 decided on 12.10.2010) has taken the view that in case of daily wager, order of reinstatement and back wages cannot be passed and in case if it is found that there was breach of Section 25(F), 25(G) and 25(H) of the Industrial Disputes Act, the concerned workman can be compensated by way of lump-sum monetary compensation. The Court has accordingly directed the petitioner Nagar Palika in that case to pay an amount of Rs.40,000/- to the respondent workman by way of lump-sum monetary compensation within the period of eight weeks from the date of said decision.

22. Considering the above legal position and facts of the present case, the Court is of the view that award passed by the Labour Court of reinstatement with 50% back wages is required to be modified by awarding compensation of Rs.75,000/- to the respondent workman which shall be paid within two months from today. It is made clear that acceptance of this amount by the respondent workman would be considered as the acceptance of the decision by the respondent workman."

The similar view is taken by this Court in reported decision i.e. 2011 (1) CLR 315 and 2011 (1) CLR 862 (Coram: Honourable Mr. Justice K. A. Puj).

In light of this observation made by this Court as well as Apex Court in case of Shankar Shetty as referred above. The award passed by Labour Court, Amreli giving compensation in lieu of reinstatement and back wages of interim period is considered to be reasonable, legal and valid.

However, according to my opinion, compensation which has been worked out by Labour Court, Amreli can not consider to be adequate and reasonable. For that amount of compensation is reasonably enhanced from Rs. 30,000/- to Rs. 50,000/- which will meet end of justice between parties. Therefore, award passed by Labour Court, Amreli in both references being LCA no. 27/2005 exh 52 and 29/2005 exh 52 is modified to the effect that instead of paying Rs. 30,000/- compensation in lieu of reinstatement and back wages of interim period it should be paid Rs. 50,000/- by petitioner to workmen. The said amount of Rs. 50,000/- is required to be paid by petitioner in favour of both respondent workmen within a period of one month from date of receiving copy of present order.

Accordingly, award in question is modified to the aforesaid extent. Rule is made absolute.

(H.K.RATHOD, J) asma Top