

Gopalbhai Muljibhai Charan vs Range Forest Officer on 24 April, 2019

Author: G.R.Udhwani

Bench: G.R.Udhwani

C/SCA/7821/2019

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7821 of 2019

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GOPALBHAI MULJIBHAI CHARAN

Versus

RANGE FOREST OFFICER

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Appearance:

MR P C CHAUDHARI(5770) for the Petitioner(s) No. 1

MS MEGHA CHITALIYA ASSISTANT GOVERNMENT PLEADER for the
Respondent(s) No. 1,2

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CORAM: HONOURABLE MR.JUSTICE G.R.UDHWANI

Date : 24/04/2019

ORAL ORDER

1. Judgement and award dated 10.08.2018 awarding compensation in the sum of Rs. 1,70,000/- to a daily wage workman, who was earning sum of Rs. 4500/- per month on the date of his termination i.e. 2014, after finding his termination illegal, is sought to be assailed in this petition under Article 227 of the Constitution of India with the plea that in absence of the challenge to the factual aspect like non-availability of the sanctioned post, engagement of the workman contrary to the rules, the reinstatement could not have been denied to the workman. To buttress the submission, reliance is placed upon Krishan Singh vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Hr.) 2010 LLR 450 which was the case where the case of the discharged employee was being dealt with under Section 11A of the Industrial Disputes Act, 1947 (for short 'I.D.Act'). In the said context, observations made by the Apex Court in para 11 and 12 are thus:

"11. The aforesaid two decisions of this Court in Mahboob Deepak v. Nagar Panchayat, Gajraula & Anr.(supra) and Ghaziabad Development Authority & Anr. v. Ashok Kumar & Anr. (supra) have no application to the facts in this case. In the present case, the respondent has not taken any stand before the Labour Court in his

objections that the post in which the workman was working was not sanctioned or that his engagement was contrary to statutory rules or that he was employed elsewhere or that there was no vacancy. In absence of any pleadings, evidence or findings on any of these aspects, the High Court should not have modified the Award of the Labour Court directing re-instatement of the appellant with 50% backwages and instead directed payment of compensation of Rs. 50,000/- to the appellant.

12. The decision of this court in Secretary, State of Karnataka & Ors. v. Umadevi (3) Ors. (supra) cited by the counsel for the respondent relates to regularization in public employment and has no relevance to an award for reinstatement of a discharged workman passed by the Labour Court under section 11A of the Act without any direction for regularization of his services."

2. The case did not involve the daily wage employee urging for reinstatement after service of five years in the public employment. The ratio laid down in Krishan Singh (supra) therefore cannot be applied to the facts of the case.

3. It is settled legal position that the daily wage employee has no lien on the post; his appointment being dehors the rules. In absence of the lien, no contention would lie in the mouth of daily wage workman that he has a right to reinstatement with continuity of service. At the most, the daily wage employee may be entitled to compensation for the breach of Section 25F of the I.D. Act or the necessary reliefs in case of breach of Sections 25G and 25H of the I.D. Act, if the case is so made out.

4. When the workman was employed for five years and eight months before alleged termination in the public employment without following due procedure of law and his appointment being only as a daily wage employee, the compensation in the opinion of this court would be appropriate relief instead of reinstatement. It is misconceived to seek a claim on Government Resolution dated 17.10.1988 inasmuch as the said Government Resolution itself indicates that no more daily wage or temporary appointment would be done and the measures contemplated therein were meant for the employees who had completed specified years of service as daily wage. The petitioner was appointed in the year 2009 i.e. long long after the policy above stated was declared in Government Resolution dated 17.10.1988 and thus cannot seek a claim on such policy as of right.

5. Learned counsel submitted that in the alternative, this court may consider the enhancement of compensation. The compensation can be enhanced in a suitable case where case for enhancement is made out. In the instant case, the workman was employed for the salary of Rs.4500/- per month i.e Rs. 54000/- per year and compensation awarded to him was Rs. 1, 70, 000/- which would roughly be salary of three years. The said amount is made available to the workman, without taking work from him and is far far higher than the compensation contemplated under section 25F of the Act. In the opinion of this court, substantial compensation is given to the workman and no case is made out for enhancement.

6. Petition fails and is dismissed.

(G.R.UDHWANI, J) niru*