

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3371 of 1995

And

SPECIAL CIVIL APPLICATION NOS.8758 to 8764 OF 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JUNAGADH DISTRICT PANCHAYAT

Versus

LALJI BUDHA

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Appearance:

Special Civil Application Nos.3371,8758 to 8764 of 1995

MR HS MUNSHAW for Petitioner

MR IS SUPEHIA for Respondent No. 1, 2, 3, 4, 5, 6, 7, 8

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 30/04/96

COMMON JUDGMENT ;

1. This batch of 8 Special Civil Applications is directed against the Award dated 26-10-94 passed by the Labour Court, Junagadh in New Reference (LCJ) Nos.1184 of 1990 to 1191 of 1990 as has been transferred to the Labour Court, Junagadh from Rajkot.

2. The eight respondents-workmen who had been appointed with the District Panchayat on different dates from 19-1-1978 and thereafter in 1981, 1982, 1985, 1986

and 1987 had been terminated on 28-9-87 with effect from 31-10-87. Against this termination, which was to be effective from 31-10-87, the respondent-workmen in the first instance filed Civil Suit in the Court of Civil Judge (J.D.), Junagadh and obtained an injunction order against their termination. This injunction order was vacated on 6-11-87 and, therefore, they stood terminated from 7-11-87. Mr. Supehia appearing for the respondents-workmen has pointed out that the Civil Suit filed by them was later on dismissed as not maintainable. The employees raised an industrial dispute and thereupon reference was made to the Labour Court, Rajkot wherefrom the dispute was transferred to the Labour Court, Junagadh and the Labour Court, Junagadh had passed the impugned Award on 26-10-94 whereby the relief of reinstatement with continuity of service and 30% backwages has been granted to all the eight respondents-workmen.

3. The respondents-workmen had gone to the Labour Court with the case that the retrenchment compensation as contemplated by S.25F of the Industrial Disputes Act had not been paid to them as condition precedent at the time of their retrenchment and that certain persons junior to them had been retained by the District Panchayat in service. The petitioner-Junagadh District Panchayat's case before the Labour Court was that in the termination orders dated 28-9-87 it was clearly mentioned that their services are being terminated because there was dearth of work, the termination orders are being passed in accordance with the seniority and in case their services are required again in future, the seniority will be given due regard, this order dated 28-9-87 making the termination effective from 31-10-87 was in itself one month's notice and it was also mentioned in this order that the employees may collect their dues under S.25F of the Industrial Disputes Act from the Office of the Dy. Executive Engineer on 7-11-87 i.e. the pay day. In the order dated 28-9-87 the details of the dues had also been mentioned. Thus, to be precise, the case of the District Panchayat before the Labour Court was that the provisions of S.25F had been followed and the termination was ordered on account of the dearth of work and due regard was given to the seniority. It was the further case of the District Panchayat before the Labour Court that on 7-11-87 i.e. at the first available opportunity after the vacation of the injunction order, the dues of each of the respondent-workman under S.25F of the Industrial Disputes Act were also offered to them by the District Panchayat but the employees refused to accept the same and, therefore, Registered A.D. letters were sent to them subsequently on 19-11-87 so as to collect the dues

on 30-11-87. It is rather strange that despite such a factually disputed position, both the parties i.e. the employees as well as the employer chose not to lead any oral evidence before the Labour Court and the Labour Court proceeded to decide all these References on the basis of the available pleadings and held that in case the dues had not been accepted by the employees on 7-11-87, the employer ought to have sent it by Money Orders and merely because the dues have not been sent by Money Orders, the Labour Court had taken it to be a case of breach of S.25F of the Industrial Disputes Act and on that basis relief of reinstatement has been granted with continuity of service and without any application of mind on the question as to which of the respondent was entitled to what amount of backwages and without holding any inquiry and even in absence of any material in this regard as to the gainful employment during the period of enforced idleness, passed a blanket order for payment of 30% backwages to each of the respondent-workman. It was also not the case of the respondent-workman before the Labour Court that on 7-11-87 they had gone to collect the dues and that yet they were not paid.

4. Mr. Supehia appearing on behalf of all the respondents-workmen had raised a controversy on the basis of the chart, which had been produced by the District Panchayat before this Court and the amendment of the petition which was allowed on 17-4-96, that on admitted pleadings with regard to the length of service of each of the respondent-workmen, the amount of retrenchment compensation as was mentioned in the respective orders is not in conformity with the requirement of S.25F and the amount was short. It has also been argued that certain persons junior to these respondents-workmen are still continuing in service.

5. In the facts and circumstances of this case, when disputed questions of facts were there before the Labour Court itself, the Labour Court could not have decided all these issues without adjudicating the facts by oral evidence and in absence of any oral evidence, the Labour Court could not have passed the Award granting the relief of reinstatement with backwages and continuity of service merely because both the parties had chosen not to lead any evidence. If the respondents-workmen being the persons to raise the dispute chose not to lead evidence, the matters should have been decided only on the basis of the admitted facts, but I find that there was no such admitted facts on the basis of which the dispute could be decided and it is clear that the Labour Court committed a serious error in passing the Award granting the relief of

reinstatement with continuity of service and 30% backwages without recording evidence and the facts, which have now come on record, also show that the matter deserves to be thrashed out on the basis of the evidence and the documents, which may be filed by both the sides. In this view of the matter, while leaving it open for both the sides to file any further document to supplement their pleadings and to lead evidence, the impugned Award dated 26-10-94 is hereby quashed and set aside and the matter is remanded back for the trial of References afresh. Looking to the fact that the matter is old, subject to the convenience of the Labour Court, the Labour Court may give preference to the proceedings in these References.

6. All these Special Civil Applications are accordingly allowed in part as above and the Rule is also made absolute in all these petitions in the terms as aforesaid. No order as to costs.