

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9544 of 1993

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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?  
1 to 5 no

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LAVJIBHAI CHAWDA

Versus

BAIJNATH N SHARMA

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Appearance:

1. Special Civil Application No. 9544 of 1993

MR RC PATHAK FOR MR MH SHAIKH for Petitioners  
MR PRAFUL J BHATT for contesting Respondent  
SERVED BY AFFIXING for Respondent No. 2  
SERVED for Respondent No. 3  
NOTICE NOT RECD BACK for Respondent No. 5

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 29/03/96

ORAL JUDGMENT ;

1. This Special Civil Application is directed against the Award dated 4-5-93 passed by the Labour Court, Ahmedabad in Reference (LCA) No.1610/88 whereby

the relief of reinstatement was granted to the concerned workmen except in case of one of the deceased workman, namely, Ibrahimbhai Mohammedbhai, and the relief of backwages was denied. The petitioner has raised the grievance against the denial of backwages. It is submitted that the question of backwages was dealt with by the Labour Court at point No.2 framed under para 5 of the Award. The point No.2 has been dealt with in paras 13 and 14 of the Award and I find from the contents of these two paragraphs of the Award that the Labour Court considered the question of employment of one of the workman, namely, Rupsing Budhaji, who had made certain income out of agriculture and, thereafter, he has disallowed the claim of backwages in general for all the workmen by saying that as regards the other dues mentioned in the Schedule of the demand, the Union had filed separate proceedings for their legal dues and the same are pending and, therefore, none of the workmen mentioned in the Schedule was entitled to backwages and, therefore, the point No.2 was decided in negative i.e. against the workmen denying backwages. In my view, the relief of backwages could not be denied on the basis of such a bald mention that separate proceedings for the legal dues had been filed by the Union. The question of backwages has to be decided with reference to each and every workmen on relevant consideration as to whether the respective workman had remained in gainful employment or not and other similar circumstances to determine the entitlement of backwages and the proportion thereof on the basis of the evidence. It appears that the Labour Court, Ahmedabad while passing the Award dated 4-5-93, which is impugned in this petition, has not adjudicated the claim of backwages in accordance with law and the matter, therefore, deserves to be remanded for this limited purpose. It will be open for both the parties now in the remanded proceedings to lead evidence or to place appropriate material for the limited purpose of deciding the claim of backwages in respect of each and every workman, whose name was included in the Schedule and only, thereafter, the Labour Court would decide the question of backwages in accordance with law without being influenced by anything mentioned in this regard in the impugned Award dated 4-5-93. Looking to the fact that the matter is quite old, the Labour Court may consider to give priority for expediting this matter. Both the parties shall remain present before the Labour Court at Ahmedabad on 1-5-96 and no notice afresh shall be required to be given to the parties as has been agreed by the learned advocates for both the sides.

2. Thus the impugned Award dated 4-5-93 is partly

quashed and set aside to the extent it says that 'The Reference so far as the relief of back wages is concerned is hereby disallowed.' This Special Civil application is, therefore, partly allowed and the Rule is also made absolute accordingly. No order as to costs.