

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4151 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 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? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

B'NAGAR DIST PANCHAYAT

Versus

PRABHATSINH H RATHOD

Appearance:

1. Special Civil Application No. 4151 of 1988
MR KH BAXI for Petitioners No. 1-2
MR TR MISHRA for Respondent No. 1
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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 29/11/2001

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution, the Bhavnagar District Panchayat and the District Health Officer have challenged the judgment and

award dated 18-3-1988 passed by the Labour Court, Bhavnagar in new Reference (LCB) No. 358 of 1987 (Old Reference (LCR) No.1081 of 1985) by which the Labour Court directed the District Health Officer, Bhavnagar District Panchayat to reinstate respondent - Rathod Prabhatsinh Harisinh on the post of compounder with continuity of service and with full backwages.

2. While admitting the petition, this Court directed the Panchayat to make payment to the respondent as per section 17B of the Industrial Disputes Act, 1947 from the date of the award, if the affidavits are found on verification to be correct. The payment was directed to be made on the basis of last pay drawn from month to month.

3. Mr TR Mishra learned counsel appearing for the respondent states that in view of the direction to the Panchayat to pay the respondent wages under section 17B, the respondent was taken back in service and the respondent has been working as compounder under the District Panchayat for all these years.

4. The respondent was selected for the post of compounder by the District Panchayat. The respondent's name was included in the select list in the year 1979 and the respondent's name was placed on the waiting list. Since there was no immediate vacancy, the respondent was not given any immediate appointment but when the incumbent of the post went on leave in the year 1983 for one year, the respondent was appointed on the post on 27-8-1983. On 16-1-1985, the respondent's services were terminated by the Medical Officer. Hence the respondent raised an industrial dispute which was referred to the Labour Court, Rajkot and subsequently transferred to the Labour Court Bhavnagar with the aforesaid reference number. Although the District Health Officer, Bhavnagar was a party, none appeared before the Labour Court on behalf of the employer. After considering the evidence led by the respondent, and the submissions on his behalf, the Labour Court held the termination to be illegal as it was in violation of the mandatory provisions of section 25F of the Act and also on the ground that the pharmacist who was appointed after the respondent was junior and still retained and, therefore, there was violation of section 25G and section 25H also.

5. In the present petition, it is the contention of the District Panchayat that since the respondent was not a qualified pharmacist as per the provisions of Pharmacist Act, 1948, the Panchayat was justified in

terminating the respondent's services and, therefore, the termination was legal.

6. On the other hand, Mr TR Mishra learned counsel for the respondent submits that the respondent is not disqualified from serving as a pharmacist as the respondent was employed well before the prohibition in question came into force. Mr Mishra has further submitted that in any view of the matter when the provisions of section 25F were not complied with and when the Panchayat had not appeared before the Labour Court, the Labour Court was justified in passing the impugned award.

7. Having heard the learned counsel for the parties, it appears to the Court that when no satisfactory explanation is offered for the absence of the employer before the Labour Court and when no application was made by the employer before the Labour Court for setting aside the award and when the provisions of section 25F were not complied with while terminating the services of the respondent who had admittedly put in more than 240 days services immediately prior to the date of termination, this Court sees no justification to interfere with the impugned award. At the same time, since it is the case of the Panchayat that the respondent is not qualified to be employed as a compounder in view of the provisions of Pharmacy Act, 1948, which contention is disputed by the respondent, it would be just and proper to observe that the award of the Labour Court or the dismissal of this petition shall not come in the way of the petitioners taking appropriate action in accordance with the law after giving the respondent a reasonable opportunity of being heard. It will also be open to the respondent to request the petitioners to send the respondent for training if the respondent's appointment or his continuance in employment is found to be irregular and if such irregularity is capable of being cured by the respondent undergoing any training as a Pharmacist. Such a request shall be duly considered by the petitioners. In case the final decision of the Panchayat is adverse to the respondent, the same shall not be implemented for a period of one month from the date of communication of the decision to the Panchayat.

8. Subject to the aforesaid observations, the petition is disposed of. Rule is discharged with no order as to costs.

(M.S. Shah,J)

zgs/-

