

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 595 of 1999

in

SPECIAL CIVIL APPLICATION No 1937 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
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 concerned : NO
Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?

GUJARAT WATER SUPPLY AND SEWERAGE BOARD

Versus

SHAILESH RAMESHBHAI PAREKH

Appearance:

1. LETTERS PATENT APPEAL No. 595 of 1999
MR HS MUNSHAW for Appellant No.
MR PF MAKWANA for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 30/09/2003

ORAL JUDGEMENT (Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

The respondent workman, Shaileshbhai Rameshbhai Parekh was working with the appellant-Gujarat Water Supply and Sewerage Board (for short "the Board") on daily wage basis in P.B. Branch since 26.6.1991. He was paid Rs.16.00 per day plus Dearness Allowance and regularly he was given rise in the salary. After a period of almost four years, i.e. on 26.5.1995 his services were terminated by the appellant Board in clear breach of the provisions of the Industrial Disputes Act. At that time he was getting daily wages of Rs.39.50. According to him he had continuously worked for more than 240 days every year. In spite of that his services were terminated by the appellant-Board in clear violation of principles of natural justice without holding any regular departmental inquiry against him by retaining his juniors. He, therefore, approached the Conciliation Officer. The conciliation proceedings failed. Therefore, Assistant Commissioner of Labour, Vadodara made a reference on 23.11.1995 to the Labour Court, Vadodara for quashing and setting aside the order of termination of the respondent workman and to take him back in service with full back wages and continuity of service. The said Reference (LCB) No.1065 of 1995 was allowed by the learned Judge of the Labour Court, Vadodara by the impugned judgement and award dated 29.8.1997 whereby he quashed and set aside the termination order of the respondent workman and ordered the appellant Board to reinstate the respondent workman in service with continuity and consequential benefits of service were granted. He was also ordered to be paid full back wages from the date of termination till reinstatement. It was also made clear that if there is any breach in compliance of the award then the appellant-Board will have to pay interest at the rate of 18% per annum from 1.10.1997. Above that, cost of Rs.500/-, was awarded.

2. Aggrieved of the aforesaid impugned judgement and award passed by the learned Judge of the Labour Court, Vadodara, the appellant Board filed Special Civil Application No.1937 of 1998 before this Court. The same was dismissed by the learned Single Judge of this Court (Coram: R. Balia, J.) on 23.3.1999 on the ground that the appellant-Board had an alternative remedy available to it under Rule 26A of the Gujarat Industrial Rules for quashing and setting aside the ex parte award passed against it.

3. Aggrieved of the impugned judgement and award passed by the Labour Court, Vadodara and the judgement and order dated 23.3.1999 dismissing Special Civil Application No.1937 of 1998 the appellant-Board has filed this Letters Patent Appeal.

4. When this appeal was listed before us on 23.9.2003 after hearing learned counsel Shri Munshaw for the appellant-Board and Shri Makwana for the respondent workman a detailed order was passed and Shri Makwana, learned counsel for the respondent workman was asked to ascertain as to whether the workman would be interested in job or back wages and at the request of Shri Makwana, the matter was kept today.

5. Today, the respondent workman, Shaileshbhai Rameshbhai Parekh has personally remained present before this Court through his counsel Shri Makwana. He stated that he is more interested in service, not in back wages provided the appellant-Board accepts the impugned judgement and award passed by the Labour Court reinstating him in service with all consequential benefits and continuity in service. In view of the above learned counsel Shri Munshaw for the appellant-Board submitted that he will have no objection if the impugned judgement and award passed by the Labour Court which is not interfered with by the learned Single Judge in writ petition be suitably modified. His only reservation was that the respondent workman be given benefit with effect from 1999, the day on which he was reinstated in service under interim orders passed by this Court on the Civil Application filed in this appeal.

6. The request of Shri Munshaw to grant all other benefits except back wages with effect from 1999 cannot be accepted in view of the judgement and award passed by the Labour Court whereby the Labour Court has declared termination order of the respondent workman in 1995 as bad in law and illegal because it was passed in clear breach and violation of principles of natural justice. On facts we are of the considered opinion that the Labour Court was fully justified in quashing the impugned order of termination and directing the appellant-Board to reinstate the workman in service with all consequential benefits of service including continuity of service and back wages. However, as stated earlier on a concession given by the respondent workman that he will not claim any back wages we are inclined to modify the impugned judgement and award passed by the Labour Court awarding full back wages to the respondent workman.

7. It may be stated that it is the case of the respondent workman that he had worked for 240 days every year from 1991 to 1994, i.e. almost for a period of four years. His juniors were retained in service, but his services were terminated. The Labour Court allowed the reference and ordered to reinstate the workman in service by his judgement and award dated 29.8.1997. The said award was not complied with by the appellant-Board for a considerable time and in absence of interim relief granted in Special Civil Application No.1937 of 1998, contempt petition, i.e. Misc. Civil Application NO.1113 of 1998 came to be filed and under the orders of the Court passed on that application, the appellant-Board reinstated the respondent workman in service, but on daily wage basis. Since 1999 the respondent workman is in service. As per the Government Resolution dated 17.10.1998 the respondent workman is otherwise entitled to get all benefits of regularisation, etc. because he was in service. He joined service in 1991. The Labour Court awarded continuity of service. By now, he has put in more than 12 years of service. The above Govt. Resolution is applicable to almost all the Corporations established by the State Government including the appellant-Board. This is not disputed by learned counsel, Shri Munshaw for the appellant-Board.

8. In view of the above discussion this appeal is partly allowed and the writ petition, i.e. Special Civil Application No.1937 of 1998 filed by the appellant-Board is partly accepted and the impugned judgement and award passed by the Labour Court on 29.8.1997 awarding full back wages to the respondent workman while passing order of reinstatement in service with all consequential benefits and continuity of service is modified only to the extent that the award passed by the Labour Court awarding full back wages to the respondent workman is hereby quashed and set aside. Rest of the order passed by the Labour Court regarding reinstatement with all consequential benefits of service including continuity of service is upheld and accordingly the judgement and order dated 23.3.1999 passed by the learned Single Judge dismissing Special Civil Application No.1937 of 1998 is hereby quashed and set aside.

9. Before parting we must state that under the interim orders of the Court passed on Misc. Civil Application No.1113 of 1998 the respondent workman is already reinstated in service. Therefore, there is no question of issuing any direction to the appellant-Board to comply with the award passed by the Labour Court

reinstating the respondent workman in service. Rest of the judgement and award passed by the Labour Court giving other consequential benefits and continuity of service is to be complied with by the appellant Board on or before 31.12.2003. It goes without saying that the appellant-Board shall now treat the respondent workman as a regular employee by virtue of the Government Resolution dated 17.10.1998.

10. Accordingly, the appeal is partly allowed with no order as to costs.

(B.J. SHETHNA, J.)

(RAVI R. TRIPATHI, J.)

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