

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9706 of 1999

with

SPECIAL CIVIL APPLICATION No 5390 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

- =====
1. Whether Reporters of Local Papers may be allowed : YES
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?

SURENDRANAGAR DISTRICT PANCHAYAT

Versus

LALJI NANJI

Appearance:

1. Special Civil Application No. 9706 of 1999
MR HS MUNSHAW for Petitioner No. 1
MRS DT SHAH for Respondent No. 1-5
 2. Special Civil Application No. 5390 of 2001
MRS DT SHAH for Petitioner No. 1
RULE SERVED for Respondent No. 1
-

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 28/10/2004

ORAL JUDGEMENT

Special Civil Application No.9706 of 1999 is filed by the employer, Surendranagar District Panchayat challenging the legality of the award dated 25.2.99 passed by the Presiding Officer, Labour Court, Surendranagar, by which Reference (LCS) No.302 of 1992 filed by the respondent-workman was partially allowed and the respondent was directed to be reinstated in service without backwages or continuity of service. The respondent workman had challenged his termination dated 1.4.89 in the said reference. The petitioner had, however, contended that the respondent had abandoned the service and that there was no termination of his service. In Special Civil Application No.5390 of 2001, the workman concerned has challenged the same award to the extent that the same denies to the workman the benefits of backwages and continuity of service.

2. The Labour Court in the impugned award had come to the conclusion that the services of the workman were actually terminated on 1.4.89 and the theory of abandonment of service put forth by the employer, except for the fact that the workman had challenged the termination of 1.4.89 after nearly three years, there was no other material placed before the Labour Court to establish that the workman had abandoned the service. The employer had not produced any material to establish the case of abandonment of service. In a recent decision of the Hon'ble Supreme Court in the case of M/s. Nicks (India) Tools v. Ram Sarat, reported in 2004 AIR SCW 5095, the Hon'ble Supreme Court has held that if the Management adopts the stand that the workman voluntarily left the service, the burden is on the management to prove the said fact.

3. In the present case, I find that the employer had not produced any material before the Labour Court to establish that the workman had abandoned the service. In that view of the matter, the finding of the Labour Court that the services of the workman were terminated on 1.4.89 cannot be interfered with in exercise of powers under Article 227 of the Constitution of India. The Labour Court found that the termination was in violation of the provisions of section 25-G and H of the Industrial Disputes Act. These findings are not seriously in dispute and the action of the Labour Court, therefore, in setting aside the termination of the workman was perfectly justified. Having found that the workman was

illegally terminated from service, Labour Court would have been justified in withholding the backwages for the intervening period, in the facts of the present case, since the workman himself had delayed raising of reference for nearly three years after his termination. However, the action of the Labour Court in denying the workman the benefits of continuity in service cannot be countenanced. The workman would be entitled to continuity in service. Learned advocate appearing for the workman Ms.D.T.Shah has stated and conceded that since the workman had not actually worked in service in the year 1988, the workman would not be entitled to nor will the workman claim regularisation pursuant to the Government resolution dated 17.10.88 on the basis of notional continuation.

4. In the result, the award of the Labour Court is modified to the extent that the workman would be entitled to receive continuity of service without backwages. Accordingly, Special Civil Application No.9706 of 1999 is rejected. Rule is discharged with no order as to costs. Special Civil Application No.5390 of 2001 is allowed in part as aforesaid. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)