

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 4459 of 2011****FOR APPROVAL AND SIGNATURE:****HONOURABLE DR. JUSTICE A. P. THAKER**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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BHANJIBHAI NATHUBHAI MAKWANA

Versus

**RAJKOT TALUKA PRATHMIK SHIKSHAN SHARAFI SAHAKARI MANDLI &
1 other(s)**

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Appearance:

MR ANAND B GOGIA(5849) for the Petitioner(s) No. 1

MR RB GOGIA(5850) for the Petitioner(s) No. 1

MR PANKAJ R DESAI(3120) for the Respondent(s) No. 1

RULE SERVED(64) for the Respondent(s) No. 2

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CORAM: HONOURABLE DR. JUSTICE A. P. THAKER

Date : 29/01/2021

ORAL JUDGMENT

1. The present petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India challenging the impugned award dated 15.11.2010 passed

by the Labour Court, Rajkot in Reference L.C.R. No.144/2009 (Old No.49/1996, 116/2007) whereby the Labour Court has denied the claim of the workman.

2. It is the contention of the petitioner that he has joined the services as a clerk in respondent in the month of December 1989 and he has worked from December 1989 till 31.12.1995 continuously. It is contended by the petitioner that his service was terminated on 01.01.1996 without any notice or notice pay, payment of retrenchment compensation and in violation of the provisions of the Industrial Disputes Act, 1947 (hereinafter be referred to as the "I.D. Act"). It is further contended by the petitioner that he has filed Reference before the Labour Court at Rajkot wherein he has also filed the statement of claim and the respondent has filed written statement denying the contentions of the petitioner made in the statement of claim. It is also contended by the petitioner that the Labour Court, after recording the oral evidence and considering the evidence on record has held that the termination of the workman was illegal, invalid and in violation of Sections 25-F, Section 25-G and Section 25-H of the I.D. Act. It is further contended by the petitioner that the Labour Court has not considered the fact of reinstatement and back wages and has awarded lump sum compensation of Rs.15000/- in lieu of reinstatement and back wages. On all these grounds, the petitioner has prayed to grant reinstatement and back wages.

3. Heard Mr.Anand Gogia, learned advocate for the petitioner and Mr.Pankaj Desai, learned advocate for the

respondent through video conferencing.

4. Mr.Anand Gogia, learned advocate for the petitioner has submitted that though the Labour Court has observed in the award that there was complete breach of Section 25-G and Section 25-H of the I.D. Act, the Labour Court has erred in not granting the prayer of reinstatement with full back wages. While referring to the award, he has submitted that when there was clear cut finding regarding breach of the provisions of the I.D. Act, the petitioner ought to have been granted reinstatement with full back wages. He has also submitted that during the pendency of the reference, the workman has reached at the age of 60 years as observed in the award. According to him, the Labour Court has apparently failed to consider the factual aspects in its proper perspective and has granted lump sum amount of Rs.1500/- only instead of reinstatement with back wages. He has prayed to set aside the award and direct the employer to reinstate the workman. He has further urged to allow the present petition.

Mr.Pankaj Desai, learned advocate for the respondent has vehemently submitted that the award passed by the Labour Court is just and proper and no interference is required by this Court. He has submitted that the Labour Court has taken into consideration the fact that the workman was doing part-time as a clerk and served only for a period from December, 1989 till 31.12.1995. He has submitted that even if the breach of the provisions of the I.D. Act and is believed, then, considering the nature of the status of the workman as part-time employee, the

observation and the reasoning given by the Labour Court is just and proper and, therefore, the present petition may be dismissed. He has submitted that there is no perversity in passing the award by the Labour Court.

4. During the pendency of the award, the workman has already reached at the age of superannuation of 60 years.

5. Having considered the submissions canvassed on behalf of both the sides coupled with the facts and the materials placed on record, it appears that there is no dispute regarding the fact that the workman was working as part-time clerk in respondent – company and he has been retrenched on 01.01.1996. It also appears from the observation made by the Labour Court that the retrenchment allowance or notice pay has not been paid to the workman on the date of his retrenchment. It also appears that initially, the workman was getting Rs.300/- per month for doing part-time clerk. It also appears that the Labour Court has come to the conclusion that there is clear cut breach of Section 25-F of the I.D. Act. At this juncture, it is required to be observed that regarding breach of Section 25-G and Section 25(H) of the I.D. Act, the contradictory finding has been given by the Labour Court. At once place, it is observed that the workman has not produced any evidence regarding the breach of Section 25-G and Section 25-H of the I.D. Act and at the same time, it is observed by the Labour Court that there is breach of Section 25-G and Section 25-H of the I.D. Act. Now, considering the fact that even during the pendency of the reference, the workman has reached at the age of 60 years i.e. superannuation and

in that view of the matter, the statement of claim is not possible.

6. It is, now, well settled law by catena of decisions of the Apex Court that when there is breach of Section 25-F of the I.D. Act which is technical one. The reinstatement of the workman is not *ipso facto* and that breach is technical one. It is also well settled by the Apex Court that in case of reinstatement of the workman for the breach of Section 25-F of the I.D. Act, the employer could take the workman back in service and after following procedure of the provisions of Section 25-F, retrenched the workman. In that view of the matter, the reinstatement of the workman is not possible and proper course for justice is to give just monetary lump sum compensation to the workman.

7. Considering the facts and circumstances of the present case, this Court is of the considered opinion that the amount awarded by the Labour Court of Rs.15000/- is meagre one. At this stage, learned advocate for the respondent has submitted that it should not be more than Rs.50,000/-. However, since the amount awarded by the Labour Court is meagre one and on lower side, considering the factual aspects of the case, this Court is of the considered opinion that the lump sum amount of compensation as full and final settlement is required to be enhanced from Rs.15,000 to Rs.75,000/-.

8. Having considered the submissions and the material facts on record and as long period has been passed, this Court is of the considered opinion that the amount of

compensation is required to be granted to the workman at Rs.75,000/-. The workman was earning at Rs.300/- per month at the initial stage and this amount has been enhanced at Rs.500/- per month.

9. Considering the judgment of the Apex Court in the case of ***Tapash Paul Vs. BSNL and another*** reported in ***2016 (1) Scale 92*** and ***BSNL Vs. Bhurumal*** reported in ***2014 (7) SCC 177***, this Court is of the view that in the facts of this case granting of relief of reinstatement after a gap of almost many years, no useful purpose will be served and, therefore, this Court deems fit to order grant of compensation of Rs.75,000/- in lieu of the reinstatement. Such amount be paid to the workman by the employer after proper verification of the identify by an account payee cheque / pay order within a period of three months from the date of receipt of this order, failing which the workman shall be entitled to claim interest at the rate of 9% from today till the date of actual realization. It is observed that the aforesaid amount is in addition to whatsoever paid to him.

10. With the aforesaid conclusion, the petition stands disposed of. Rule is made absolute to the aforesaid extent. No order as to costs.

(DR. A. P. THAKER, J)

V.R. PANCHAL