

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## R/SPECIAL CIVIL APPLICATION NO. 10109 of 2019

## FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

THE EXECUTIVE ENGINEER  
Versus  
JAYESHBHAI DHANJIBHAI AHIR

Appearance:

MS SEJAL K MANDAVIA(436) for the Petitioner(s) No. 1  
MR DIPAK R DAVE(1232) for the Respondent(s) No. 1

CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 30/06/2022

CAV JUDGMENT

1 This petition under Article 226 / 227 of the Constitution of India is filed by the employer, Executive Engineer, District Panchayat, Irrigation Department, Surat, challenging the award of the Labour Court, dated 15.02.2019. By the award in question, the

Labour Court has directed that the respondent workman be reinstated in service with 30% backwages.

2 Facts in brief would indicate that the respondent who was working as a Driver with the petitioner employer, approached the Labour Court filing a Statement of Claim at exh.6. It was his case that he was working as a Driver with the petitioner since 01.03.1996 and on and from 30.04.2012 after office hours, he was told that he should not report for duty from 01.05.2012. According to the respondent workman, he was told that from 01.05.2012, the services of Driver were being outsourced and therefore he was not required to report for duty. It was his case that he was earning a daily wage of Rs.135/-. The employer petitioner filed a response by way of exh.8 denying the claim of the workman that he was working since 01.03.1996. It was the case of the department that the Driver had worked only from 01.05.2011 to 30.04.2012 on a daily wage basis. Based on a rate card, he was paid Rs.135/- as daily wage. That there was no sanctioned post of a Driver and having decided to outsource the services of a Driver, the services of the petitioner were put to an end. Evidence was led by both parties. The workman was examined

at exh.13. He had produced Salary Bills at marks 12/1 to 12/12 showing the number of days that he had worked and the salary wages paid for that day. The employer also examined one Dhanjibhai Chimtabhai Gamit at exh. 23. Also was produced at exh.7 the details of the wages paid on the basis of the dates on which the workman had worked at marks 25/1 to 25/4. The employer had produced the actual number of days that the workman had worked and the allotment of a new Car from 12.01.2017. Based on appreciation of evidence, the Labour Court came to the conclusion that there was violation of provisions of Sec. 25(F) and 25(G) of the Industrial Disputes Act, 1947, and therefore, the respondent workman was reinstated with 30 % backwages.

3 Ms.Sejal Mandaviya, learned counsel for the petitioner - employer submitted that the findings of the Labour Court, more or less, were in favour of the petitioner inasmuch as, the workman was not in a position to prove that he had worked from 01.03.1996, despite which the Labour Court granted the benefit of reinstatement with 30% backwages. In fact, for the period from 01.05.2011 to 30.04.2012, the workman had not worked for 240 days but for a

period of 92 days as was the evidence produced on record by way of documents at exhs.25/2 and 25/3.

3.1 Ms.Mandaviya, learned counsel for the petitioner, would submit that once it was found by the Labour Court that there was no need for the services of a driver and the services were being outsourced, the Labour Court could not have awarded reinstatement particularly also with backwages.

3.2 Ms. Mandaviya, learned counsel for the petitioner, would also submit that except for the statements which the workman had given in terms of details of Salary Slips, nothing was produced on record and therefore no adverse inference could have been drawn against the petitioner to show that the employee workman had completed 240 days in service.

4 Mr.Dipak Dave, learned counsel for the respondent workman would submit that the award of the Labour Court is just and proper. A specific and a positive finding had been arrived at by the Labour Court that the workman had for the period from 01.05.2011 to 30.04.2012 had worked for 272 days. That itself showed that in

compliance with the provisions of Sec.25(D) the workman had worked for 240 days in the preceding year prior to his termination. The Labour Court, therefore, had rightly held that there was violation of Sec.25(F) of the Act.

4.1 Mr.Dave, learned advocate, would further submit that the Labour Court found that after having terminated the services of the workman, the services were procured by outsourcing and therefore though there was work, the services of driver were requisitioned through outsourcing and the Labour Court therefore rightly believed that there was violation of Sec.25(G) of the Act. Having proved that he had worked continuously, the award of reinstatement of the workman with backwages was sustainable. He also would rely on an affidavit in reply filed to the petition and rely on the Certificate dated 26.07.2006 wherein it was shown that the services of the workman from 02.01.2002 to 26.07.2006 were good. The certificate was issued by the Executive Engineer. A letter dated 08.04.2008 was also produced together with the affidavit to sustain the finding that the workman had worked for a period from 01.03.2006 onwards.

5 Perusal of the award and considering the submissions of the learned counsels for the respective parties would indicate that the workman examined himself at exh.13. He also produced on record bills and covering letters for the period from May 2011 to April 2012 at marks 12/1 to 12/12. Examining these exhibits, the Labour Court found that the workman had worked for 272 days for the period from 01.05.2011 to 30.04.2012. In the deposition of the employer rendered by one Dhanjibhai Chimtabhai Gamit at exh.23, referring to that deposition, the Labour Court found that the employer too had admitted in his deposition that the workman had worked for 272 days as a driver and that he was paid Rs.135/- per day was evident from the signatures of one Shri J.K.Shah in the Salary Slips.

6 Having considered these set of evidences, despite a finding that the workman had not been able to show that he had been working continuously from the year 1996, the Labour Court found that if the provisions of Sec.25(F) of the Act are appreciated, it had come on record that the workman had worked for 272 days preceding his retrenchment. The Labour Court, therefore, found that

there was violation of the provisions of Sec.25(F) of the Act. This finding of the Labour Court was based on the set of evidences produced by the employee workman at exhs. 12/1 to 12/12 showing that he had worked for a period of 272 days supported by the evidence of the employer that these salary slips were signed by one Shri J.K.Shah from the establishment.

6.1 Having said that, the findings of the Labour Court cannot be faulted. Based on this evidence, therefore, the Labour Court in the opinion of this Court rightly observed that no adverse inference can be drawn against the workman for not having proved his continuity of service from 01.03.1996. The Labour Court has discussed the number of days that the workman worked based on the evidence produced at marks 12/1 to 12/11 and the deposition of the workman at exh.13.

6.2 After discussing the evidence of the workman, on the appreciation of the documents produced by the employer, the Labour Court found that the employer had produced a log book, exh.25/1 for the period from 01.04.2011 to 31.03.2012. They are produced at

mark 25/2 a statement showing that the workman had worked for 92 days. Also was produced on record an order dated 12.01.2017 at mark 25/4 showing procurement of a new vehicle.

7     Appreciating this evidence in light of the Statement of Claim, the Written Statement, the testimony of the workman and that of the employer made by one Shri Dhanjibhai, the Labour Court found that the stand of the employer by producing a statement exh.25/3 showing that the workman had worked only for 92 days was an afterthought. In the opinion of this Court, this finding of the Labour Court cannot be faulted. A positive finding was therefore recorded that for the period from 01.05.2011 to 30.04.2012, the workman had worked for 272 days in the preceding 12 months and therefore, violation of Sec.25(F) was writ large in the termination.

8     As far as the stand of the employer that the services of the respondent workman were terminated because of outsourcing, the Labour Court found that there was work, it was available and the stand therefore that there was no Car available for which the services of the employee workman could be engaged and even the stand of

the employer by producing the order that a new car was available from 01.12.2017 was not believed. When the stand of the employer workman was that the services of the respondent were terminated because they had outsourced the services of the driver, engaging the services of another employee through outsourcing by terminating the services of the workman was found to be in violation of provisions of Sec.25(G) of the Act. No fault can be found with this finding of the Labour Court.

9 As far as backwages are concerned, what is observed by the Labour Court is that nothing has come on record to show that the employee workman was gainfully employed. No basis seems to have come on record as to why the Labour Court had awarded 30% of backwages. The Labour Court has specifically observed the fact that the employee workman was a driver and looking to the present status of inflation, it cannot be believed that the workman would have remained unemployed. A presumption was drawn that he did and was gainfully employed. In the face of that finding, the award of the Labour Court awarding 30% backwages cannot be sustained.

10 Accordingly, the award of the Labour Court dated 15.02.2019

is modified. The award of reinstatement is confirmed and that of awarding 30% backwages is set aside. Petition is accordingly, partly allowed.

**(BIREN VAISHNAV, J)**

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