

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1793 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

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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 ?	

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SAVITABEN MANGALBHAI HARIJAN
Versus
SUPERINTENDENT

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Appearance:

MR DIPAK R DAVE(1232) for the Petitioner(s) No. 1

MR. UTKARSH SHARMA, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1,2

NOTICE SERVED for the Respondent(s) No. 3

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CORAM:HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 23/08/2022

ORAL JUDGMENT

1 Rule returnable forthwith. Mr.Utkarsh Sharma, learned Assistant Government Pleader, waives service of

notice of rule on behalf of the respondent – State. With consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing today.

2 The original workman, aggrieved by the award of the Labour Court dated 26.10.2018 by which a lump-sum compensation of Rs.54,000/- has been awarded, has approached this Court claiming that the award be quashed and set aside and further direction be issued to the respondents to reinstate the petitioner in service with full backwages, continuity of service and all consequential benefits.

3 Facts in brief would indicate that the petitioner was engaged as a 'Sweeper' under the respondents. She joined her services on 17.01.2000. On her services being discontinued, apparently due to the policy of outsourcing with effect from 02.05.2006, she approached the Labour Court.

3.1 The Labour Court, based on the terms of reference opined that the interest of justice would be served if compensation is awarded to the petitioner.

3.2 Perusal of the award of the Labour Court would indicate that against the termination of the year 2006, the reference was raised within time on 04.07.2007. After the Statement of Claim was filed by the petitioner, a written statement too was filed by the respondent - employer at exh.24. The award was decided ex-parte in absence of the employer by the order dated 23.02.2012, wherein, the Labour Court directed the respondents to reinstate the petitioner in service with 25% backwages.

3.3 In Miscellaneous Application No. 16 of 2012 filed in the reference case, namely, Case No. 157 of 2007, the Labour Court set aside the ex-parte award on 18.02.2014 with a direction to decide the issue afresh. It is in these circumstances, that the reference was re-numbered as Reference (T) No. 42 of 2014.

4 Mr.Dipak Dave, learned counsel for the petitioner, would assail the award of granting compensation on the ground that the respondents in failing to produce any evidence could not prove that the termination of the petitioner was bad. In fact, the findings of the Labour Court would indicate that the Labour Court found that the petitioner had worked continuously for a period of 240 days for six years from 17.01.2000 to 02.05.2006 when she was terminated from her services. Perusal of the award of the Labour Court would indicate that in support of the averments made in the Statement of Claim, the workman had been examined at exh.13. It was her case before the Labour Court that she had worked for 240 days in each year of service continuously. Attendance Registers were produced at exh.27 for the period from 17.12.2001 to January 2005. On going through such registers, the Labour Court found that the petitioner-workman had worked continuously for over a period of time satisfying the prerequisite of completing 240 days in each year of service as provided under Sec.25(F) of the

Act.

4.1 Mr.Utkarsh Sharma, learned AGP for the State would also urge the Court that the benefit of continuity in service cannot be granted, since the petitioner was originally working as a part timer.

5 In addition thereto, reading the award of the Labour Court would indicate that by way of Exhs. 28 to 31, forms were produced showing payment of wages to the petitioner-workman which too indicated that the petitioner had worked for the entire months for the wages which were paid to her for the years in question. Based on this evidence therefore, and in light of the decision in the case of **Director, Fisheries Terminal Department vs. Bhikubhai Meghajibhai Chavda.**, reported in **AIR 2010 (SC) 1236**, the Labour Court came to the conclusion that the petitioner was working continuously over a period of time in the months in question i.e. 30-31 days respectively, and therefore, there was violation of

provisions of Sec.25(F), particularly when the petitioner was in continuous service of 240 days as defined in Section 25(B) of the Act. However, the Labour Court, relying on a decision in the case of ***Hari Nandan Prasad & anr vs. Employer I/R to Management of Food Corporation of India & Anr.***, reported in **(2014) 7 SCC 190**, opined that interest of justice would be served if compensation of Rs.54,000/- is awarded looking to the fact that period of 12 years has gone by and reinstatement therefore may not be plausible.

6 Facts on hand would indicate that in the opinion of this Court, the Labour Court materially erred in not granting the benefit of reinstatement on the ground of period of 12 years having gone by since the adjudication. As referred to hereinabove, what is evident is that initially the award was passed ex-parte in the year 2012 essentially because the respondents had failed to appear and adduce evidence before the Labour Court. The Labour Court, then had awarded reinstatement with 25%

backwages. When the award passed ex-parte was set aside on 18.02.2014 for fresh consideration, the Labour Court by the award impugned herein, has awarded compensation which in the opinion of this Court is unjustified, particularly when admittedly violation of Sec.25(F) is writ large as even found by the Labour Court.

6.1 The Court is also emboldened to take the view in view of the decision of the Co-ordinate Bench of this Court rendered in Special Civil Application No. 5899 of 2021 dated 13.01.2022, wherein, somewhat similar award passed by the Labour Court, Godhra, awarding compensation of Rs.35,000/- was under challenge. Of course, the policy of outsourcing was extensively discussed by the Co-ordinate Bench. The termination in the present case too, though not expressly stated was as a result of such policy having come into force. Paras 7 to 14 of the order read as under:

“7. This Court has perused the written statement dated 23.09.2014 and Exh.20 i.e examination-in-

chief of the witness of respondent-state, which reveals that the respondent-State has specifically contended that since vide circular dated 10.02.2006 issued by the Finance Department, State Government, the appointments made on contractual basis were abolished, the petitioner-workman was terminated from service. This Court has also perused the deposition of the representative of the respondent-State, the same was recorded on 23.09.2015 below Exh.24. It is admitted by the representative of the respondent-State that the petitioner -workman was terminated in view of the instructions issued by the State Government, without issuing any notice or notice pay. It is also stated that the work is still available with the respondent.

8. The aforesaid Circular dated 10.02.2006 and the subsequent Circular dated 02.04.2012 were subject matter of challenge in the writ petition being special Civil application No.7462 of 2012 and allied matters. The contractual employees like the present petitioner were terminated in view of the aforesaid policy, which resulted in filing of the aforesaid writ petitions. The aforesaid group of petitions were allowed vide judgement and order dated 21.12.2018. It was carried in appeal by the State by filing Letters Patent Appeal No.1155 of 2019. The said appeals were dismissed vide judgement and order dated 09.05.2019. The Coordinate Bench of this Court has recorded the prayers and has observed thus:

“3 By way of these writ petitions under Articles 14,16,21,23 and 226 of the Constitution of India, by and large, the petitioners have prayed for the following reliefs:

A) Your Lordships may be pleased to issue a writ of certiorari to quash and set aside the Government Resolution dated 25.4.2012 directing the Government

officers to terminate the services of ClassIV part-time employees from 31.5.2012 issued by respondent no. 3;

B) Your Lordships may be pleased to issue a writ of mandamus commanding the respondents not to terminate the services of the petitioners from 31.5.2012 pursuant to the Government Resolutions dated 25.4.2012 and its parent government dated 10.2.2006 issued by respondent no. 3;

C) Your Lordships may be pleased to pass a cease and desist order to permanently restrain the respondents from terminating the petitioners' service under Government Resolution dated 10.2.2006 and 25.4.2012 issued by the respondent no. 3;

D) Your Lordships may be pleased to issue a writ of mandamus directing the respondent no. 3 to give prospective effect to the Government Resolution dated 10.2.2006 issued by respondent no. 3 and further declare that the said Government Resolution cannot apply retrospectively to the petitioners who are appointed before 10.2.2006;

E) Your Lordships may be pleased to declare the action of the respondents to terminate the services of the petitioners in an unfair, unjust and unreasonable manner being inconsistent and incompatible with Article 14,16,21 and 23 of the Constitution;

F) In the alternative, Your Lordships may be pleased to direct the respondents to consider the cases of all the petitioners

individually for regularizing their service in light of para 53 of the Uma Devi's case;

G) Pending admission and final hearing of the present petition, Your Lordships may be pleased to stay the implementation and operation of the Government Resolution dated 25.4.2012 issued by the respondent no. 3 terminating the services of the petitioners on 31.5.2012;

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5 The Finance Department of the State Government on 10.2.2006 issued Government Resolution withdrawing the powers of all the departments to appoint and pay wages to the parttimers from the contingency fund. Further, it was decided that the work performed by the parttime employees to be given to the outsourcing agency. The object of the Government Resolution dated 10.2.2006 was to reduce the prospective huge financial burden arising out of regularizing part time employees in service.

6 Though such resolution was passed, however, the departments of Government authorities were in need of part-time employees and as the alternative arrangement of outsourcing was time consuming, Finance Department came with various Government Resolutions extending the time to keep the part-time employees in service. However, vide Government Resolution dated 25.4.2012 Finance Department gave final ultimatum to all the Government offices to terminate the service of class IV part-time employees on or before 31.5.2012.

7 The petitioners' services were to be terminated on or before 31.5.2012 and they

were to be replaced by another set of ad hoc employees in the name of outsourcing. Apprehending such termination, the petitioners approached this Court by way of aforementioned petitions. Other similarly situated persons affected by the outsourcing policy of the Government also filed identical petitions before this Court which are being disposed of by this common judgment.

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32 As mentioned above, some of the petitioners are out of service after coming into force the Resolution of the State Government dated 31.5.2012. These petitioners were working along with their other counter part prior to 31.5.2012. Since number of Class IV employees of the State got affected because of the Resolution dated 31.5.2012, all the affected persons could not obtain the stay from the courts against their termination. There is no denying fact that all these petitioners are affected by the Resolutions of the State Government dated 25.4.2012 and 31.5.2012. They are to be treated at par with the employees who were lucky to get the stay against their termination from the courts. Accordingly, the relief granted by this Court in this judgment shall be extended to all the employees who are affected by the Resolutions of the State Government whether they are continued as outsource employees or are terminated in view of these resolutions.”.

9. From the aforementioned observations, it is manifest that the entire policy of the State Government introduced vide Government Resolutions dated 10.02.2006 and 25.04.2012 and the termination of contractual employees were subject matter of challenge before this Court. This Court has held that

the persons, who were unable to obtain stay cannot be discriminated since similarly situated employees were continued and they are to be treated at par with the employees, who were lucky to get the stay against their termination from the Courts. Finally, it is observed that the relief granted by this Court in the judgment shall be extended to all the employees, who are affected by the Resolutions of the State Government whether they are continued as outsource employees or are terminated in view of these resolutions. Thus, in wake of the aforesaid directions, the petitioner, who is also victim of termination because of the unfair policy of the State Government, cannot be discriminated, and he is also required to be extended the same relief, which was extended by this Court to other similarly situated employees.

10. The aforesaid judgment has become final. Thus, since the circular, due to which the respondent-workman was terminated, has been set aside and all the employees, who were terminated in view of the said circular, are ordered to be reinstated by this Court, the award of the Labour Court requires to be modified.

11. There is another aspect in the matter with regard to termination, which is held to be in violation of Sections 25H of the I.D. Act. It is not in dispute that the work was available and as on today also, the work is available. Thus, the reinstatement cannot be denied to the petitioner. When similarly situated part time employees have been granted reinstatement in the aforementioned judgments by this court, it will be unjust not to grant reinstatement to the petitioner.

12. At this stage Mr. Dave has fairly suggested that if reinstatement with continuity of service is granted to the petitioner-workman, he will forgo the back wages.

13. In the above circumstances, this court is of the considered opinion that the payment of compensation, in lieu of reinstatement, would be detrimental to the interest of the petitioner.

14. Under the circumstances, the impugned award passed by the Labour court, Godhra is misconceived to the extent of granting compensation. The respondent is directed to reinstate the workman in service with continuity of service. However, it is clarified that he will not be entitled to any back wages. The order, reinstating the petitioner workman, shall be passed within a period of three months from the date of receipt of this order."

7 Having therefore found that the Labour Court having positively held that there was violation of Sec.25(F) of the Act, for no fault of the petitioner, the Labour Court proceedings having been prolonged at the instance of the respondents, the petitioner could not have been then deprived of the benefits of reinstatement which is a normal course that ought to have been followed once violation of Sec.25(F) is otherwise proved.

8 In the present case, the respondents, even did not adduce any evidence, documentary and / or oral to oppose the claim of the petitioner.

9 Under the circumstances, the impugned award passed by the Labour Court, Godhra, is misconceived to the extent of granting compensation. The respondent is directed to reinstate the petitioner- workman in service with continuity of service. However, it is clarified that she will not be entitled to any backwages. The order, reinstating the petitioner workman, shall be passed within a period of three months from the date of receipt of the copy of this order.

10 With the aforesaid directions, the present writ petition is partly allowed. The impugned award dated 26.10.2018 passed by the Labour Court, Godhra, in Reference (T) No. 42 of 2006 is modified to the aforesaid extent. Rule is made absolute to the above extent.

(BIREN VAISHNAV, J)

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