



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/LETTERS PATENT APPEAL NO. 1091 of 2023
In
R/SPECIAL CIVIL APPLICATION NO. 17944 of 2021
With
R/LETTERS PATENT APPEAL NO. 700 of 2023
In
R/SPECIAL CIVIL APPLICATION NO. 18321 of 2021
With
R/LETTERS PATENT APPEAL NO. 1182 of 2023
In
R/SPECIAL CIVIL APPLICATION NO. 17944 of 2021
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2023
In
R/LETTERS PATENT APPEAL NO. 1182 of 2023
In
R/SPECIAL CIVIL APPLICATION NO. 17944 of 2021
With
R/LETTERS PATENT APPEAL NO. 1092 of 2023
In
R/SPECIAL CIVIL APPLICATION NO. 18321 of 2021
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In
R/LETTERS PATENT APPEAL NO. 1092 of 2023
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R/SPECIAL CIVIL APPLICATION NO. 18321 of 2021
With
R/LETTERS PATENT APPEAL NO. 1093 of 2023
In
R/SPECIAL CIVIL APPLICATION NO. 18334 of 2021
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2023
In
R/LETTERS PATENT APPEAL NO. 1093 of 2023
In
R/SPECIAL CIVIL APPLICATION NO. 18334 of 2021
With
R/LETTERS PATENT APPEAL NO. 1094 of 2023
In
R/SPECIAL CIVIL APPLICATION NO. 17941 of 2021
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2023
In
R/LETTERS PATENT APPEAL NO. 1094 of 2023
In
R/SPECIAL CIVIL APPLICATION NO. 17941 of 2021
With
R/LETTERS PATENT APPEAL NO. 1095 of 2023**



In
R/SPECIAL CIVIL APPLICATION NO. 1794 of 2022
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2023
In
R/LETTERS PATENT APPEAL NO. 1095 of 2023
In
R/SPECIAL CIVIL APPLICATION NO. 1794 of 2022
With
R/LETTERS PATENT APPEAL NO. 701 of 2023
In
R/SPECIAL CIVIL APPLICATION NO. 18334 of 2021

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JETPUR NAVAGADH MUNICIPALITY
Versus
PATHAN YUNUSKHAN JAMYALKHAN
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Appearance:

MR BHAVESH P TRIVEDI(2731) for the Appellant(s) No. 1
MR RR TRIVEDI(941) for the Appellant(s) No. 1
MR DHRUV K DAVE(6928) for the Respondent(s) No. 1
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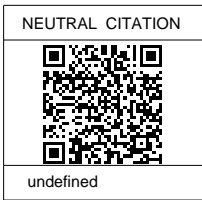
CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 18/04/2024

ORAL COMMON ORDER

(PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)

1. The present Letters Patent Appeals under Clause 15 of the Letters Patent are directed against the judgment and order of the learned Single Judge passed in two group of matters dated 02.03.2023 and 03.03.2023 respectively. Since the issue involved is common, we are taking all the Letters Patent Appeals together for adjudication. By the said judgment and order, the learned Single Judge held that the Municipality shall pay lump sum compensation to the respondent - workmen modifying the

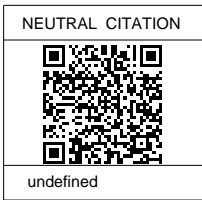


judgment and award of the labour court accordingly. Being aggrieved by the said order, the Municipality has preferred Letters Patent Appeals challenging the quantum of compensation. The cross-appeals are preferred by the workmen for quashment of the order of the learned Single Judge granting compensation and, therefore, prayed for reinstatement along with backwages. Thus, we have taken cross appeals together for adjudication.

2. The facts in the background *inter alia* are that the workmen had invoked jurisdiction of labour court, Rajkot by way of preferring Reference. The judgment and award was delivered by the labour court holding that the action of the termination of the workmen by the employer was illegal. The workmen were directed to be reinstated with continuity of service on original posts with 20% backwages.

3. The labour court on the basis of evidence led before it recorded a finding that there was a breach of Sections 25F, 25G and 25H of the Industrial Disputes Act, 1947 in terminating the services of the workmen.

3.1. It appears that it was the municipality who had filed Special



Civil Application challenging the judgment and award passed by the labour court, which culminated into order of the learned Single Judge whereby the learned Single Judge found it fit to modify the lump sum compensation *in-lieu* of reinstatement qua all the workmen. Thus, it has resulted into cross appeals being filed by the Municipality as well as the workmen. It would be pertinent to mention that out of the common order passed by the learned Single Judge, one of the petitioners had already preferred Letters Patent Appeal being Letters Patent Appeal No. 1090 of 2023 in Special Civil Application No. 18336 of 2021. This Court had dismissed the appeal preferred by the Municipality and confirmed the order passed by the learned Single Judge. The relevant part of the order passed by the Division Bench is reproduced hereunder :

“4. Although learned advocate for the appellant wanted to submit that learned single Judge has not given any reasons in modifying the award by granting lump-sum compensation and that the lump-sum compensation is on higher side since the workman was daily rated workman and was getting only Rs.286/- per day as wages, this court has considered the controversy applying the above aspects.

5. It is not in dispute that the workman was appointed in the year 1998, she served as Labourer in the PWD Department of the Municipality throughout. Her termination was on 1.8.2015. In other words, she worked long 15 years with the Municipality.

5.1 Looking to the time gap which has intervened between the date of termination and the date of granting relief of reinstatement, when learned single Judge has thought it fit to award lump-sum compensation, the approach on part of learned single Judge could not be faulted.

5.2 Looking to the various aspects and factors considered above,



including the length of service, nature of employment, the time gap intervening, etc., in overall view, the compensation awarded to the tune of Rs.4,25,000/- could not be said to unreasonable.”

3.2. Thus, the co-ordinate Bench of this Court on the common issue raised has come to the conclusion that order granting lump sum compensation was just and proper.

4. Over a passage of time, the law has developed to lay down the proposition that even in case where the labour court or Industrial Tribunal comes to a conclusion that there was a breach of provisions of Section 25F of the Industrial Disputes Act, it cannot necessarily or automatically entail the relief of reinstatement for the workmen.

4.1. The shift in law on this count was highlighted by the Supreme Court in ***Bhopal Vs. Santosh Kumar Seal [(2010) 6 SCC 773]*** relying on its own another decision in ***Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327]***, observing that the relief of payment of lump-sum compensation could be a proper relief in a given set of facts and circumstances.

“In the last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic

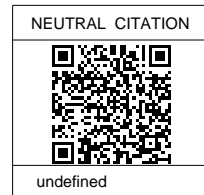


even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate. (See U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey [2006 (1) SCC 479], Uttaranchal Forest Development Corpn. v. M.C. Joshi [2007 (9) SCC 353], State of M.P. v. Lalit Kumar Verma [2007 (1) SCC 575], M.P. Admn. v. Tribhuban [2007 (9) SCC 748], Sita Ram v. Moti Lal Nehru Farmers Training Institute [2008 (5) SCC 75], Jaipur Development Authority v. Ramsahai [2006 (11) SCC 684], GDA v. Ashok Kumar [2008 (4) SCC 261] and Mahboob Deepak v. Nagar Panchayat, Gajraula [2008 (1) SCC 575].)

4.2. In subsequent decision in **Rajasthan Development Corporation Vs. Gitam Singh [(2013) 5 SCC 136]**, the Supreme Court stated,

“From the long line of cases indicated above, it can be said without any fear of contradiction that this Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed employee is entitled to reinstatement in all situations. It has always been the view of this Court that there could be circumstance(s) in a case which may make it inexpedient to order reinstatement. Therefore, the normal rule that the dismissed employee is entitled to reinstatement in cases of wrongful dismissal has been held to be not without exception. Insofar as wrongful termination of daily-rated workers is concerned, this Court has laid down that consequential relief would depend on host of factors, namely, manner and method of appointment, nature of employment and length of service. Where the length of engagement as daily wager has not been long, award of reinstatement should not follow and rather compensation should be directed to be paid. A distinction has been drawn between a daily wager and an employee holding the regular post for the purposes of consequential relief.”

4.3. In **Uttaranchal Forest Development Corporation Vs. M.C. Joshi [(2007) 9 SCC 353]**, the Supreme Court held that the question of grant of compensation in place of relief of



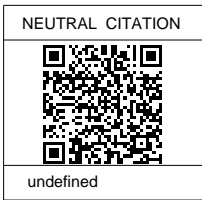
reinstatement could be guided by relevant factors to be that whether the appointment was made in accordance with the statutory Rules or not.

4.4. It is to be observed that the decisions of the Supreme Court have carved out the circumstances and aspects which may guide the discretion of the court in awarding lump-sum compensation instead of granting relief of reinstatement even if there is a breach of Section 25F, 25G and 25H of the Industrial Disputes Act.

4.5. These factors were highlighted in ***Bantva Municipality Vs. Amritlal Harji Chauhan*** being *Special Civil Application No.9135 of 2013 decided on 31.3.2014* as under :

*“(i) The fact that the workman is daily-rated workmen, not permanently employed; (ii) He is not holding a permanent post; (iii) Nature of his employment; (iv) Span of service, viz. The period during which he worked upto the date of termination of services; (v) Manner and method of appointment. Whether it was a backdoor entry; (vi) The time gap from the date of termination; (vii) Delay in raising the Reference is also considered to be a germane factor; (viii) Any special feature peculiar to the facts of the particular case. For instance, in *Bhurumal (supra)*, the Supreme Court noticed that post which the workman held was of Lineman in the Telephone Department, and that the work of Lineman was drastically reduced in view of advancement of the technology.”*

4.6. In the case of ***BSNL v. Bhurumal***, reported in **(2014) 7 SCC 177**, it was categorically observed that even after



reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself.

4.7. It is apt and appropriate to reproduce the relevant observation made by the Hon'ble Apex Court in the case of *BSNL (supra)*, which reads as under :

"33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. 4 Rationale for shifting in this direction is obvious.

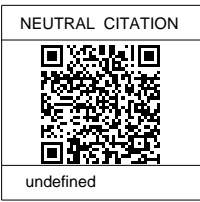
34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [see State



of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]]. Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

5. Therefore, looking to the gap which intervened between the date of termination and the date of granting reinstatement, the approach of the learned Single Judge granting lump sum compensation cannot be faulted with.

6. Looking to the various aspects and factors which are considered above, like the nature of employment, time gap intervened, length of service, the compensation awarded to the tune could not be said to be unreasonable. Therefore, Letters Patent Appeals preferred by the Municipality on the question of amount of compensation as well as appeals preferred by the workmen seeking reinstatement are liable to be dismissed. However, in one of the matters being Letters Patent Appeal No. 701 of 2023 in Special Civil Application No. 18334 of 2021 in the case of workman being *Koli Vairaginiben Ramkumar*, we observe that the compensation given by the learned Single Judge is to the



tune of Rs.6,25,000/- for 11 years of service. It can be observed from the order passed by the learned Single Judge that such amount is proportionally different from the other set of amounts which are given as compensation. However, for the identical years of work i.e. 11 years of service, the other workmen are granted an amount of Rs.3,25,000/- as lump sum compensation. Thus, we are inclined to modify the amount of lump sum compensation in Letters Patent Appeal No. 701 of 2023 to the tune of Rs.3,25,000/- from Rs.6,25,000/-. Hence, Letters Patent Appeal No. 701 of 2023 is partly allowed to the aforesaid extent, whereas, all the other Letters Patent Appeals stand dismissed as no ground is made out to interfere with the order of the learned Single Judge.

7. All the appeals, except Letters Patent No. 701 of 2023 are accordingly dismissed. No order as to costs.

Consequentially, connected civil applications also stand disposed of.

(BIREN VAISHNAV, J)

(PRANAV TRIVEDI, J)

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