IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 381 of 2024
In
R/SPECIAL CIVIL APPLICATION NO. 7322 of 2009
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In
R/LETTERS PATENT APPEAL NO. 381 of 2024

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RANGE FOREST OFFICER
Versus
VIRJIBHAI RANCHHODBHAI & ANR.

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Appearance:
MR SANJAUY UDHWANI ASSISTANT GOVERNMENT PLEADER for the Appellant(s) No. 1
for the Respondent(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE BIREN VAISHNAV
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 09/04/2024

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)

1. The present Letters Patent Appeal under clause 15 of the Letters Patent assails the correctness and validity of the judgment and order passed by the learned Single Judge in Special Civil Application No. 7322 of 2009.

2. The prayer as made in the writ petition preferred by the respondent – original petitioner was to give direction declaring the decision of the labour court in awarding Rs.30,000/- as lump sum compensation instead of reinstatement with continuity of service,

to be bad in law and it was further prayed to quash and set aside such award passed by the labour court.

3. The learned Single Judge after considering the arguments canvassed by the learned advocates appearing for the respective parties was pleased to enhance the amount of compensation to be paid to the respondent – original petitioner to Rs.5 lacs from Rs.30,000/- instead of granting reinstatement with continuity of service and full back wages. The appellant being aggrieved by the said order of enhancement in compensation has preferred the present appeal.

4. The factual matrix which has led to the filing of the petition was that the petitioner was working as Class-IV employee from 01.03.1979. Petitioner's services came to be terminated with effect from 08.11.1995, that is after almost 16 years of service. It was the case of the workman that the procedure as enunciated under the provisions of Section 25F of the Industrial Disputes Act, 1947 (for short the "Act") was not followed and therefore, it led to raising an industrial dispute. The workman by way of letter dated 28.06.1996 raised an industrial dispute. The Assistant Labour Commissioner, made Reference under Section 10(1)(c) of the Act

to the labour court, which came to be culminated into Reference (LCA) No. 764 of 1996. Before the labour court, the parties led evidence and by way of judgment and award dated 29.01.2007, the labour court was pleased to hold that the termination of workman was illegal. However, instead of granting reinstatement, the workman was granted lump sum compensation of Rs.30,000/-

4.1. The appellant herein, being aggrieved by the said award passed by the labour court, had preferred writ petition being Special Civil Application No. 23465 of 2007. However, the petition was dismissed and the award passed by the labour court granting lump sum compensation was confirmed. The respondent – original petitioner also being aggrieved by the award of the labour court qua not granting reinstatement preferred writ petition which came to be numbered as Special Civil Application No. 7322 of 2009. The learned Single Judge after considering all the aspects was pleased to enhance the amount of compensation from Rs.30,000/- to Rs.5 lacs. The said order enhancing the amount of lump sum compensation is assailed in the present appeal.

5. We have heard Mr. Sanjay Udhwani, learned Assistant Government Pleader appearing for the appellant at the admission

stage.

5.1. It has been contended by Mr. Udhwani, learned Assistant Government Pleader that once the award of the labour court is assailed by the appellant in writ petition being Special Civil Application No. 23456 of 2007 and the order passed by the learned Single Judge being confirmed, the learned Single Judge ought not to have enhanced the amount of lump sum compensation as the award of the labour court was already confirmed by this Court. It was further argued that the amount of lump sum compensation of Rs.30,000/- was just and proper and the learned Single Judge ought not to have enhanced it to such a huge proportion that is to the tune of Rs.5 lacs. In wake of such submission, Mr. Udhwani, learned Assistant Government Pleader has requested to consider the prayer made by the appellant.

6. Having heard learned Assistant Government Pleader for the appellant and having perused the record, the core question to be considered herein was whether the learned Single Judge was justified in confirming the award of lump sum compensation instead of granting reinstatement with back wages. Therefore the argument canvassed by learned Assistant Government Pleader to

the effect that once the appellant had preferred writ petition before this Court and the award passed by the labour court was confirmed, cannot be countenanced. This is so for the simple reason that what was challenged by the workman was separate and the case of the workman had to be considered as per the submissions made in Special Civil Application No. 7322 of 2009. Furthermore, once separate petition preferred by the appellant herein was dismissed, it cannot be said that the termination of services of workman was not as per law. Once the learned Single Judge had accepted that the termination was bad in law, the issue for consideration was either to grant reinstatement or lump sum compensation. The alleged termination of the workman was in the year 1995, the award was passed in the year 2007 and the order passed by the learned Single Judge is in the year 2023. The workman is nearing the age of superannuation. Further, there is no dispute that even after reinstatement is granted, it is always open to terminate the services of an employee by paying him retrenchment compensation. Therefore, for daily wage labourer, no useful purpose would be served in reinstating when he can be given monetary compensation by this Court. The workman is nearing the age of superannuation and in the recent years, there is

shift of paradigm by granting lump sum compensation instead of reinstatement.

6.1. 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].)"*

6.2. 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."

6.3. 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.

6.4. 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.

6.5. 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."*

6.6. 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.

7. Therefore, looking to the gap between the date of appointment, date of termination and the date of order passed by the learned Single Judge, grant of lump sum compensation cannot be faulted with. Further, the workman had put in almost 16 years of service and therefore, the amount of Rs.5 lacs as lump sum

compensation is duly justified. Therefore, we do not find any reason to interfere with the order passed by the learned Single Judge.

8. Accordingly, the present appeal being devoid of merits, the same deserves to be dismissed. The appeal is hereby dismissed. No order as to costs.

Consequently, the connected Civil Application for stay also stands disposed of.

(BIREN VAISHNAV, J)

(PRANAV TRIVEDI,J)

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