

Gujarat High Court

Thakor Shivaji Kanaji vs Water Supply And Sewerage Board on 3 July, 2023

Bench: Rajendra M. Sareen

C/SCA/14211/2013

CAV JUDGMENT DATED: 03/07/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 14211 of 2013

With

R/SPECIAL CIVIL APPLICATION NO. 5706 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN

Sd/-

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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 ?

===== THAKOR SHIVAJI KANAJI Versus WATER SUPPLY AND SEWERAGE BOARD & 1 other(s) ===== Appearance:

MS REENA KAMNANI for MR PH PATHAK(665) for the Petitioner(s) No. 1  
===== CORAM:HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN Date : 03/07/2023 CAV JUDGMENT

1. By of Special Civil Application No.14211 of 2013, the petitioner - Thakar Shivaji Kanaji has challenged the judgement and award passed by the Labour Court, Mehsana in Reference (LCM) No.493 of 2008 (Old LCK C/SCA/14211/2013 CAV JUDGMENT DATED: 03/07/2023 No.639 of 2003), by which the Labour Court awarded lump sum compensation of Rs.10,000/- in lieu of reinstatement and back wages and hence the petitioner has prayed for reinstatement and back wages. In the alternative, it is prayed to enhance the compensation awarded by the Labour Court.

2. By of Special Civil Application No.5706 of 2014, the petitioner Gujarat Water Supply and Sewerage Board, Patan

- has challenged the judgement and award passed by the Labour Court, Mehsana in Reference (LCM) No.493 of 2008 (Old LCK No.639 of 2003) to the extent awarding lump sum compensation of Rs.10,000/- in lieu of reinstatement and back wages.

### 3. FACTS :

3.1. As per the case of the petitioner of Special Civil Application No.14211 of 2013 - Thakor Shivaji Kanaji - workman (hereinafter shall be referred to as "the workman" for short, was working as a labourer with the respondent from 2001 with salary of Rs.2000/- per month and the service of the workman was continuous. It is the case of the workman that the respondent on 30/6/2003 has terminated the services of the petitioner without any notice or notice pay and therefore, the action of the employer terminating the services of the workman was in violation of the provisions of Section 25(F), 25(G) and (H) of the C/SCA/14211/2013 CAV JUDGMENT DATED: 03/07/2023 Industrial Disputes Act. Hence the workman approached the Assistant Labour Commissioner, who referred the dispute before the Labour Court Mehsana for adjudication and the same was registered as Reference (LCM) No.639 of 2003 which was subsequently renumbered as Reference (LCM) No.493 of 2008 and the Labour Court, at the end of trial passed the judgement and award awarding compensation of Rs.10,000/- to the workman in lieu of reinstatement, against which both, the workman and the employer have filed the aforesaid writ petitions. It is pertinent to note that while making application before the Assistant Commissioner for condonation of delay, the workman waived his right to claim back wages.

### 4. SUBMISSION OF THE WORKMAN :-

4.1. Ms.Reena Kamnani, learned advocate for the workman has vehemently submitted that the workman was working as daily wager with the employer from 2001 with monthly salary of Rs.2000 and his services were continuous, however, the employer terminated the services of the workman on 30/6/2003 without any notice or notice pay and therefore, the termination is in violation of the provisions of section 25(F), 25(G) and 25(H) of the Industrial Disputes Act. It is submitted that the Labour Court, considering the evidence on record has come to the conclusion that the workman has worked for 240 days prior to his termination and the employer has terminated C/SCA/14211/2013 CAV JUDGMENT DATED: 03/07/2023 the services of the workman without following due procedure under the I.D. Act and the termination of the workman was retrenchment as per section 2(oo) of the I.D. Act and therefore, the Labour Court held the termination illegal. It is submitted that however, the Labour Court erred in not granting relief of reinstatement and in lieu thereof, has awarded lump sum compensation of Rs.10,000/- only, which is illegal. Hence, it is prayed to allow SCA No.14211 of 2013 and order for reinstatement. In the alternative, it is prayed to enhance the compensation suitably.

### 5. SUBMISSIONS OF THE EMPLOYER :

5.1. Mr.K.H. Baxi, learned advocate for the employer has vehemently submitted that the Labour Court has erred in awarding compensation of Rs.10,000/-. It is submitted that the workman was neither employed by the employer nor salary was paid by the employer, nor his attendance was taken by the employer. It is further submitted that in fact, security contract was entered into by the employer and the workman was employed by the Security Services and he was on the muster roll of the Security Services and paid by the Security Services, however, the Labour Court failed to appreciate the said facts and wrongly come to the conclusion that the workman has established his case.

5.2. Mr.Baxi, learned advocate for the employer has further submitted that the workman was employed by the Security C/SCA/14211/2013 CAV JUDGMENT DATED: 03/07/2023 Services and was paid by it and the workman was under the control of the Security Services and therefore, there is no question of terminating services of the workman by the employer, however, the Labour Court erroneously partly allowed the reference and awarded compensation of Rs.10,000/-. He has prayed to allow SCA No.5706 of 2014.

6. Heard Ms.Reena Kamnani, learned advocate for the workman and Mr.K.H. Baxi, learned advocate for the employer.

#### 7. FINDING :

7.1. Having heard the learned advocates for the respective parties and considering the material on record and the finding of the Labour Court, it is clear that the Labour Court on appreciation of evidence, has come to the conclusion that the workman has worked for 240 days in the last presiding year with the employer. Therefore, the said finding is not required to be interfered with.

7.2. The Labour Court, relying the documents on record, has come to the conclusion that the workman was working in Hajipur Store maintained by the workman and not under any contractor. It is specific case of the workman that he was under the employment of the employer and not under the contractor - Sarasvati Services and Detective Pvt. Ltd., Ahmedabad. Considering the evidence, the Labour Court C/SCA/14211/2013 CAV JUDGMENT DATED: 03/07/2023 has come to the conclusion that the workman was working under the employer and at that time no security contract was in force. The employer has not produced any documentary evidence to show that at the relevant time security contract was in force and the workman was working under the security contractor and his salary was paid by the contractor. No salary slip or pay role of the contractor was produced by the employer to show that the workman was not in the service of the employer but he was under the service of the service contractor. On the contrary, the documents produced by the workman clearly shows that the workman was working under the employer at Hajipur Store. Considering the evidence on record, the Labour Court has rightly observed that there is relation of employer and employee relationship. In support of the case of the employer that the workman was working under the contractor, no documentary evidence has been produced by the employer. The employer had not filed any application for joining the security agency as party and the security agency could have come with a case that the workman was working under the contractor and not under the employer. Though sufficient opportunity was granted, the employer has not produced any document or proof

before the Labour Court to show that the workman was working under the contractor. Under the circumstances, adverse inference is rightly drawn by the Labour Court that the workman has completed 240 days in the last preceding year.

C/SCA/14211/2013 CAV JUDGMENT DATED: 03/07/2023 7.3. On appreciation of evidence, the Labour Court has come to the conclusion that the workman was working under the employer and he had worked for 2 years, he has worked for 240 days in the last year and he was terminated on 30/6/2003 without issuing any notice, notice pay or retrenchment compensation and there is breach of Section 25(F) of the I.D. Act and the said termination is in violation of the provisions of section 25(F), 25(G) and 25(H) of the I.D. Act and therefore, the Labour Court has rightly held the termination of the workman by the employer as illegal.

7.4. The Labour Court has come to the conclusion that the workman has worked for 2 years and at the time of termination the monthly salary of the workman was Rs.2000/- and was maintaining the family of 5 persons and his services was terminated on 30/6/2003. It is the case of the workman that after termination, he has tried to get employment elsewhere but could not succeed and he was employed. The Labour Court has come to the conclusion that it cannot be believed that the workman was unemployed from 2003 till the reference is decided in 2013 i.e. for 10 years. Considering the facts of the case and the fact that the workman worked from 2001 to 2003 i.e. for 2 years, the Labour Court awarded compensation of Rs.10,000 in lieu of reinstatement, which in the facts and circumstances of the case and considering the fact that the C/SCA/14211/2013 CAV JUDGMENT DATED: 03/07/2023 workman was terminated in the year 2003 and now at this stage, after 20 years, reinstatement cannot be granted to the workman but the compensation awarded by the Labour Court in lieu of reinstatement is also not adequate and now the workman would have been crossed the age of superannuation and would have retired. It is pertinent to note that the workman has waived the back-wages before the Assistant Labour Commissioner.

7.5. Hon'ble Apex Court in the case of Senior Superintendent Telegraph (Traffic) Bhopal vs. Santosh Kumar Seal and Ors., reported in (2010) 2 SCC 309, has observed and held as under :-

6. In 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. & Anr. v. Uday Narain Pandey<sup>1</sup>; Uttaranchal Forest Development Corpn. v. M.C. Joshi<sup>2</sup>; State of M.P. & Ors. v. Lalit Kumar Verma<sup>3</sup>; Madhya Pradesh Administration v. Tribhuban<sup>4</sup>; Sita Ram & Ors. v.

Moti Lal Nehru Farmers Training Institute<sup>5</sup>; Jaipur Development Authority v. Ramsahai & Anr.<sup>6</sup>; Ghaziabad Development Authority & Anr. v. (2006) 1 SCC 479 (2007) 9 SCC 353 (2007) 1 SCC 575 (2007) 9 SCC 748 (2008) 5 SCC 75 (2006) 11 SCC 684 Ashok Kumar & C/SCA/14211/2013 CAV JUDGMENT DATED: 03/07/2023 Anr.<sup>7</sup> and Mahboob Deepak v. Nagar Panchayat, Gajraula & Anr.<sup>8</sup>).

7. In a recent judgment authored by one of us (R.M. Lodha, J.) in the case of Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr.9, the aforesaid decisions were noticed and it was stated :

"7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow.

However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has C/SCA/14211/2013 CAV JUDGMENT DATED: 03/07/2023 completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee".

7.6. The Hon'ble Apex Court in the Case of Tapash Paul Vs. BSNL and Another reported in 2016 (1) Scale 92 has observed and held as under :-

"5. It is no doubt true that a Court may pass an order substituting an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds viz. (I) where the industry is closed;

(ii) where the employee has superannuated or going to retire shortly and no period of service is left to his credit; (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated and / or (iv) when he has lost confidence of the Management to discharge duties. What is sought to be emphasised is that there may be appropriate case on facts which may justify substituting the order of reinstatement by award of compensation, but that has to be supported by some legal and justifiable reasons indicating why the order of reinstatement should be allowed to be substituted by award of compensation.

7.7. The Hon'ble Apex Court in the case of BSNL Vs. Bhurumal, reported in 2014 (7) SCC 177 has observed and C/SCA/14211/2013 CAV JUDGMENT DATED: 03/07/2023 held as under:-

"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 regularization (See: State of Karnataka vs. Uma Devi (2006) 4 SCC 1). Thus when he cannot claim regularization 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."

7.8. In view of the aforesaid and considering the decision in the case of Senior Superintendent Telegraph (Traffic) Bhopal Tapash Paul (supra), decision in the case of Tapash Paul (supra) and the decision in the case of Bhurumal (supra), this Court is of the considered view that in the facts of this case granting of relief of reinstatement C/SCA/14211/2013 CAV JUDGMENT DATED: 03/07/2023 after a gap of more than 20 years, no useful purpose will be served. At the same time, this Court is of the considered view that the lump sum amount of Rs.10,000/- cannot said to be an amount adequate enough to meet with the ends of justice. This Court is of the considered opinion that instead of Rs.10,000/- if the workman is ordered to be paid lump sum amount of Rs.50,000/- in lieu of the reinstatement, then, the ends of justice would be met appropriately. This Court deems fit to order grant of compensation of Rs.50,000/- as full and final settlement of the claim in lieu of the reinstatement and back wages. Such amount is needed to be paid to the workman by the respondent - employer after proper verification of the identity by an account payee cheque / pay order within a period of two months from the date of receipt of this order, failing which the workman will be entitled to claim interest at the rate of 9% from today till the date of actual realization.

8. With the aforesaid observation, the award passed by the Labour Court stands modified accordingly. Special Civil Application No.14211 of 2013 preferred by the workman is partly allowed and rule is made absolute to the aforesaid extent. Special Civil Application No.5706 of 2014 is hereby dismissed and rule is discharged. No order as to costs.

Sd/-

(RAJENDRA M. SAREEN,J) Rafik