

Executive Engineer Vs. Bakulaben Chandreshbhai Somani

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Court : Gujarat

Decided On : Jun-20-2012

Judge : S.R. Brahmbhatt

Appeal No. : SPECIAL CIVIL APPLICATION NO. 13890 OF 2003

Appellant : Executive Engineer

Respondent : Bakulaben Chandreshbhai Somani

Judgement :

ORAL JUDGMENT

1. Heard learned advocate for the petitioner. Though served, none appears for respondents.

2. The petitioner-original employer in Reference No. 385 of 1999 has approached this Court with following reliefs:

- i. "that the Hon'ble Court may be pleased to admit and allow this petition;
- ii. that the Hon'ble Court may be pleased to issue a writ or mandamus or any other appropriate writ, direction or order in the nature of Writ of mandamus quashing and setting aside the Award passed by the Court of the learned Labour Judge, at Surat on 20/3/2003 in Reference No. 385 of 1999;

iii. that the Hon'ble Court may be pleased to stay the execution, implementation and operation of the said Award passed by the learned Labour Judge, Surat in Reference No. 385 of 1999, during the pendency of this petition;

iv. that any other further order or writ as thought fit may be passed in the interest of justice”

challenging the award dated 20.3.2003 passed by the Labour Court in Reference No. 385 of 1999, wherein, the Court has partly allowed the Reference and ordered reinstatement of the workman without back wages for the reasons stated therein.”

3. Facts in brief deserve to be set out as under:

The respondent workman was engaged for a period of 29 days right from 8.12.1981 to 7.8.1985. Every time 29 days' appointment was renewed and ultimately the workman was not engaged thereafter. The workman raised dispute in the year 1988, which came to be referred to the Court, wherein, it was numbered as Reference No. 385 of 1999 and after recording finding with regard to breach of Section 25F, the Court came to the conclusion that workman on account of his belated demand not entitled to receive the back wages and ordered reinstatement without back wages vide award and order dated 20.3.2003. Being aggrieved by the same, petitioner has filed this petition under Articles 226 and 227 of the Constitution of India.

4. It is required to be noted that workman passed away on 14.3.2004 and therefore, heirs have been brought on record, who have been duly served but they have chosen not to appear in this matter.

5. Learned advocate for petitioner has contended that 29 day's appointment as such would go to show that provisions of Section 2(oo)(bb) of the Industrial Disputes Act would be squarely attracted and therefore, the Labour Court was patently erred in holding that there was a breach of Section 25F of the ID Act and Award and order therefore, is required to be quashed and set aside.

6. Learned advocate for petitioner also contended that inordinate delay of about 12 years should also indicate that workman in fact was not interested in pursuing the

employment for which he had taken out the proceedings, therefore, on this ground also, the petition is required to be allowed.

7. This Court is of the considered view that the petition is required to be partly allowed by modifying the award for the following reason:

The Court is not inclined to accept the submission of delay dis-entitling the workman to receive any relief. The delay as such is not considered to be a bar in entertaining the demand so far as the Industrial Dispute is concerned. However, the delay is required to be considered while granting relief if ultimately the court came to the conclusion that workman was responsible for not approaching the court or raising the dispute in time. In that eventuality, the course left with the court for molding the relief. In the instant case, the court considered this aspect and therefore, without awarding any back wages, ordered reinstatement only. The reinstatement order in my view cannot be said to be perverse in any manner as the breach of Section 25F was evident from the material on record. Learned advocate for petitioner is not justified in making submission with regard to invoking provisions of Section 2(oo)(bb), as facts clearly indicate that the arrangement of issuing order for 29 days was nothing but camouflage to take advantage of the statutory provisions but in reality, the workman did continue in service from 8.12.1981 to 3.8.1985. This factum would have been required to be considered by the employer and would have to follow mandatory provisions of Section 25F. The provisions of Section 25F are mandatory and non-compliance therewith would render the action vitiate and manifest, therefore, in that situation, the Labour Court did not have any option but to observe that termination was illegal. When the termination was illegal, the appropriate remedy would be that of reinstatement. In the instant case, the fact remains that workman had worked only for 5 years. Therefore, instead of reinstatement, plausibility of awarding lumps sum compensation can be awarded. The court is of the view that award is required to be substituted by ordering lumps sum payment in lieu of reinstatement and same is awarded as Rs.25,000/-. Therefore, the award is modified and the workman is awarded Rs.25,000/- as lumps sum compensation in lieu of award of reinstatement. The petitioner is directed to pay the said amount to heirs of the workman on or before 31.07.2012.

8. With this observation, the petition is partly allowed and award is modified to aforesaid extent. Rule is made absolute to aforesaid extent. No costs.

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