

Supreme Court of India

Deputy Executive Engineer vs Kuberbhai Kanjibhai on 7 January, 2019

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 5810 OF 2009

Deputy Executive Engineer .Appellant(s)

VERSUS

Kuberbhai Kanjibhai .Respondent(s)

JUDGMENT

Abhay Manohar Sapre, J.

1. This appeal is directed against the final judgment and order dated 05.12.2007 passed by the High Court of Gujarat at Ahmedabad in Special Civil Application No.19622 of 2007 whereby the Signature Not Verified Digitally signed by ANITA MALHOTRA Date: 2019.01.07 17:40:06 IST Reason:

High Court dismissed the petition filed by the appellant herein.

2. By impugned order, the High Court upheld the award dated 09.05.2007 passed by the Labour Court, Surendranagar in LCS No.120/1994 and directed the appellant (State) herein to reinstate the respondent (worker) without awarding to him any back wages. Against this order, the State felt aggrieved and filed the present appeal by way of special leave before this Court.

3. It is the case of the respondent (worker) that he rendered his services in the R & B Department of the State (Surendranagar) as a daily wager for 18 years but his services were brought to an end by the State without following the due procedure prescribed in law. However, the case of the State was that the respondent(worker) worked hardly for 2 years from 1979 to 1981 and that too intermittently and hence he was not entitled to claim any relief of either reinstatement or other relief under the labour laws.

4. After almost 15 years of his alleged termination, the respondent raised a dispute before the Labour Court, Surendranagar (LCS No.120/1994) questioning the legality and correctness of his termination.

5. By award dated 09.05.2007, the Labour Court directed reinstatement of the respondent in State services but without awarding any back wages to him.

6. The State, therefore, felt aggrieved and filed writ petition in the High Court of Gujarat at Ahmedabad. By impugned order, the High Court dismissed the writ petition and upheld the award of the Labour Court which has given rise to filing of the present appeal by way of special leave by the State through its Authority before this Court.

7. Heard Ms. Jesal Wahi, learned counsel for the appellant and Mr. A.P. Mayee, learned counsel for the respondent.

8. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal in part and modify the impugned order to the extent indicated infra.

9. In our opinion, the case at hand is covered by the two decisions of this Court rendered in the case of *Bharat Sanchar Nigam Limited vs Bhurumal* (2014) 7 SCC 177 and *District Development Officer and Anr. vs. Satish Kantilal Amerelia* (2018) 12 SCC 298.

10. It is apposite to reproduce what this Court has held in the case of *Bharat Sanchar Nigam Limited* (supra):

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. 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) [(2006) 4 SCC 1]. 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.

35. We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground that it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularised under some policy but the workman concerned terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied.

11. Here is also a case where the respondent was held to have worked as daily wager or muster role employee hardly for a few years in R & B of the State; Secondly, he had no right to claim regularization; Thirdly, he had no right to continue as daily wager; and lastly, the dispute was raised by the respondent (workman) before the Labour Court almost after 15 years of his alleged termination.

12. It is for these reasons, we are of the view that the case of the respondent would squarely fall in the category of cases discussed by this Court in Para 34 of the judgment rendered in Bharat Sanchar Nigam Limited (supra).

13. In view of the foregoing discussion, we are of the considered view that it would be just, proper and reasonable to award lump sum monetary compensation to the respondent in full and final satisfaction of his claim of reinstatement and other consequential benefits by taking recourse to the powers under Section 11A of the Industrial Disputes Act, 1947 and the law laid down by this Court in Bharat Sanchar Nigam Limiteds case (supra).

14. Having regard to the totality of the facts taken note of supra, we consider it just and reasonable to award a sum of Rs.1,00,000/-(Rs.One lakh) to the respondent in lieu of his right to claim reinstatement and back wages in full and final satisfaction of this dispute.

15. Let the payment of Rs.1,00,000/-be made by the appellant(State) to the respondent within three months from the date of receipt of this judgment.

16. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed in part. The impugned order of the High Court is set aside. The Award dated 09.05.2007 of the Labour Court in LCS No. 120 of 1994 is accordingly modified to the extent indicated above.

.....J. [ABHAY MANOHAR SAPRE]J. [INDU MALHOTRA] New Delhi;

January 07, 2019.