

A DISTRICT DEVELOPMENT OFFICER & ANR.

v.

SATISH KANTILAL AMRELIA

(Civil Appeal Nos.19857-19858 of 2017)

B

NOVEMBER 28, 2017

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

C *Industrial Disputes Act, 1947 – ss.25-G, 11-A, 10 – Termination of workman – Monetary compensation – Respondent worked in appellant's Revenue Department as a Peon-cum-Driver on daily wages – He was terminated – Aggrieved, respondent approached Labour Court for deciding the legality and propriety of his termination order – Labour Court answered the reference in favour of respondent and directed the appellant to re-instate the respondent in service along with payment of 40% back wages – Writ petition*
D *filed by the appellant was dismissed – On appeal, held: It is an admitted fact that the respondent was a daily wager during his short tenure, which lasted hardly two and half years approximately – Labour Court found the termination to be bad due to violation of s.25-G of the Act – However, the instant case does not fall in exceptional cases as observed by Supreme Court in Bharat Sanchar*
E *Nigam Limited case, as appellant did not resort to any kind of unfair practice while terminating the services of the respondent – It would be just and proper and reasonable to award lump sum monetary compensation to the respondent in full and final satisfaction of his claim of re-instatement and other consequential benefits by taking*
F *recourse to the powers u/s.11-A of the Act.*

Partly allowing the appeals, the Court

G **HELD: 1. It is an admitted fact that the respondent was a daily wager during his short tenure, which lasted hardly two and half years approximately and coupled with the fact that 25 years has since been passed from the date of his alleged termination. On perusal of the entire record of the case, it was considered that the law laid down by this Court in the case of Bharat Sanchar Nigam Limited would aptly apply to the facts of this case. [Para 13] [418-B-C]**

H

2. The Labour Court has found that the termination is bad due to violation of Section 25-G of the Act. Taking note of overall factual scenario emerging from the record of the case and having regard to the nature of the findings rendered and further the averments made in the SLP justifying the need to pass the termination order, this case does not fall in exceptional cases as observed by this Court in Para 35 of *Bharat Sanchar Nigam Limited* case due to finding of Section 25-G of the Act recorded against the appellant. In other words, there are reasons to take out the case from exceptional cases contained in *Bharat Sanchar Nigam Limited* case because the appellant did not resort to any kind of unfair practice while terminating the services of the respondent. [Para 15] [419-F-H; 420-A]

3. Therefore, 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 re-instatement and other consequential benefits by taking recourse to the powers under Section 11-A of the Act and the law laid down by this Court in *Bharat Sanchar Nigam Limited* case. [Para 16] [420-B]

Bharat Sanchar Nigam Limited v. Bhurumal (2014) 7
SCC 177 : [2013] 16 SCR 1023 – relied on.

Case Law Reference

[2013] 16 SCR 1023 relied on Para 13

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 19857-19858 of 2017.

From the Judgment and Order dated 01.12.2014 in Civil Application No. 10519 of 2014 in Letters Patent Appeal (Stamp Number) No. 1878/2006 and Judgment and Order dated 21.04.2006 in Special Civil Application No. 8390 of 2006 of the High Court of Gujarat at Ahmedabad.

Ms. Jesal Wahi, Ms. Puja Singh, Ms. Shodhika Sharma, Ms. Hemantika Wahi, Advs for the Appellants.

Purvish Jitendra Malkan, Ms. Dharita Purvish Malkan, Ms. Deepa Ghorasia, Advs for the Respondent.

A The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

2. These appeals are filed against the final judgment and order dated 01.12.2014 passed by the High Court of Gujarat at Ahmedabad in Civil Application No.10519 of 2014 in Letters Patent Appeal No.1878 of 2006, wherein the High Court dismissed the Letters Patent Appeal filed by the appellant herein in default and further declined to restore the appeal when prayed by the appellant. The Letters Patent Appeal arose out of judgment and final order of the Single Judge dated 21.04.2006 in Special Civil Application No.8390 whereby the learned Single Judge dismissed the writ petition filed by the appellant and affirmed the Award dated 01.02.2006 passed by Labour Court, Bhavnagar in Reference Case No.166 of 1992.

3. The controversy involved in the appeals is confined to short facts, which, however, need mention hereinbelow to appreciate the same.

4. The appellant is the Panchayat Department of State of Gujarat having its office at Bhavnagar. The respondent - Satish Kantilal Amrelia worked in the appellant's Revenue Department at Bhavnagar as a Peon-cum-Driver on daily wages from 18.12.1989 to 31.05.1990 (5 months 15 days) and then started giving his services again as daily wager in appellant's another branch (Small Saving) from 01.06.1990 to 12.02.1992 (1 year 9 months) on daily payment of Rs.27.55 (Rs. Twenty Seven and Fifty Five Paise). The respondent's tenure was then discontinued with effect from 12.02.1992 vide order dated 23.03.1992 (Annexure P-4).

5. The respondent felt aggrieved of his termination and initiated two actions against the appellant. In the first instance, challenging his termination order dated 23.03.1992 from the services, the respondent filed Civil Suit No.141 of 1992 in the Civil Court at Bhavnagar. During the pendency of the civil suit, he also approached to the State (Labour Commissioner) and prayed for making Industrial Reference to the concerned Labour Court under Section 10 of Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") for deciding the legality and propriety of his termination order.

6. The Labour Commissioner made an Industrial Reference No.166 of 1992 to the Labour Court No. 2 at Bhavnagar for deciding the legality and correctness of the termination order and for regularization of respondent's services.

7. The 2nd Joint Civil Judge (SD), Bhavnagar, vide judgment/decree dated 03.05.1994 decreed the respondent's suit, set aside the termination order and directed the appellant (State) to re-instate the respondent in service with all consequential benefits. A

8. Against the judgment/decree of the Trial Court, the appellant filed first appeal being Civil Appeal No.45/1994 before the Assistant Judge, Bhavnagar. The Appellate Court, by order dated 30.09.2003, allowed the appellant's appeal, set aside the judgment/decree of the Trial Court and dismissed the respondent's civil suit. In substance, the Appellate Court upheld the respondent's termination order. B

9. The Labour Court, however, by Award dated 01.02.2006 (Annexure P-9) answered the Reference in respondent's favour. Applying the provisions of the Act, the Labour Court held that since the respondent was able to prove that he has worked for 240 days continuously in one previous calendar year, he was entitled to get the protection of the Act. It was held that it was a case of illegal retrenchment because the respondent was not paid any prior retrenchment compensation before termination of his services. The Labour Court also held that there was violation of Section 25-G of the Act in passing the termination order. The Labour Court accordingly directed the appellant(State) to re-instate the respondent in service along with payment of 40% back wages. C
D
E

10. The appellant (State) felt aggrieved, filed writ petition (Special Civil Application No.8390/2006) before the High Court of Gujarat. By order dated 21.04.2006, the Single Judge dismissed the appellant's writ petition and affirmed the Award of the Labour Court. The appellant then filed Letters Patent Appeal before the Division Bench of the High Court but it was dismissed in default. The appellant applied for restoration of the Letters Patent Appeal but it was dismissed and hence this appeal by special leave was filed by the State before this Court against the order of the Division Bench as also against the order of the Single Judge. F

11. Heard Ms. Jesal Wahi, learned counsel for the appellants and Mr. Purvish Jitendra Malkan, learned counsel for the respondent. G

12. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals in part and while setting aside the impugned orders (Single Judge and Division Bench), modify the Award of the Labour Court as indicated below. H

A 13. Having gone through the entire record of the case and further
keeping in view the nature of factual controversy, findings of the Labour
Court, the manner in which the respondent fought this litigation on two
fronts simultaneously, namely, one in Civil Court and the other in Labour
Court in challenging his termination order and seeking regularization in
B service, which resulted in passing the two conflicting orders - one in
respondent's favour (Labour Court) and the other against him (Civil
Court) and lastly, it being an admitted fact that the respondent was a
daily wager during his short tenure, which lasted hardly two and half
years approximately and coupled with the fact that 25 years has since
C been passed from the date of his alleged termination, we are of the
considered opinion that the law laid down by this Court in the case of
Bharat Sanchar Nigam Limited vs. **Bhurumal** [(2014) 7 SCC 177]
would aptly apply to the facts of this case and we prefer to apply the
same for disposal of these appeals.

D 14. It is apposite to reproduce what this Court has held in the case
of **Bharat Sanchar Nigam Limited** (supra):

E "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
F 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.

G 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
H

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)17]. 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.”

15. We have taken note of one fact here that the Labour Court has also found that the termination is bad due to violation of Section 25-G of the Act. In our opinion, taking note of overall factual scenario emerging from the record of the case and having regard to the nature of the findings rendered and further the averments made in the SLP justifying the need to pass the termination order, this case does not fall in exceptional cases as observed by this Court in Para 35 of *Bharat Sanchar Nigam Limited* case (supra) due to finding of Section 25-G of the Act recorded against the appellant. In other words, there are reasons to take out the case from exceptional cases contained in Para 35 because we find that

- A the appellant did not resort to any kind of unfair practice while terminating the services of the respondent.

16. In view of forgoing 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 re-instatement and other consequential benefits by taking recourse to the powers under Section 11-A of the Act and the law laid down by this Court in Bharat Sanchar Nigam Limited case (supra).

17. Having regard to the totality of the facts taken note of supra, we consider it just and reasonable to award a total sum of Rs.2,50,000/- (Rs.Two Lakhs Fifty Thousand) to the respondent in lieu of his right to claim re-instatement and back wages in full and final satisfaction of this dispute.

18. Let the payment of Rs.2,50,000/- be made by the appellant(State) to the respondent within three months from the date of receipt of this judgment failing which the amount will carry interest at the rate of 9% per annum payable from the date of this judgment till payment to respondent.

19. In view of foregoing discussion, the appeals succeed and are allowed in part. The impugned order of the Division Bench and that of the Single Judge are set aside. The Award of the Labour Court dated 01.02.2006 is accordingly modified to the extent indicated above.