

Gujarat High Court

Jamnagar Municipal Corporation vs Bharat Chandulal Vaghela on 3 May, 2023

Bench: Mauna M. Bhatt

C/SCA/13/2019

ORDER DATED: 03/05/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13 of 2019

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JAMNAGAR MUNICIPAL CORPORATION

Versus

BHARAT CHANDULAL VAGHELA

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Appearance:

MR HS MUNSHAW(495) for the Petitioner(s) No. 1

HITESH A MAKWANA(8644) for the Respondent(s) No. 1

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CORAM:HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 03/05/2023

ORAL ORDER

1. This petition is filed challenging the award of the Labour Court, Jamnagar dated 06.08.2018, passed in Reference (LCJ) Case No. 65 of 2008, wherein the Labour Court directed the petitioner to reinstate the respondent in service within 30 days with continuity but without backwages.
2. This Court under order dated 08.01.2019, had issued notice and by order dated 07.12.2022, granted stay subject to payment of amount towards Section 17-B of the Act.

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3. Considering the issue involved and with the consent of the learned advocate for respective parties, the present petition is taken up for final hearing.

4. The facts in brief are as under: -

The petitioner - Jamnagar Municipal Corporation constituted under the provisions of Gujarat Provincial Municipal Corporation Act, 1949 has filed present petition challenging the award of the Labour Court, Jamnagar dated 06.08.2018 (Exh.96). It is the case of the petitioner that the respondent applied for work as a daily wager in Solid Waste Department of Jamnagar Municipal Corporation. The application of the present respondent as well as other candidates were considered

and an order dated 04.11.2000 (Exh.88) was passed wherein list of 308 candidates was circulated as daily wage employees with the following conditions: - (i) all workmen referred in the list will be taken on work as alternative arrangement because occasionally the regular workmen proceed on leave. (ii) except the workmen referred in the list no C/SCA/13/2019 ORDER DATED: 03/05/2023 person will be considered for substitution. (iii) they have to regularly remain present and (iv) for deletion of their name from list/discontinuation no notice is required. 4.1 It is case of the petitioner that these appointments were made as alternative arrangement to meet with health and hygiene of the citizens of the city of Jamnagar, keeping in mind that regular employees of solid waste department occasionally proceed on leave. However, as respondent herein was habitual absentee, a warning letter dated 06.12.2004 (Exh.91), was served upon him to be sincere about his duty otherwise the purpose of his appointment would get frustrated. It was also referred in the note below warning letter that, if the respondent further remains absent, it is to be reported immediately. Despite warning dated 06.12.2004, as the respondent did not report for duty, a notice dated 14.02.2005 (Exh.90) was issued calling upon him to show cause as to why his name should not be deleted from the list of workmen appointed pursuant to the order dated 04.11.2000.

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Thereafter, an order dated 14.03.2005 was passed

terminating the service of respondent along with other workmen. In the order dated 14.03.2005, it was stated that despite earlier warning and notice calling for explanation, the respondent did not tender any explanation. After termination the respondent addressed a letter dated 16.03.2005, requesting the petitioner to reinstate him. In the letter dated 16.03.2005, the respondent admitted that he remained absent on account of personal difficulties.

4.2 Against the action of the petitioner deleting his name of from list/ termination, he approached the Labour Court, Jamnagar by way of filing Reference (LCJ) No. 65 of 2008 praying for reinstatement with continuity and full backwages. The Labour Court, Jamnagar vide order dated 06.08.2018 directed the petitioner to reinstate the respondent back into service with continuity but without backwages within a period of 30 days from the date of receipt of the order. Aggrieve by the said order, present C/SCA/13/2019 ORDER DATED: 03/05/2023 petition is filed.

5. Heard learned advocate Mr. Munshaw for the petitioner. He made the following submissions: -

5.1 The reference filed by the respondent seeking reinstatement with continuity and full backwages is not maintainable as the same is filed beyond a period of 3 years.

5.2 The Labour Court, Jamnagar ignored that the respondent along with other workmen were appointed vide order dated 04.11.2000 in substitution of regular employees in Solid Waste Department of Jamnagar Municipal Corporation as alternative arrangements to meet with exigencies of work. The appointment of respondent was done to meet with the exigency as regular

employees of Solid Waste Department occasionally proceed on leave or remain absent.

5.3 The Labour Court, Jamnagar ignored that warning C/SCA/13/2019 ORDER DATED: 03/05/2023 and show cause notice, dated 06.12.2004 and 14.02.2005 respectively, were issued to the respondent before termination of service, wherein by way of notice dated 14.02.2005 the explanation for his unauthorized absenteeism was called for. Since, no explanation was received within the time specified, an order dated 14.03.2005 was passed terminating the service of respondent along with other employees who were also remaining authorized absent.

5.4 The explanation of the respondent dated 16.03.2005, was received subsequent to the termination order dated 14.03.2005 in which the respondent admitted that he remained absent unauthorizedly on account of his personal reasons.

5.5 Learned advocate Mr. Munshaw while referring to the statement of claim filed by the respondent before the Labour Court, Jamnagar submitted that in the said claim no averment has been made in relation to the non-service of warning and notice dated 06.12.2004 and 14.02.2005 C/SCA/13/2019 ORDER DATED: 03/05/2023 respectively.

5.6 He submitted that therefore, the finding of the Labour Court, Jamnagar that no notice has been served upon the respondent and that there is no proof of service to the respondent is factually incorrect. He submitted that though the respondent was appointed as dailywager, his termination order was passed after following the principles of natural justice and there being no illegality in the order dated 14.03.2005, the findings recorded by the Labour Court, Jamnagar is contrary to the evidence on record and therefore the same deserves to be quashed and set aside. 5.7 He submitted that as the respondent had worked after his termination for some time in the year 2005, would not make his conduct good and therefore the observation of the Labour Court that payment has been made to the present respondent for the work done in the month of June, 2005 is not required to be considered for treating the termination illegal. The application under provision of Section 25B(2) by Labour Court is erroneous C/SCA/13/2019 ORDER DATED: 03/05/2023 as the respondent was appointed as a dailywager in alternative of regular employee. In the order of appointment, it is stated that for any misconduct or in the event the work is not required, no notice is required for termination. Despite that the service of the respondent was terminated after issuing two notices and there being no illegality, the order passed by the Labour Court reinstating the respondent with continuity and without backwages is bad in law. He thus submitted that the order dated 06.08.2018 passed by the Labour Court, Jamnagar is required to be quashed and set aside.

6. On the other hand, Mr. Hitesh Makwana for the respondent submitted that the order of the Labour Court, Jamnagar is appropriate and it has rightly recorded those two notices dated 06.12.2004 and 14.02.2005 were not served upon the respondent. In absence of any justification of service of notice, the order of the Labour Court, Jamnagar is required to be confirmed.

C/SCA/13/2019 ORDER DATED: 03/05/2023 6.1 He submitted that the nature of work performed by the respondent is of permanent nature and despite that his service was terminated without taking into consideration the explanation put forward by the respondent and therefore order of the Labour

Court, Jamnagar is just and proper.

7. Considered the submission. It is noticed that the respondent along with other 307 workmen were appointed as daily wager and in alternative of regular workmen considering the fact that the regular workmen would occasionally remain absent. In the order dated 04.11.2000, it is stated that these employees are required to remain present regularly and if the work is not available their name will be automatically removed from the register. It is also stated that for terminating the services, no notice is required to be given to them. However, since the respondent remained unauthorized absent from duty, a warning dated 06.12.2004 was served upon him to remain present on regular basis. In note it was stated that further C/SCA/13/2019 ORDER DATED: 03/05/2023 absenteeism shall be reported. Despite that the respondent did not report for duty. The Labour Court held that the warning dated 06.12.2004 was not served upon the respondent, however, the letter at Annexure-B to the petition refers to thumb impression of the respondent. Similarly, a show-cause dated 14.02.2005 was served upon the respondent calling for his explanation for remaining unauthorised absent. Since, no reply was received from the respondent for his unauthorized absent, an order dated 14.03.2005 (exactly after one month from notice) was passed deleting the names of the respondent from the list dated 04.11.2000. This confirms that the petitioner remained absent from 06.12.2004 to 14.03.2005. In the order dated 14.03.2005, it is stated that since no reply has been received despite opportunity granted, the names of absentees have been deleted from the list of appointment dated 04.11.2000.

Thus, it is noticed that due opportunity of explanation was accorded and thereby principles of natural justice have been complied with. Most importantly, in the C/SCA/13/2019 ORDER DATED: 03/05/2023 explanation of the respondent dated 16.03.2005 he had stated that he could not remain present for personal reasons. Therefore, the finding recorded by the Labour Court in my opinion that the notices dated 06.12.2004 and 14.02.2005 were not received by the respondent is not correct, because the respondent himself had admitted his absenteeism. Moreover, a workman on essential services is expected to be more disciplined.

7.1 The finding of the Labour Court that the report of absenteeism is subsequently prepared is of no consequence because on the basis of the record available with the petitioner, they have prepared the report and placed on record. Therefore, in my opinion the order dated 06.08.2018 of the Labour Court, Jamnagar is erroneous on both the grounds that the notices could not be served upon the respondent as also the report has been subsequently prepared.

7.2 Further, in statement of claim no averment has been made in relation to the non-service of notice and no C/SCA/13/2019 ORDER DATED: 03/05/2023 explanation given despite opportunity. The fact that the respondent had worked after his termination would not make the order of termination illegal.

8. In view of above fact, I do not see any error in the termination order dated 14.03.2005 passed by the petitioner therefore, the order dated 06.08.2018 passed by the Labour Court, Jamnagar in Reference (LCJ) Case No. 65 of 2008 is required to be quashed and set aside and hereby quashed and set-aside. Interim relief stands vacated. The petition is allowed. No order as to costs.

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(MAUNA M. BHATT,J) SHRIJIT PILLAI