IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 1248 of 2012

In R/SPECIAL CIVIL APPLICATION NO. 5833 of 2012

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

and

HONOURABLE DR.JUSTICE A. P. THAKER

==========

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 ?	

==========

RAVJIBHAI FULLABHAI NAI

Versus

AIMS OXYGEN PRIVATE LIMITED & 1 other(s)

==========

Appearance:
MR ND SONGARA(2198) for the Appellant(s) No. 1
MR DM SHAH(5989) for the Respondent(s) No. 1
MR PARITOSH CALLA(2972) for the Respondent(s) No. 2

==========

CORAM: **HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**
and
HONOURABLE DR.JUSTICE A. P. THAKER

Date : 07/01/2020

ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT)

1. Heard learned counsel for the parties.

2. The appellant – the second party workman in Reference (LCV) Case No.321 of 1998 in the proceedings before the Labour Court, Vadodara and the petitioner in Special Civil Application No.5833 of 2012, has by way of this Letters Patent Appeal challenged the order passed by the learned Single Judge on 25.04.2012 in writ petition being Special Civil Application No.5833 of 2012, where-under the learned Single Judge has concurred with the findings and the relief granted by the Labour Court in the proceedings of reference vide award dated 22.09.2011, whereby the appellant workman was awarded a lump-sum payment of Rs.70,000/- in lieu of reinstatement and other relief after recording findings qua the illegality and unsustainibility of the termination order of the workman passed on 24.06.1989.

3. Facts in brief, as could be gathered from the memo of petition and the award deserves to be set out here under for ready reference;

3.1 The appellant – workman was working as Gas feater in the respondent company since 01.06.1974. The employer at the relevant time, as it is alleged in the statement of claim wanted to offer voluntary retirement to the employees for resizing the strength of the staff and as the management failed in obtaining requisite consent from the staff members, it was designed to see to it that workman was terminated on the pretext of the defection in duty as alleged. The workman was initially relieved on 01.06.1989 and in conciliation proceedings thereafter, the management had

taken a stand that the workman had not challenged the termination order, the earlier reference being Reference (LCV) No. 646 of 1989 was not tenable. The workman's services were in fact terminated vide order dated 24.06.1989.

3.2 As the workman as per his say, has not given any opportunity of defending his case, the workman raised one more dispute in the year 1998, which came tobe referred to the competent Court wherein it was registered as Reference (LCV) No.328 of 1998. the Statement of claim was filed by the workman, interalia, alleging the victimization, lack of opportunity, incorrect findings, perversity in the report and assailed the order of termination dated 24.06.1989. The Labour Court after recording reasons and holding that the termination order of workman was not sustainable, as it was found to be actuated on account of extraneous considerations and without affording opportunity and inquiry itself was conducted in haste and it was found that workman was required tobe granted some relief.

3.3 The Labour Court did consider the factum of the time leg between the order of termination and the date of passing of the award and came to the conclusion that the workman could not be possibly for remain unemployed on account of the lapse of time looking to his technical nature of his work, the Labour Court, therefore, after holding in favour of the workman completely qua unsustainability of the order of termination dated 24.06.1989 did not grant the relief of reinstatement or complete back-wages. Instead thereof the Labour Court ordered lump-sum compensation of Rs.70,000/- in lieu of reinstatement and back-wages. The Labour Court did advert to the details of the wages drawn by the workman, the time leg and the earlier reference, which was rejected and came to the conclusion that in those circumstances, the workman

deserved to be granted only relief of monitory compensation in lieu of the reinstatement and back-wages. The said award passed by the Labour Court on 22.09.2011 was challenged by the present appellant workman in this Court by way of Special Civil Application No.5833 of 2012, in which the learned Single Judge of this Court after concurring with the findings came to the conclusion that the order passed by the Labour Court does not need not to be interfered with and accordingly dismissed the petition. Being aggrieved and dissatisfied by such judgment of the learned Single Judge, present appeal under Clause 15 of the Letters Patent Act

4. Learned counsel appearing for the appellant contended that the Labour Court seriously erred in not considering its own findings qua the workman's termination being absolutely illegal and ordered only lump-sum payment of monitory compensation, which was wholly untenable in eye of law.

4.1 Learned counsel appearing for the appellant further submitted that the Labour Court has also not held against the workman anything in respect of the earlier reference being Reference No.646 of 1989, as the same was passed wherein the termination order dated 24.06.1989 had not been considered on its merits. Having held in favour of the workman, so far as the termination order was concerned, the Labour Court ought to have granted the order of reinstatement and back-wages also. The Labour Court was not justified in denying the back-wages and reinstatement which otherwise as decided by the Supreme Court in number of cases, matter of course in an eventuality where the impugned order is found to be passed without any legal basis.

4.2 Learned counsel appearing for the appellant further

submitted that the Labour Court has, in fact, gone in the realm of conjecture and surmise, so far as the gainful employment of the workman is concerned, the Labour Court has not indicated in its findings that the workman was gainfully employed so as to disqualify him from receiving the back-wages on account of illegal termination. Therefore, on that count also, the Labour Court is not justified in denying the back-wages and reinstatement to the workman.

4.3 Learned counsel appearing for the appellant further submitted that the learned single Judge of this Court also erred in not appreciating the aforesaid aspect and, therefore, the order passed by the learned single Judge also deserves to be interfered with and the workman is required to be granted appropriate relief till the age of superannuation that happened to be on 10.11.2015 and back-wages to that extent and all the retirement benefits based thereupon.

5. Learned counsel appearing for the respondent submitted that the Labour Court's findings qua the workman's entitlement for relief deserves to be considered as the Labour Court did advert to the facts and circumstances of the case, in which, it was established that the workman's termination was on 24.06.1989 and the reference which was under consideration was in the year 1998. The time leg between the order of termination and the raising of reference and when it is taken up for final consideration could not have been brushed aside lightly by Labour Court as otherwise it would amount to grant undue favour to the appellant workman for his own delay in approaching the Court.

5.1 Learned counsel for the respondent further submitted that

the earlier reference of the workman, which was rejected even if was not held against the workman the factum of that reference being rejected and the workman's inaction thereafter for quite some long time also would dismayed from considering the relief to be granted to the workman, at this stage when number of order orders passed between two will have to be considered by the Court.

5.2 Learned counsel for the respondent under the instructions submitted that in case if the Court is of the view that the lump-sum payment of Rs.70,000/- as ordered was not justified the Court may enhance the same keeping in mind the submissions and the time gap and the fact that the workman already attend the age of superannuation in the year 2015 itself, he submitted that the respondents have instructed him to state before the Court that respondents are ready and willing to pay Rs.1,50,000/- towards compensation.

6. The Court has heard learned counsel for the parties and perused the papers. The Court apropos the submissions of learned counsel for the respondents called upon the petitioner's counsel to indicate the petitioner's willingness or not which reads as under;

> *"Apropos the order dated 17.10.2019, the counsel for the respondent employer has submitted that he has received instructions to state before the Court that lump sum amount wich was already orderd, may be enhanced but the liability of employer may not be exceeded. The final figure that has said to the Court is Rs.1,50,000/- (Rs. One lakh Fifty thousand only), which will be towards full and final amount.*
>
> *Shri Songar, learned advocate appearing for the appellant seeks time to reflect upon same and receive instructions. Put up on 22.10.2020."*

6.1 Today, the learned counsel for the appellant indicated that the appellant is unable to accept the offer of enhancement and as

per his submission, the enhancement of compensation money would not meet the end of justice and hence he has shown his inability to accept the same.

6.2 The Court is of the view that the Labour Court's findings so far as the termination order is concerned indicate that the order of termination dated 24.06.1989 was absolutely illegal. the findings of the Labour Court qua that order of termination ordinarily would want grant of back-wages and the reinstatement as the termination would brought about without fault of the workman. The Labour Court even go to the extent of observing that the order of termination dated 24.06.1989 was a kind of victimization of the workman. However, as it is clear by now the question of back-wages and reinstatement is left to the discretion of the Court. As the Labour Court has under the Industrial Disputes Act greater discretion and power to grant appropriate relief to the workman. The said discretion is to be guided by the authoritative pronouncement of law by the Supreme Court time and again.

7. Thus, so far as the back-wages aspect is concerned it can well be said that the same is the question to be decided independently by the Court, when the Court came to the conclusion that the termination was illegal. Accordingly, in this case also the Labour Court has adverted to this aspect. Unfortunately, there is no elaborate findings qua gainful employment of the workman, but the glaring facts of the matter that the workman was terminated on 24.06.1989 and the first reference of the workman had failed and the workman thereafter did do nothing for moving the Court and terminated on 24.06.1989 was challenged in the year 1998 as the second reference was registered in the year 1998 and in absence of any explanation for this inaction in the interregnum on the part of

the workman persuaded the Labour Court to taken into consideration the long time leg between the order of termination the workman's inaction in the interregnum period and the factum of the original wages drawn by the workman, at the time of termination. This deliberation and decision making process of the Labour Court had gone into Labour Court's decision of granting lump-sum in lieu of the reinstatement and the back-wages. The question arises that whether said discretion is required to be interfered with in any manner. The question is therefore has to be answered after taking into consideration the relevant factors. In the instant case, the workman's services prior to his termination also if taken into consideration was for the period of 15 years and the workman was a technical hand and, therefore, when the workman after failing in his first reference did do nothing for challenging the termination order dated 24.06.1989 and raised reference only in the year 1998, the Labour Court could not be said to have unjustified qua non granting of reinstatement and backwages, in the peculiar facts and circumstances of the case. The workman was to retire in the year 2015 and he was technical hand even otherwise also, in that view of the matter, the discretion exercised by the Labour Court in out view did not call for any inteference.

7.1 However, when the learned counsel for the respondent has under instructions of the respondent submitted that respondents are ready and willing to pay Rs.1,50,000/- we are of the view that the said amount could be granted, as otherwise also the said amount seems to be just and proper as the original wages of the workman were also Rs.771/- per month, when his services came to be terminated. Therefore, if the one takes into consideration all the relevant factors, then the amount of Rs.1,50,000/- would surely

meet end of justice and accordingly the award of the Labour Court need to be modified only to that extent and it is accordingly modified and, therefore, the workman is said to have been entitled to compensation of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only). The same shall be paid within a period of 3 months from the date of receipt of order. After that the same shall carry interest at the rate of 10% per annum till actual date of payment. The amount to be paid would earn interest only after period of 3 months from the date of receipt of the order. Appeal is partly allowed and disposed of accordingly.

(S.R.BRAHMBHATT, J)

(A. P. THAKER, J)

DRASHTI K. SHUKLA