

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/LETTERS PATENT APPEAL NO. 1341 of 2018
In R/SPECIAL CIVIL APPLICATION NO. 12392 of 2016**

With

R/LETTERS PATENT APPEAL NO. 1346 of 2018

In

SPECIAL CIVIL APPLICATION NO. 12391 of 2016

With

R/LETTERS PATENT APPEAL NO. 1345 of 2018

In

SPECIAL CIVIL APPLICATION NO. 12742 of 2016

With

R/LETTERS PATENT APPEAL NO. 1342 of 2018

In

SPECIAL CIVIL APPLICATION NO. 12741 of 2016

With

R/LETTERS PATENT APPEAL NO. 1347 of 2018

In

SPECIAL CIVIL APPLICATION NO. 12393 of 2016

With

R/LETTERS PATENT APPEAL NO. 1344 of 2018

In

SPECIAL CIVIL APPLICATION NO. 12390 of 2016

With

R/LETTERS PATENT APPEAL NO. 1343 of 2018

In

SPECIAL CIVIL APPLICATION NO. 12394 of 2016

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SOMABHAI KANTIBHAI SOLANKI

Versus

STATE OF GUJARAT THRU DEPUTY EXECUTIVE ENGINEER

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Appearance:

MR YOGEN N PANDYA(5766) for the Appellant(s) No. 1

**MS NISHA THAKORE, ASST GOVERNMENT PLEADER(1) for the
Respondent(s) No. 1**

NOTICE SERVED BY DS(5) for the Respondent(s) No. 2

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE ANANT S. DAVE

and

HONOURABLE MR.JUSTICE BIREN VAISHNAV

Date : 21/06/2019

ORAL ORDER
(PER : HONOURABLE MR.JUSTICE BIREN VAISHNAV)

1. These appeals arise out of a common oral judgement dated 07.08.2018 passed by the learned Single Judge. By the order under challenge, the learned Single Judge partly allowed the petitions filed by the employer – State of Gujarat. By the order under challenge, the learned Single Judge confirmed the direction as far as reinstatement is concerned, however, denied the benefit of continuity of service and 20% backwages. On being aggrieved by the denial of continuity of service and 20% backwages, the employee is in appeal before this Court.

2. It is not in dispute by the learned advocates appearing for the respective parties that this group of appeals are similar to Letters Patent Appeal No. 2184 of 2017 which has already been decided by this Court by a common oral order dated 12.03.2018. The awards in question in those appeals were part of the awards which are subject matter of challenge in these proceedings. The facts therefore are not discussed in detail. The learned Single Judge confirmed the award of the labour Court of reinstatement holding that there was violation of Section 25F of the Industrial Disputes Act, 1947. The learned Single Judge confirmed the finding of the labour Court of denying the benefit of continuity of service and also denied backwages of 20% so awarded by the labour Court. According to the learned Single Judge, the appellants herein were not entitled to the benefit of continuity of service inasmuch as they were working as daily wagers.

3. Mr. Yogen Pandya, learned advocate for the appellants has submitted to which Ms. Nisha Thakore, learned Assistant Government Pleader has no dispute that the reasonings rendered by this Court in Letters Patent Appeal No. 2184 of 2017 and allied matters will govern these appeals. While deciding the aforesaid group of appeals, we had considered the various decisions of the Apex Court in detail and held as under:

“9.16 Considering the facts and circumstances of the case, we are in agreement with the above observations made by the learned Single Judge.

10 Before parting, what emerges on record is that in case of breach of statutory provisions viz. Section 25F, 25G, 25H of the Act, 1947, ordinarily as a consequence of such a breach, workmen is entitled for reinstatement, continuity of service and backwages. That when the action of employer is found as such in breach of above provisions of Act, 1947, remedy of lump sum is not to be followed and reinstatement has to be ordered by the labour Court as such breach is illegal. In a given case, when no material is available in support of claim of the workmen and even the employer fails to establish that workmen was not in service or on muster role of the employer and powers to appoint or employee – workmen were completely absent and that authority or officer had no jurisdiction to do so, on a proved fact like this, order can be passed withholding continuity in service and backwages like in the present group of appeals preferred by the employees against Junagadh Municipality.

10.1 That pendency of litigation viz. Reference before the Labour Court and thereafter before the writ Court, the long tenure of such pendency is no ground to deny backwages to workmen, since such pendency is not due to fault or any negligence on the part of the workmen and it is due to huge arrears and pendency of various cases before the

Court.

10.2 The law laid down by the Apex Court in the case of Hindustan Tin Works Pvt. Ltd. [supra], Gauri Shanker [supra] and Sudarshan Rajpoot [supra] is good law even today and J.K.Synthetics Ltd. [supra] was distinguished by their Lordships in Deepali Gundu Surwase [supra] and was held per incurium for which this Court cannot have any different consideration.

That mentioning of Section 25B of the Act, 1947 in Government Resolution dated 17.10.1988 issued by the State of Gujarat has the same meaning and interpretation for which we have made reference in earlier part of this judgment. Unless the award by labour Court qua reinstatement, continuity in service and backwages or reinstatement without continuity and/or without backwages is quashed and set aside by writ Court upon challenge to such an award, no officer or authority of the Government has power to go behind the order of labour Court and such officer or authority is dutybound to implement the award in accordance with law.

11 In view of the above discussion, we pass the following order;

[I] Letters Patent Appeal Nos.735, 736, 738 to 747 of 2017 filed by the workmen are hereby dismissed and the order dated 19.07.2016 in Special Civil Application Nos.14983 to 15001 of 2011 passed by the learned Single Judge is confirmed.

[ii] Letters Patent Appeal Nos.132 to 134 of 2017 are partly allowed and orders dated 12.09.2016 passed by the learned Single Judge in Special Civil Application Nos.981 of 2012, 2587 of 2012 and 2588 of 2012 are modified to the extent of granting continuity of service to workmen with 20% back wages.[iii] Letters Patent Appeal No.345 & 346 of 2017 are partly allowed and orders dated 12.09.2016 passed by the learned Single Judge in Special Civil Application Nos.442 of 2012 and Special Civil Application No.1953 of 2012 are modified to the extent of granting continuity of service and awarding lump sum amount of Rs.25,000/only to the workmen in lieu of 10%

backwages granted by the Labour Court.

[iv] Letters Patent Appeal Nos.2184 and 2186 of 2017 are partly allowed and order dated 06.05.2016 passed by the learned Single Judge in Special Civil Application No. 1760 and 1761 of 2012 and allied matters are modified to the extent of granting continuity in service and lump sum of Rs.25,000/- as they have filed reference after a period of 5 years.

[v] Letters Patent Appeal Nos. 1902 to 1907 of 2017 are partly allowed and orders dated 25.11.2016 passed in Special Civil Application No.1035 of 2012 and common order dated 25.11.2016 passed in Special Civil Application No.2156 of 2012 and allied matters, are modified to the extent of granting continuity of service and awarding lump sum amount of Rs.25,000/only to the workmen in lieu of backwages granted by the Labour Court.

With the aforesaid all the appeals are disposed of.”

4. Admittedly, directions contained in clause (iv) of para 11 of the aforesaid decision applies in the present case.

5. Accordingly, present appeals are partly allowed. The judgement and order dated 07.08.2018 passed by the learned Single Judge in the respective petitions is modified to the extent of granting continuity of service to the appellants herein and lumpsum compensation of Rs.25,000/- in lieu of 20% backwages which was otherwise denied by the learned Single Judge. Order accordingly.

(ANANT S. DAVE, ACJ)

(BIREN VAISHNAV, J)

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