

In the Labour Court before the Presiding Officer

Mr. L.M. Rathod, Judge

At Bhavnagar



REF (L.C.B.) No. 602/2001

Second Party:-

Legal Heirs of Deceased Harunbhai Chhotubhai Malek

- 1. Hanifaben Harunbhai Malek**
- 2. Razakbhai Harunbhai Malek**
- 3. Imtiyaz Harunbhai Malek**

[as per order vide exh. 16]

C/o. Shramik Sangh,
115, Kaveri Corporation, Navapara, Bhavnagar

V/S

First Party :-

- 1. Director of Medical Services**

E.S.I.S., Panchdeep Bhavan,

Opp. Income-Tax Office, Aashram Road, Ahmedabad

- 2. Incharge Doctor**

E.S.I. Scheme,

Davakhana No. 1, Ganga Jaliya Lake, Bhavnagar

Sub:- Reference U/s 10(1) of the I.D. Act, 1947 for Adjudication

For the Second Party Rep.

:- Mr. P.K. Thakker

For the First Party Ld. AGP.

:- Mr. N.H. Jadeja

-:: AWARD ::-

1. The present reference has been referred to this court for adjudication by the Asst. Labour Commissioner, Bhavnagar u/s-10(1) of Industrial Dispute Act, 1947 (Act,1947 for brevity) under vide order No. K.H./9491/S.H.M.C./B.H.A. / I.D.R. 387/2001, dtd. 26.11.2001 along with schedule hereunder;

—:: Schedule ::-

“શ્રી હારુનભાઈ છોટુભાઈ મલેકને તેમના પડેલા દિવસોના પુરા પાગર સાથે તેમની મૂળ જગ્યાએ પુનઃ સ્થાપિત કરવા જોઈએ કે કેમ ?”

2. In pursuance of the reference notice issued to the parties vide exh. 2 for the adjourned date 05.02.2002 got duly served to the parties and pursuant thereto the first party appeared through Ld. AGP Mr. N.H. Jadeja vide exh. 10 whereas the second party appeared through union representative Mr. P.K. Thakker. The second party has submitted statement of claim vide exh. 4 and copy thereof was furnished to the first party through registered post vide mark 5/1 and 5/2 but the first party failed to appear and therefore consequently right of the first party to submit reply/objections came to be closed.

2.1. The second party moved applications vide exh. 14 and 16 to join legal heirs of the deceased original second party Mr. Harunbhai Chhotubhi due to his demise which appear to have been allowed by my predecessor presiding officers and accordingly the legal heirs of the deceased have come on record and accordingly and necessary amendments have been made in the statement of claim vide exh.4.

2.2. Mr. Tahkker by filing statement of claim vide exh. 4 has submitted that;

a) The second party was rendering continuous services as a chowkidar since 1978 drawing latest monthly wages in the pay grade of 296-4-320 alongwith allowances. He has further submitted that despite the second party was rendering services with due diligence and honesty he was terminated since 15.09.1979 without any default on his part and thereby he has been terminated as an act of victimization and thereby the first party practised unfair labour practice.

b) He has further submitted that the demand notice dtd. 16.02.2001 was tendered through Regd. Post but the first party has not complied therewith and therefore he has been constrained to raise industrial dispute before the Asst. Labour Commissioner, Bhavnagar, and there after conciliation proceedings was carried on but no any amicable settlement could be arrived at between the parties. Therefore the matter has been referred to this court for adjudication.

c) He has further submitted that the second party was terminated by oral order since 15.09.1979 without following the termination procedure without notice, notice pay, or retrenchment compensation and thereby the first party has committed breach of the provisions of the I.D. Act, 1947 and provisions of the Model Standing Orders. Thereby the first party has committed breach of the provisions of Sec.25(F),(G),(H) of the Act 1947 and also continued junior workmen and recruited new workmen after his termination but he was not called for. The first party is not prepared and published seniority list st the time of termination of the second party. Therefore he made written submission on 05.01.2000 and was assured to be taken back and therefore he relied upon

assurance and thereby delay has been caused in raising dispute. The first party is liable to give permanent job to the second party but due to lax policy delay has been caused and he has not so far been reinstated.

d) He has further submitted that he preferred SCA No. 4443/2000 before the hon'ble High Court and vide order dtd. 08.05.2000 he was directed to file reference in the Labour Court and therefore cause of action has been arisen in his favour to raise the dispute.

e) He has further submitted that the work which was being rendered by him is of permanent nature of the permanent post. He has further submitted that he is ready and willing to resume pending litigation. He has remained unemployed and could not get work even if sufficient attempts were made to get work by reason of he has become over aged. He has further submitted that work for more than prescribed hours was being taken from him but no over time wages or other service benefits were extended to him.

f) He has further submitted that approach letter to the given to the first party but not replied or complied therewith and there by left the second party languish in dire poverty. He has no source of income and therefore inter alia prays in para-12(a to d) to declare his termination illegal and unreasonable and reinstate him on his original post with continuity of service, full back wages and other service benefits alongwith costs of litigation.

3. The copy of statement of claim appears to have been duly furnished to the first party through registered post vide exh. 5 and A.D. Slip refers duly served. Therefore, right of opponent to submit reply/objection of statement of

claim came to be closed. The first party does not seem to have submitted reply/objection on record. Thereafter the matter was posted for the evidence of second party and after joining the legal heirs of deceased the affidavit of oral evidence came to be filed vide exh.20 on 21.11.2019 and copy thereof was furnished to the first party but thereafter this witness has remained absent and did not afford herself for cross-examination and consequently notice vide exh.21 for the adjourned was issued and same got duly served but the witness failed to appear and afford herself for cross-examination. Therefore the affidavit of oral examination came to be discarded in absence of the witness and thereafter as there was no any evidence on the side of the second party right of the first party to leave evidence also came to be closed. Thereafter right of the parties who advance/submit arguments has come to an end on 06.12.2021. Therefore, there is no oral or documentary evidence on either side.

4. For the determination of points of determination following issues arise before me, Which are hereunder;

Issue No.	Description
Issue no. 1	Whether the second party proves that his termination is illegal and unreasonable ? If Yes, Whether is he entitled to get reinstated on his original post with continuity of service and full back wages ?
Issue no. 2	What Award ?

(7) My findings upon such issues are;

Issue No. 1	In Negative
Issue No. 2	As per Final Order

(8)

Reasons for Decision

ISSUE No. 1 :-

1. In the matter on hand the the parties have been duly served with notice to pursuant thereto the second party submitted statement of claim vide exh. 4 and copy thereof was also furnished to the first party but the first party failed to submit reply/objection thereof and consequently right to submit reply/objection came to be closed. The legal heirs of the second party have been brought on record and affidavit of oral evidence has also been submitted vide exh.20 but thereafter the witness failed to appear and afford herself for cross-examination and therefore affidavit of oral evidence came to be discarded by reason of long absence of witness. Therefore it can be said that there is no evidence on oath on record and without being led the evidence on oath the averments of the statement of the claim cannot be said to be proved within the meaning of Sec.3 of the Evidence Act. Further right of arguments of both the parties have also been closed. The second party seems to have been given sufficient opportunities to appear and proceed with the matter but have remained indifferent and shown callous attitude in dealing with the matter. Therefore the second party has not substantiated the averments and documentary evidence on record. The parties have not advanced/submitted arguments. Therefore, the applicant seems to have lost interest in proceeding with the matter and therefore remained negligent and indifferent to his matter

and seems to have lost interest therein. Therefore, stages have been closed step by step.

2. The present reference has been filed in the year 2001 but thereafter not taken care of and virtually abandoned till the date. The second party has been afforded sufficient opportunities to lead evidence but she failed to do so. The second party is required to adduce evidence on her side to substantiate her averments of the statement of claim. But the second party has not done so. She has remained oblivious and indifferent and therefore, no any corroborative evidence has come on record and therefore in absence of such evidence on record the averments of the statement of claim can not be said to be proved and therefore this court is not left with any resort except to dismiss this reference. Therefore, issue No. 1 is held in “Negative” and final order as to issue No. 2 is passed hereunder ;

:- FINAL ORDER :-

- 1. The present reference is hereby dismissed.**
- 2. The second party (Harunbhai Chhotubhai Malik) is not entitled get reinstated with continuity of service and full back wages since 15.09.1979.**
- 3. The parties to bear costs of lis by their own.**
- 4. The present reference be sent to the Labour Commissioner, Bhavnagar for publication.**

Place: Bhavnagar.

Date : 04.01.2022

(Lalitkumar Meghajibhai Rathod)
Presiding Officer, Court No. 1
(Code No. GJ00844)