

EX-17

**IN THE COURT OF THE PRESIDING OFFICER (SD),
LABOUR COURT NO. : 1, AT : BHARUCH**

Ref.(LCB) Case No: 277 of 2016

First Party-Institute :

Manager shri,
Welspun Corp. Ltd.
At: Post: Vaddala, Dahej,
Ta: Vagra,
Bharuch.

v/s.

Second Party-Workman :

Mr. Mahendrasinh Kalyansinh Prankda,
Residing at: 5, Anurag Colony,
Linc Road,
Bharuch.

FOR THE FIRST PARTY : Ld. Ad. Mr. Piyushbhai Dhanak.

FOR THE SECOND PARTY : Ld.Repre./Ad. Mr. Aasifbhai Shaikh.

AWARD/JUDGMENT

(1) By this award I shall adjudicate the

JUDGE (SD), LABOUR COURT No:1, BHARUCH.

dispute between the employee and management regarding reinstatement of employee. The dispute raised from an employee by filing complaint against management on Dt:3-8-2016 before Assistant Labour Commissioner, Bharuch.

For the sake of brevity and for convenience to understand, here in after First party shall be refer as 'Management' and Second party shall be refer 'Workman'.

(2) The workman Shri Mahendrasinh Kalyansinh Prankda, has raised an industrial dispute regarding the termination of his services by the management to The Appropriate Government. On being satisfied regarding the

existence of Industrial Dispute between the parties, the appropriate government Assistant Labour Commissioner has made a reference on Dt:2-9-2016, under section 10 (1) (c) of the Industrial Disputes Act, 1947 for adjudication by this Court, on following terms.

The terms of said reference is as under:

"Whether Shri Mahendrasinh Kalyansinh Prankda should be reinstated on his original post with continuity of service and with full back-wages ?"

**(3) THE CASE OF WORKMAN AS PLEADED IN
STATEMENT OF CLAIM Ex-5 :**

Workman was working with management as **Sr. Fitter** since Dt:19-11-2007. His last monthly salary was Rs.20,000/-. Workman never gave any opportunity to the management to have any complaint against him. He further stated in the Statement of Claim that, management is engaged in the business of Engineering and is leading business house in India and had engaged 550 workers for production. Management has other branches outside India also. In January-2016 officers of Personnel Department of management obtain resignations from workmen forcibly and those who had not resigned were

made to transfer at Mandia in Karnataka. For this dispute had been raised by the Dahej Audhyogik Kamdar Sangh and therefore management was not pleased with the workman.

It is further stated that, on Dt:19-7-2016 workman received a phone call at 08:00 p.m. from Mumbai's management and was informed that his Punching Card had been locked and from next day he had not to go to company. The caller had not disclosed any identity though asked.

It is further stated that on Dt:20-7-2016 when he went for his service and he found at the gate of the company that his Punching Card is locked and was not allowed to resume duty and thus he alongwith other workers terminated. No reasons were given to

workman for his termination though asked. It is further contended that the act of discontinuation from service by management amounts to retrenchment. On that day company had dismissed 120 workers from service and therefore co-workers had made voluntary strike on that day.

Provisions of Chapter 5(B) is applicable to management and management had not taken any prior permission of the Appropriate Government before retrenchment of the workman. Management had not given any chance of explanation to workman before retrenching and had not given any Notice or Notice Pay or Retrenchment Compensation or any legal dues. Management had illegally dismissed the workman by exercising

excessive powers.

Management had informed by letter to the other terminated workmen that they were terminated as per conditions of Appointment Letter but workman was not served with any such letter.

Workman further stated that, he was terminated illegally. Dahej Audhyogik Kamdar Sangh had raised industrial dispute against management vide Ref.(IT) No:536/13 which is pending before Hon'ble Industrial Court, Baroda and workman is affected party in it. Management had not taken any permission or approval as per provisions of S.33 of the ID Act and hence management breached the mandatory provisions. Workman reserves his right to file complaint u/s 33(A) of the ID

Act.

Workman further stated that management had not paid him any legal dues before termination and management written letter of No-dues and Collection of Full and Final Payment with malafide intent. Workman further stated that management used to obtain resignations forcibly from workmen. Workman further stated that he had written a letter informing management to send him his full and final payment by cheque through Regd. A/D but management had not paid him any payment. Management written a letter Dt:2-8-2016 with malafide intentions of No due Clearance and Collection of Full and Final Payment. Workman further stated that management had terminated approximately 120

workmen and had forcibly obtained resignations from couple of them and had also resumed some of them.

The workman prayed for reinstatement in service with full back wages or get the above dues from management.

**(4) CASE OF MANAGEMENT AS PLEADED IN WRITTEN
STATEMENT OF DEFENCE Ex-6 :**

After denying categorically and specifically of all averments made in statement of claim by workman, the management submits that the contentions of the statement of claim as incorrect. It is alleged that the statement of claim of workman filed by the workman is not

maintainable and the same barred by the settled provisions of law. It is also alleged that Labour Court has not jurisdiction to try the reference case. Workman has no right to filed this type of reference case. It is further submitted that, the services of the concerned workman have been terminated based on accepted terms of appointment letter and hence it is in accordance with contract of employment. It is further submitted that since last some period of time owing international crisis the demand for the products had declined substantially and that has affected the overall business and company in order to survive its existence and to save the future of everyone concerned services of some of

the workmen were terminated based on contractual agreement. It is further submitted that, company in order to find solution and to see that the difficulties faced by workman are reduced and they get alternative relief, VRS was offered to all employees and larger group of employees accepted the VRS benefits while few of those employees have not accepted the same. In present situation a termination based on contractual appointment is legal and justified and company is willing to offer the VRS to all including the present workman even though the scheme was for specific period. It is further stated that the services of the workman was terminated as per letter Dt:19-7-2016 according to terms

and conditions of the Appointment Letter.

The management has prayed for dismissal of this reference case.

(5) The following evidence has been produced on behalf of both the parties.

Oral Evidence :

Sr. No.	Exh.	Particulars
01	7	Deposition of workman himself

Documentary Evidence :

Sr. No.	Exh.	Particulars
1	5	Statement of Claim
2	8	Application for production of documents.
3	12	Closing Pursis.
4	13	Appli. for closing of right of evidence of FP.

5	14	Written Argument.
6	16	List of Judgments.

The following evidence is produced from management side.

Oral Evidence :

Sr. No.	Exh.	Particulars
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Documentary evidence by management.

Sr. No.	Exh.	Particulars
1	6	Written Statement of Management
2	10	Documentary Evidence List.
3	11	Appointment Letter.
4	15	Written Argument.

(6) Both the parties have given equal and sufficient opportunities to adduce their evidence, workman submitted his closing

pursis vide Exh.12 and though opportunity given to management but FP has not produced any evidence hence its right to evidence was closed upon application of SP vide Ex:13.

(7) After the recording of evidence, both side have submitted their written arguments vide Ex:14 and Ex:15 and placed judgments in support of the arguments.

(7.1) Representative of the workman in his written argument he submitted as per the statement of claim and as per the oral evidences adduced on behalf of the workman. It is further stated that the workman has proved his case and hence the relief asked herein should be allowed.

Ld. Repre. relied upon the following judgments in support of his arguments.

[1] 1986(33) FLR 752 (SC) ; O.P. Bhandari Vs I.T.D. Corpn. Ltd.

[2] 1985(50) FLR 147 (SC); Delhi Transport Corpn. Vs D.T.C.M. Congress.

[3] 2014-III-LLJ-478(SC); Bhuvnesh Kumar Dwivedi Vs Hindalco Industries Ltd.

[4] 1990(61) FLR 73 (SC); D.K. Yadav Vs M/s. J.M.A. Industries Ltd.

Read the above judgments relied upon by the workman and considered the ratio laid down in the judgments.

(7.2) Ld.Ad. for the management has submitted in his written argument mostly as per their written statement. It is further

argued that, workman was terminated as per the terms and conditions of the Appointment Letter. Workman averred that he was terminated on Dt:20-7-16 where in fact his services were terminated on Dt:19-7-16, present dispute is based on the termination of Dt:20-7-16 and therefore this court has no jurisdiction to decide the termination which already taken place on Dt:19-7-2017. In written arguments an alternative prayer for compensation in lieu of reinstatement taken by management and for that it argued that, if the court is of the opinion that the court has power to decide the legality of termination Dt:19-7-2016 then in that event the court should grant lump sum compensation in lieu of reinstatement and/or

back-wages. This will be in overall survival of Industry.

Ld. Ad. for FP relied upon the following judgments in support of his arguments.

[1] 2004 LLR 471 (Guj)
(SCA No:8376/1994); Kaushik J. Gandhi Vs Sandesh Ltd.

[2] 2000(1) GLH 490 (Guj) (SCA No:3084/1990); GSRTC Ahmedabad Vs Premsingh L. Rathod.

[3] 2006 LLR 603 (All); Chemical Workers Union Vs Labour Court Ghaziabad.

[4] 1999 Lab.I.C. 602 (SC); Municipal Committee, Tauru Vs Harpal Singh & Ors.

Read the above judgments relied upon by the workman and considered the ratio laid

down in the judgments.

(8) On perusal of entire record, evidence lead by respective parties and after careful reading of written arguments as well as keeping in mind the nature of dispute between the parties, following issues would be arise for determination of this reference case.

:ISSUES:

(1) Whether the service of concerned workman have been terminated illegally and/or unjustifiably by the management and thereby the management has violated the provisions of section 25(f)(g)(h) of the Industrial Dispute

Act 1947, and whether the workman is entitled to get the relief as prayed for?

(2) What order and relief/s ?

(9) My findings of the said issues are as under

(1) In Partly affirmative

(2) As per final order

: REASONS :

(10) ISSUE NO. : 1

After received written statement from first party management, the matter was adjourned for workman evidence. To prove

his case the workman has examined himself vide Ex:7 and led his evidence through affidavit, there after case was adjourned for cross examination of workman. Learned Advocate for management cross examined the workman at length.

In the Cross examination workman has admitted that, it is true that his appointment was as per the terms and conditions of the Appointment Letter(Ex:11), he further admitted that he had not raised any objection or made any correspondence regarding denial or non acceptability of the terms and conditions of Ex:11. It is true that company implemented the terms and conditions alongwith salary. Present reference made as he was terminated. He was

terminated on Dt:20-7-2017. Company had not given any letter in writing of termination on Dt:20-7-2017. He came to know about his termination as he went to company on Dt:20-7-2017. He does not know exactly when he informed the company regarding his oral termination. He does not know about the floating of VRS Scheme by company. It is true that to prove the contents mentioned in Para:3 of page:1 and Para:8 of page:3 he had not placed any documentary evidences. It is true that he had not produced any documents which shows that he had asked from company by writing letter about his legal dues. SP in his cross examination stated that at present he is unemployed and had tried for employment.

(11) Herein this case the management has not step into the witness box to prove the contentions raised in their reply though enough opportunities were given by the Court.

(12) No other evidence produced by the both the parties. This court has gone through the deposition of workman and written statement(Ex:6) of first party management and consider the arguments and judgments advanced by both the parties.

Herein this case workman has moved an application vide Ex:8 for production of documents by FP. Though ordered FP has not

produced the ordered documents before this court such as the proof of service of Termination Letter to workman and copy of full and final settlement/paid money if any to workman by first party/company alongwith the Termination Letter or afterwards and information regarding the punching during July-2016 of workman's card including in-out data.

It is not disputed that workman was not employee of management and had not completed 240 days in last one year.

FP herein this case had produced Offer Letter of workman vide Ex:11 and had not produced the Terms and Conditions therein.

FP produced the Notice of Cessation of Employment vide Mark:10/1 therein mentioned that services of workman discontinued w.e.f. 19-7-2016 on completion of working hours. As per the documentary evidences produced herein by FP it nowhere reflects and there is no proof that Notice of Cessation of Employment of workman were effectively served upon workman. FP has not produced any original proof of refusal of Regd. AD by workman. FP had not produced any documentary evidence which may show that it had floated any VRS Scheme in company. FP had not produced any documentary evidences which may indicate that the company is in any financial crisis and it is difficult for company to survive its existence.

The workman through his testimony has also proved that he was illegally terminated by the management and management had not paid his dues. Hence in view of the above discussion I held that workman was terminated illegally without giving notice pay, and without holding any departmental inquiry and without giving opportunity to be heard as per law of natural justice and hence the service of the workman terminated illegally and unjustifiably by the management and thus the management has violated the settled provisions of the section 25(f)(g)(h) of Industrial Dispute Act 1947.

(13) It is admitted by the FP in its written statement vide Ex:6 and in written arguments vide Ex:15 that FP ready and willing to give lump sum compensation and benefits of VRS which offered to other workmen considering the prevailing financial conditions of the first party in present state of financial crisis.

(14) In this case workman has claimed reinstatement with full back wages and consequential benefits. It is settled law that even in case of illegal termination also reinstatement is not automatic. For this this Court relies upon the following judgments:

[1] In view of decisions of the Apex Court in Ram Ashrey Singh and another Vs Ram Bux Singh and others [(2003) 9 SCC 154], in Senior Superintendent Telegraph (Traffic), Bhopal Vs Santosh Kumar Seal and others [(2010) 6 SCC 773] and in 2013 (5) SCC 136 and other judgments on the point that even in case where the Labour Court or Tribunal records breach of Section 25-F, workman may not be automatically entitled to relief of reinstatement and backwages. Instead, relief of payment of lump sum compensation may be awarded.

[2] In the case of SCA No. 4657 of 2009; Executive Engineer & 2 Versus Padhiyar (Sindhva) Rayjibhai Mathurbhai; [Coram:

Hon'ble Mr.Justice H.K.Rathod saheb Date:
18/06/2010].

Relevant para:11 to para:15 of the
judgment are as under.

Para:11 - "The Labour Court, Godhara has considered that office in which workman was working has been closed and it has been transferred to Baroda and more than 11 years have passed from date of termination. Meanwhile, no permanent employee has been recruited by petitioner and workman was not working in permanent posts. In the year 2000, written statement was filed by petitioner and in the year 2003, workman was examined. Thereafter, after three years, petitioner has led oral evidence exh 19. Therefore, in light of this back ground, instead of reinstatement and back wages of interim period, Labour Court, Godhara has granted lump sum amount of compensation Rs. 25,000/- in favour of workman. This award is not challenged by workman before

this Court and not implemented by petitioner.

Para:12 - "In light of this back ground, question is whether Labour Court is entitled or having jurisdiction to grant such compensation in lie of reinstatement and back wages or not when section 25 F is violated by petitioner? This aspect has been examined by Full Bench of Madhya Pradesh High Court in case of **Munshi Singh S/o Balwant Singh Kushwah v. Nagar Panchayat, Jaura reported in 2010 Lab IC 370.** The relevant discussion made in para 8 to 15 are quoted as under:

"8. Thus, the view of the Apex Court in all these cases was that once the order of termination is held to be illegal retrenchment then the nature of consequences was to reinstatement with full backwages. However, the Apex Court in its subsequent judgments has changed its view.

9. In case of Karan Singh Vs. Executive Engineer, Haryana State

Marketing Board, 2007 LLR 1233 : (AIR 2007 SC (Supp) 989), the employee whose services were terminated, has approached the Tribunal after a long delay and the Apex Court has held that the delay in approaching the natural Tribunal is no ground to strike down the reference, if the termination order is violative of Section 25 F of the Industrial Dispute Act. It is not proper for the Court to refuse to strike down the termination order. The Court in such a situation finds that termination order is bad in law, the Court can instead of granting reinstatement can award compensation. In that case, the Apex Court has granted compensation to the employee to the tune of Rs. 60,000/-.

10. Another judgment is in the case of Nagar Mahapalika (now Municipal Corpn) Vs. State of U. P. and others (2006) 5 SCC 127 : (2006 Lab IC 2264). In that case, the retrenchment was found to be illegal by the Apex Court. However, considering the provisions of U. P. Nagar Mahapalika

Adhiniyam, 1959, the Apex Court has refused to grant reinstatement and held that the order of reinstatement should not be granted as a matter of course but the legality or otherwise of the termination should be considered to be an important factor in the matter of grant of relief.

11. The next judgment is in the case of State of M. P. and others Vs. Arjunlal Rajak (2006) 2 SCC 711 L (2006 Lab IC 1319). in that case, the Apex Court has held that for non compliance of the provisions of Section 25 F of the I. D. Act, ordinarily workman could be directed to be reinstated with or without back wages, but when a project or scheme or an office itself is abolished, relief by way of reinstatement can not be granted.

12. In the case of Mahboob Deepak V. Nagar Panchayat, Gauraula and others (2008) 1 SCC 575 : (AIR 2008 SC (Supp) 342) the Apex Court has held that even if the order of termination is illegal, the compensation can be granted as there are allegations against the terminating

employee for misconduct and financial irregularities.

13. In the case of Madhya Pradesh Administration Vs. Tribhuban, (2007) 9 SCC 748 : (2007 Lab IC 1955), the Apex Court has held that consequences of non compliance of provisions of Section 25 F of the I. D. Act is not automatic reinstatement and compensation can be awarded to the employee in appropriate cases.

14. In the case of U. P. State Road Transport Corporation Vs. Man Singh (2006) 7 SCC 752 : (2006 Lab IC 4054), the Apex Court has considered the case of conductor whose services were terminated after a period of one year from his appointment. The Apex Court has refused to direct reinstatement as there was nothing on record to show that the employment was in accordance with rules and awarded compensation of Rs. 50,000/-.

15. Thus, from the cases referred hereinabove, it is clear that the normal rule is that once, it is found that the

termination order is violative of Section 25 F of Industrial Disputes Act, then the said order is ab initio void and the employee is entitled to reinstatement with full back wages. However, in a particular case, the Court can refuse to grant relief of reinstatement for a particular reason which will depend on the facts and circumstances of each case. Thus, there is no hard and fast rule that the Court should grant the relief of reinstatement with full back wages in each and every case. The same relief shall depend on the facts and circumstances of each case. Hence, the reference is answered accordingly. Now the case be listed before the appropriate Division Bench."

Para:13 - *"In view of aforesaid observation made by Full Bench of Madhya Pradesh High Court and also considering special facts and circumstances of case that before Labour Court, workman has proved continuous service from the year 1994 to 1998 and completed 240 days*

continuous service in preceding 12 months, even though, section 25 F is not followed and violated by petitioner. The respondent was part time employee working as Waterman/Watchman on ad hoc basis, not permanent workman. From date of termination, more than 11 years have passed, subsequently no direct recruitment has been made by petitioner and office, in which, workman was working has been sifted to Baroda and same has been closed at the relevant place where workman was working. These relevant factors rightly considered by Labour Court and granted relief in favour of workman. Therefore, contention raised by learned advocate Mr. Desai can not be accepted in light of reasoning given by Labour Court, Godhara.

Para:14 - "The Labour Court, Godhara has rightly examined matter on the basis of oral and documentary evidence and also rightly denied relief of reinstatement and back wages and grant reasonable amount of compensation of Rs. 25,000/-. For that, Labour Court is having jurisdiction to pass such order under section

11 A of Industrial Dispute Act, 1947. The Labour Court has not committed any error which would require interference by this Court while exercising power under Art. 227 of Constitution of India.

Para:15 - *"Hence, there is no substance in present petition. Accordingly, present petition is dismissed."*

[3] In the case of SCA No: 427 of 2014; District Development Officer Versus Raulji Harishchandra Svarupsinh; [Coram: Hon'ble Mr. Justice N.V.Anjaria saheb, Date : 17/01/2014]

The relevant para:5 to para:7 are as under:

Para:5 - *"Upon consideration of the aforesaid evidence and in particular deposition at Exh. 80 and the orders of appointment produced as*

above with Exh. 13 list, the labour court concluded that though the orders of appointment were being issued for 29 days each, the evidence clearly showed that the workman had worked from 2.3.1985 till August, 1990. It was further found and recorded that during 12 months preceding to date of termination, the workman had completed 240 days of service. The finding recorded by labour court on the above count was justified having regard to the evidence before it.

Para:6 - Despite the above findings, labour court did not grant relief of reinstatement and back wages, but directed to pay to the workman a lumpsum compensation of Rs. 75000/-. In awarding the compensation as aforesaid, the factor of completion of 240 days of service found on evidence, the number of years put in by the workman as rojamdard and the nature of work etc., have been taken into account by the labour court. They are the germane considerations taken into consideration in determining the amount. It is trite that in a

given case, though labour court may not grant reinstatement, and instead award lumpsum compensation even after recording finding of breach of section 25-F. Such discretion has been exercised by the labour court property.

Para:7 - *The impugned judgment and award does not call for any interference in the writ jurisdiction. The challenge in the petition is devoid of any merit. The petition stands dismissed."*

(15) The workman has worked with management from Dt:19-11-2007 to Dt:20-7-2016 that is approximately for 9 years. Therefore, considering the facts and circumstances and as per the reply of management they have engaged other persons for the job performed by the workman. Therefore, it would not be appropriate to

reinstate the workman as prayed for. Hence, I grant lump sum compensation of Rs.3,50,000/- (Three lakh Fifty thousand only) as retrenchment compensation in lieu of reinstatement and back wages and all other consequential reliefs. It will be further just and proper to order First party/company to pay all the remaining legal dues of second party/workman. Hence I pass following final order.

ORDER

[1] Reference (LCA) Case No. 277/2016 is hereby partly granted in favour of Second Party/workman Mr. Mahendrasinh Kalyansinh Prankda.

[2] It is hereby ordered that First party/company has to pay Rs.3,50,000/- (Three lakh Fifty thousand only) as lump sum compensation in lieu of reinstatement and back wages and all other consequential reliefs to the Second party/workman within 30 days from receipt/service of this award.

[3] It is also further ordered that First party/company has to pay all the remaining legal dues of the second party/workman within 30 days from receipt/service of this award.

[4] It is also ordered that first party has to pay Rs.1000/- (Rupees One thousand only) to the workman as a cost

of this reference.

[5] Copy of the award be sent to the Assistant Labour Commissioner, Bharuch for publication as per rules.

[6] A copy of the award be sent to the Hon'ble Principal Senior Civil Judge saheb, Bharuch, as per provisions of section 11(10) of the Industrial Dispute Act 1947 as amended by Industrial Dispute(Amendment) Act 2010 (No.24 of 2010).

Date : 12-01-2018

Place : BHARUCH

(SANDIPSINH G. DODIYA)

CODE: GJ00902

**PRESIDING OFFICER, JUDGE(SD),
LABOUR COURT NO.1, BHARUCH.**