

2009 (2) LLJ 41

GUJARAT HIGH COURT

Hon'ble Judges:A.L.Dave and Abhilasha Kumari JJ.

Agriculture Produce Market Committee Versus Kanubhai Laxmanbhai Patel

Letters Patent Appeal No. 1099 of 2007 ; *J.Date :- JULY 21, 2008

- [INDUSTRIAL DISPUTES ACT, 1947](#) Section - [2\(oo\)](#) , [25F](#) , [25H](#)

Industrial Disputes Act, 1947 - S. 2(oo), 25F, 25H - person junior to respondent was taken in service - priority over respondent - retrenched workman directed to be reinstated - held, benefit of S. 25H could not be denied to such workman on the ground there was no sanctioned post - appeal dismissed.

Imp.Para: [[4](#)]

Cases Referred To :

1. [Central Bank Of India V/s. S. Satyam, 1996 2 LLJ 820 : 1997 \(2\) GLR 1284 : 1996 \(2\) GLH 595 : 1996 \(2\) CLR 1095 : 1996 \(5\) SCC 419](#)
2. State Of U.P. V/s. Neeraj Awasthi, 2006 1 LLJ 721

Cited in :

1. (Referred To) :- [Solitaire Machine Tools Limited Vs. Harish M.Vaghela, 2021 \(1\) GLR 114 : 2020 \(2\) GLH 150 : 2020 JX\(Guj\) 229 : 2020 AIJEL HC 241982](#)
2. (Referred To) :- [Bhavnagar Municipal Corporation Vs. Dharmendra B.Vegad, 2010 JX\(Guj\) 960 : 2010 AIJEL HC 224360](#)

Equivalent Citation(s):

2008 (3) CLR 208 : 2009 (2) LLJ 41

JUDGMENT :-

A.L.DAVE, J.

- 1 The appellant is aggrieved by an oral order passed in Special Civil Application No. 12092/2000 on December 2,2005 whereby the learned single Judge dismissed the petition preferred by the appellant.

The said petition arose out of an order passed by Labour Court, Nadiad in Reference (LCN)No. 281/1984 on April 19, 2000.

The respondent herein, who is a workman, came to be retrenched by the appellant on August 13, 1983. He, therefore, raised the dispute and ultimately a reference was made to the Labour Court. The Labour Court did not find any fault with the retrenchment but found that provisions contained in Section 25-H of the Industrial Disputes Act were committed breach of and, therefore, directed reinstatement of the respondent by the impugned judgment.

Learned single Judge also upheld the same and hence this appeal.

- 2** Learned advocate Mr. Kunal Nanavati appearing for Nanavati Associates submitted that the appeal is mainly canvassed on the ground that the entry of the respondent was a back-door entry and not a regular one, after following requisite procedure and, therefore, benefit cannot be taken by the respondent. He relied on decision in case of State of U.P. v. Neeraj Awasthi and Others, (2006) 1 SCC 667 : 2006-I-LLJ-721, particularly paragraphs 75 and 76 and submitted that the appeal may be entertained.
- 3** We have examined the question and we find that there is no dispute about the fact that the respondent was retrenched and that at a subsequent point of time, a person junior to him was taken in service, whereas he was denied the said benefit. If we examine the decision, we find that the Apex Court in case of State of U.P. v. Neeraj Awasthi and Others (supra) has observed that when a post is not sanctioned, normally directions for reinstatement should not be issued. In the instant case there was no question of a sanctioned post for the reason that there is a breach of Section 25-H where a junior is given priority over the respondent. Otherwise if there is no sanctioned post and reinstatement is ordered, that may create administrative problems. But in the instant case that is not the situation.
- 4** The Apex Court in case of CentralBank of India V/s. S. Satyam and Others, AIR 1996 SC 2526 : (1996) 5 SCC 419: 1996-II-LLJ-820 has observed that the plain language of Section 25-H speaks only of re-employment of "retrenched workmen." The ordinary meaning of the expression "retrenched workmen" must relate to the wide meaning of "retrenchment" given in Section 2(o). It was also observed that Section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman.... who has been in continuous service for not less than one year." This being the legal position, we are unable to

accept the contention of the appellant that because the respondent was not regularly appointed, benefit of Section 25-H cannot be extended to him. Respondent is a retrenched workman and as held by the Apex Court in case of Central Bank of India V/s. S. Satyam and Others (supra), the language of Section 25-H has to be given a simple meaning so far it relates to the term of "retrenched workmen." The appeal, therefore, stands dismissed. Civil Application No. 8509/2007

- 5** In view of dismissal of Letters Patent Appeal, Civil Application does not survive and stands disposed of accordingly.