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2009 eGLR\_HC 10005863

Before the Hon'ble MR AKIL KURESHI, JUSTICE

**BHARAT PETROLEUM CORPORATION LTD. Vs. HANUBHAI JALABHAI BUA AND 2 -  
RESPONDENT(S)**

**SPECIAL CIVIL APPLICATION No: 1630 of 1991 , Decided On: 07/09/2009**

**Devang Vyas, R.D. Raval, Nanavati Associates**

**MR.JUSTICE AKIL KURESHI**

1. This petition is filed by the employer and is directed against the judgement and award of the Labour Court, Rajkot dated 20.8.1990.

2. The respondent workman had raised the Reference complaining about his illegal termination from the post of Watchmancum Sweeper, which according to him, he has worked for four years on salary of Rs. 500/ per month. He was terminated without following any procedure by an oral order dated 30.10.1983. Case of the employer however, was that the respondent was never engaged as a workman. He was only given a contract to provide for watchman. Certain contracts allegedly signed by the respondent were produced before the Labour Court. The petitioner also raised the question of maintainability of the Reference contending interalia that it was the Company under the Central Government and that the appropriate Government to make Reference would be the Central Government and not the State Government.

3. The Labour Court turned down all the defences of the petitioner, came to the conclusion that respondent was a workman employed by the petitioner. The contract was not countersigned by the respondent and that there was no material produced to show that the petitioner is a Government of India undertaking.

3.1 The Labour Court consequently allowed the Reference, set aside the order of termination and directed reinstatement of the workman with full backwages and continuous service.

4. While entertaining the petition, the petitioner was directed to deposit 50% of the backwages payable to the respondent as per the award. I am informed by the Counsel for the petitioner that same was duly done and by an order dated 23.12.1992, the respondent workman was allowed to withdraw the amount deposited by the petitioner. From the

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record, I further found that during the pendency of the petition, petitioner was directed to pay benefits under Section 17B of the Industrial Disputes Act as per the last wages drawn.

5. Having heard the learned advocates appearing for the parties and having perused the material on record, I do not find any infirmity with the award passed by the Labour Court, declaring the termination of the respondent illegal. Respondent had entered the witness box and gave evidence to the effect that he was engaged for guarding the premises of the petitioner Company and also for cleaning work for which he was being paid Rs. 500/ per month. He had not signed the contracts showing him as a contractor and not as a workman. No evidence was laid on behalf of the Company to prove the signature of workman. In fact, the sole witness one Shri Siddharth, Aviation Officer of the Company admitted that he neither knew the workman nor his signature since he had resumed at the place only on 1.1.1988 i.e. long after the workman was terminated from service. The Labour Court therefore, came to the conclusion that the respondent was engaged as a workman and his services were terminated without following any procedure in violation of provisions contained in Section 25F of the Industrial Disputes Act.

6. With respect to the contention that Reference was incompetent, the Labour Court held that there is no evidence to show that the petitioner is a Government of India undertaking/Company.

7. To the above factual findings, I see no reason to interfere in exercise of writ jurisdiction. Finding of the fact that respondent had not signed the so-called contracts need no interference since the finding is based on evidence on record.

8. Fact that respondent was disengaged without any procedure is not in dispute.

9. With respect to the question of appropriate Government, it may be noted that Reference was never challenged by the petitioner Company. Before the Labour Court also a half-hearted attempt was made to question the competence of the State Government to make Reference. In the present petition, material is sought to be produced which was not a part of the record to establish this contention. The termination having taken place in the year 1983, I find it wholly inequitable to permit the petitioner company to raise a technical defence that Reference should have been made by the Central Government and not by the State Government on the strength of evidence which was not produced before the Court below. This contention is therefore, turned down.

10. Final relief granted by the Labour Court however, would call for some modification. Respondent was engaged even as per his say for a period of four years, before his termination, way back in October 1985. He was paid 50% of the backwages between the

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date of termination till the award of the Labour Court. He had thereafter, received benefits of Section 17B of the Industrial Disputes Act during the pendency of the petition. While upholding the award of the Labour Court, no further monetary benefits need to be given to the respondent for not having actually worked for the petitioner right from the year 1983. Amounts already paid towards backwages and Section 17B benefits should cover the monetary benefit that respondent can receive out of this litigation.

11.I may also notice that in all probabilities, respondent would have crossed the age of superannuation. Counsel for the respondent therefore, does not in any case, insist on actual reinstatement now.

12.The petition is therefore, disposed of giving following directions :

1. Award of the Labour Court insofar as same declares termination illegal is upheld.
2. All the monetary benefits of 50% backwages and Section 17B benefits ordered to be paid to the respondent by way of interim orders shall not be disturbed.
3. If the respondent has already not actually received 50% backwages as directed by this Court on 23.12.1992, deposited by the petitioner, it will be open for the respondent to withdraw the same.
4. Respondent shall not be entitled to further monetary benefits. His services however, shall be treated to be continuous till the date of this order on the original terms for other purposes.

13.With above modification of the impugned award, the petition is disposed of. Civil Application also stands disposed of accordingly.

*Order accordingly*

