

(2012) 10 GUJ CK 0002
Gujarat High Court
Case No: S.C.A. No. 5128 of 2005

Sumitraben
Mangaldas Mehta

APPELLANT

Vs

Manager, Lyka Labs
Ltd.

RESPONDENT

Date of Decision: Oct. 16, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Industrial Disputes Act, 1947 - Section 33(2)(b)

Citation: (2013) 136 FLR 610 : (2013) LLR 146

Hon'ble Judges: S.R. Brahmbhatt, J

Bench: Single Bench

Advocate: Hina Desai, for the Appellant; Kunal Nanavati for Nanavati Associates, for the Respondent

Final Decision: Allowed

Judgement

S.R. Brahmbhatt, J.

Heard learned advocates appearing for the parties. The petitioner, complainant in Complaint (I.T.) No. 3/98 from Industrial Tribunal, Vadodara, in Reference (I.T.) No. 271/95, has approached this Court under Articles 226 and 227 of the Constitution of India, challenging the order and award dated 6.11.2004, passed by the Presiding Officer, Industrial Tribunal, whereunder the complaint of the petitioner was held to be just and proper and, therefore, while partly allowing the complaint and declaring that the order dated 13.10.1997 being illegal and untenable in eye of law, directed the Company, respondent hereinabove, to pay all consequential monetary benefits accruing to the petitioner on that basis and granted her equivalent sum for compensation in lieu of reinstatement and Rs. 50,000 for sexual harassment at the work place, but did not grant reinstatement for the reason that on account of loss of confidence in the petitioner the reinstatement would not be proper.

2. Facts in brief leading to filing this petition, deserve to be set out as under;

The petitioner was working with respondent-Company as permanent operator and she had put in more than 12 years of service prior to termination of her services. On account of the factional rivalry between two unions and as the petitioner had joined the new union called Gujarat Kamdar Mandal, she had the lace problems. The petitioner was constrained to file complaint that she was sexually harassed at her work place by fellow employees of the respondent Company namely one Shri Kirit Joshi and Shri Pradip Patel. The complaint of the petitioner had resulted into fabrication of charges as a result whereof the charge-sheet dated 1.1.1995 and 22.2.1995 came to be issued to her. The charges were that of misbehaving. The inquiry pursuant to the charges culminated into order of termination of her services w.e.f. 13.10.1997. As this termination of her services were brought about during pendency of Reference (I.T.) No. 271/95, the duty was cast upon the respondent employer, respondent hereinabove, to obtain approval from the competent authority before which the dispute was pending in terms of the. Reference (I.T.) No. 271/95. The termination order was brought about without following the provision of Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act, for the sake of brevity). The petitioner was constrained to file complaint being Complaint (I.T.) No. 3/98 in Reference (I.T.) No. 271/95, inter alia complaining that the order of termination dated 13.10.1997 was illegally passed and the same was not tenable in eye of law, as it was passed without following due procedure of law and was passed in blatant disregard to the provision of I.D. Act. The Tribunal after elaborate hearing came to the conclusion that the order of termination was bad on account of breach of provision of 33(2)(b) of the I.D. Act and also "accepted the submission of the petitioner qua her entitlement to appropriate relief on account of she being harassed at the work place. The Tribunal, therefore, while setting aside the order of termination dated 13.10.1997, ordered payment of full back-wages and other benefits, as if, the order had not been passed and equivalent sum for compensation in lieu of reinstatement and Rs. 50,000 for sexual harassment at the work place and Rs. 2,000 toward cost. This order is assailed in this petition under Articles 226 and 227 of the Constitution of India.

3. Learned advocate appearing for the petitioner contended that the order impugned is contrary to the provision of law, so far as it did not grant reinstatement of the petitioner. The declaration of law by the Apex Court in case of [Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others](#), is absolutely clear on the point and, therefore, the Industrial Tribunal did have no objection, but to abide by the law cited before it and the denial of reinstatement is, therefore, patently based upon the considerations which cannot be said to be germane in any manner. The reinstatement order ought to have been followed, as a matter of course.

4. Learned advocate for the petitioner contended that the findings qua petitioner's sexual harassment and awarding of compensation of Rs. 50,000 under that head and awarding complete back-wages and all monetary benefits on the basis as if impugned order had never been passed were in any manner not challenged by the employer, respondent hereinabove, and when such findings are based upon the evidences adduced before the Tribunal, Tribunal did not have any other option but to order reinstatement and in the instant case non-granting of reinstatement on the ground of lack of confidence in the petitioner on the part of the employer and the employer being drug manufacturing company etc., would be no reasoning whatsoever capable of being accepted by any court of law. Therefore, this reasoning adopted by the Tribunal in denying the benefits of reinstatement is required to be quashed and set aside. The entire challenge in the petition is qua only that portion in which the Tribunal has observed that on account of reinstatement is not warranted the reasoning assigned for not ordering reinstatement would not merit any consideration whatsoever. The Court, therefore, may pass appropriate order and the benefits which have ordered been given though not in complete compliance with the order may also be ordered to be adjusted. The entitlement of the petitioner in light of the direction that may be issued considering the law laid down by the Apex Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma And Others (supra).

5. Learned advocate for the respondent contended that the findings are recorded by the Tribunal qua no justification for ordering reinstatement as such. The Tribunal while examining the complaint was entitled to mould the relief in the appropriate manner. The order of reinstatement in all cases is not to follow, as a matter of course. In an appropriate case the relief of compensation in lieu of reinstatement is always justified. In the instant case, the relief of reinstatement is not granted, but the Tribunal has granted the benefit of back-wages and all other monetary benefit and whatever sum is, therefore, become payable. The equivalent sum in addition thereto is ordered to be given by way of monetary compensation in lieu of the order of reinstatement and, therefore, the employee petitioner is in fact not prejudiced in any manner. The petitioner got relief of complete back-wages and monetary benefit from the date of her termination till the date of order and the equivalent sum is ordered to be paid by way of monetary compensation, which would take care of her future service. In case, if the petitioner was ordered to be reinstated, then the benefit of compensation amount would naturally not have been granted. Thus, the huge sum is ordered to be paid by way of compensation in itself would be sufficient to indicate that the order impugned does not call for any interference.

6. This Court has heard learned advocates appearing for the parties and perused the petition and accompanying documents. The close reading of the entire award lead to the indisputable conclusion that the Industrial Tribunal arrived at clear finding, namely;

(i) That the petitioner was subjected to sexual harassment.

(ii) That the complaint of the petitioner qua she being sexually harassed was found to be substantial and based upon evidences.

(iii) That the Company, respondent hereinabove, could not have taken such complaint from lady employee with casualness where about 100 lady employees were working.

(iv) That the order of termination passed on 13.10.1997 was passed without following the mandatory provision of Section 33(2)(b), hence, appropriate relief was required to be granted,

(v) That the petitioner was entitled to receive all the monetary benefits including back-wages from the date of order of termination dated 13.10.1997, as if order was not passed,

(vi) That the petitioner was entitled to reinstatement, but for the reasons recorded in the award the Tribunal deemed it appropriate not to order reinstatement and in lieu of reinstatement granted additional sum equivalent to the back-wages as compensation to be paid to the petitioner, as she was not ordered to be reinstated.

(vii) That an amount of Rs. 50,000 was ordered to be paid to the petitioner with Rs. 2,000 expenses for sexual harassment and cost to the Company.

(viii) That the petitioner loss confidence of the management on account of the complaint, as the manufacturing of drug and medicine was carried out, her reinstatement would create more complication and it was found to be against the interest of justice and hence instead of reinstatement monetary compensation equivalent to the back-wages and other monetary benefits was ordered to be granted.

The aforesaid indisputable conclusion of the Tribunal are required to be examined in light of the law laid down by the Apex Court in case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopai Sharma and Others (supra). The Tribunal was in fact urged to pass appropriate order in light of the law laid down by the Apex Court Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma and others, (supra). Despite this, unfortunately Tribunal has come to its own conclusion qua not granting reinstatement and it chose to grant monetary compensation in lieu thereof. The reasoning assigned by the Tribunal for such an approach is the loss of confidence by the management and the petitioner not being compatible in the working atmosphere in the Company. This finding or reasoning do not have any basis whatsoever as the loss of confidence cannot be merely presumed, The plea of loss of confidence is to be examined from the angle of the post that is being held by the employee and the Company's entrustment of work to such employee. As against this, the petitioner also did not indicate anywhere that the work atmosphere was not suiting her so as to accept the monetary compensation in lieu of

reinstatement. On the contrary, petitioner ail along adhered to her prayer for reinstatement which could not have been denied only on the ground that two fellow employees" attitude were exhibiting and/or were misconducting themselves with petitioner. In such a situation, it was management"s duty to take care of the entire situation and provide appropriate safety and congenial working condition to the lady employee. The dispensing with the services of the petitioner even on the ground of affording monetary compensation would definitely send a wrong signal which cannot be countenanced by any court of law and hence the direction in my view of denying reinstatement and granting compensation in lieu of reinstatement is wholly unjustified.

7. It is important to note at this stage, that though the petition is one filed under Articles 226 and 227 of the Constitution of India both, the Tribunal is not joined as a party and, therefore, argument is available to the respondent to canvass that the petition be dismissed as it is not filed after joining the Tribunal as a party. But in light of the decision of the Full Bench in case of [\(The\) Bhagyodaya Co-operative Bank Limited Vs. Natvarlal K Patel and Another,](#) , but this submission, though not canvassed is of no avail to the respondent as even if one treats the petition to be filed only under Article 227, of the Constitution of India, then also the challenge to the Tribunal"s order qua denying the reinstatement is maintainable under article 227 of the Constitution of India, as the Tribunal failed in exercising its jurisdiction or rather took wholly immaterial considerations for denying the reinstatement to the petitioner. To that extent, it can be safely said that the power and jurisdiction vested in the Tribunal was abdicated by the Tribunal or rather Tribunal misdirected itself in denying the order of reinstatement in such a case. Hence the order to that extent is vitiated and is required to be quashed and set aside, The entire order, otherwise is required to be treated as confirmed: as there is no challenge to the entire order at the end of the employer.

8. The petitioner has confined this petition qua Tribunal not granting her prayer of reinstatement. Therefore, the order to that extent would be modified and now the direction qua denying of reinstatement and granting compensation in lieu thereof is quashed. The entire award is otherwise intact and it is ordered that the petitioner is entitled to be reinstated with all the consequential benefits and, as a result thereof the petitioner would be reinstated and she would be paid back-wages, as if, the order of termination had never been passed and in case if there is payment made towards the obligation arising out of the direction of paying monetary compensation in lieu of reinstatement, then that amount shall be got adjusted against the amount which becomes payable and admissible to the petitioner under this direction. With this observation, the petition is allowed. Rule is made absolute to the aforesaid; extent. There shall be no order as to costs.