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SUPREME COURT ON REINSTATEMENT & BACK WAGES

A. Introduction:

Supreme Court (“**SC**”), on 23rd September 2022 in *Jeetubha* case,¹ reinstated with back wages, a watchman illegally dismissed by Kutchh District Panchayat (“**KDP**”) 20 years ago. It observed the interference of the High Court in the facts of the case was unwarranted.

B. Brief Facts:

1. Jeetubha Khansangji Jadeja (“**Jadeja**”) was appointed as watchman by KDP on 5th October 1992.
2. Jadeja was terminated for convenience in 2002 without notice and without following the mandatory procedure under the Industrial Disputes Act, 1947 (“**ID Act**”).
3. Since his request for reinstatement was negated by KDP, he raised an industrial dispute which was referred to Bhuj labour court (“**Labour Court**”).
4. KDP contended that Jadeja was temporary worker and had not completed 240 days of ‘continuous service’ as per Section 25B² of the ID Act and therefore was not entitled to benefits under the ID Act.
5. The Labour Court held the termination of Jadeja was illegal and directed reinstatement after considering the muster roll submitted as evidence.
6. KDP challenged the award before Gujarat High Court (“**HC**”) and the Single Judge (“**SJ**”) upheld the Labour Court’s order.
7. KDP appealed to Division Bench (“**DB**”) which was rejected. Aggrieved by this, it approached the SC, which directed the HC to hear the matter afresh.
8. Although the DB observed that a workman junior to Jadeja was retained and the KDP did not have proper records, it set aside the reinstatement and instead granted Rs. 1 Lakh as compensation.
9. Aggrieved by this order, Jadeja approached the SC.

C. Contentions before SC:

1. Jadeja contended that the DB order amounted to miscarriage of justice as:
 - a. He had produced sufficient evidence before the Labour Court and SJ of HC, which showed that the ‘first in, last out’ rule had not been followed.

¹*Jeetubha Khansangji Jadeja vs. Kutchh District Panchayat* (23.09.2022 - SC): MANU/SC/1227/2022.

² Section 25B of the ID Act.

- b. KDP was unable to produce complete record to prove its contentions.
2. KDP contented that the SC should not interfere with the DB's order as directing reinstatement would not be in the interests of justice, as Jadeja was terminated 20 years ago.

D. Judgment & Reasoning of SC:

The SC:

1. Observed the following:
 - a. The Labour Court and the single judge had duly considered all the evidence brought before them by both the parties.
 - b. KDP was unable to refute the documentary evidence of Jadeja and it did not place any material to support its contentions.
 - c. The finding of the Labour Court stood proved as Jadeja proved that he had completed continuous service under the ID Act.
2. Relied on many precedents,³ set aside the DB's order and held that that the direction to substitute the relief of reinstatement with one for lumpsum payment was not warranted in the circumstances of this case.
3. Reiterated that courts must adopt a 'restitutionary' approach when it considers reinstatement and the extent of back wages. It held, "*The very idea of restoring an employee to the position which he held before dismissal or removal, or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money...*"

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³ *Hindustan Tin Works Pvt. Ltd. vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Ors.* (07.09.1978 - SC): MANU/SC/0272/1978; *Deepali Gundu Survase vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Ors.* (12.08.2013 - SC): MANU/SC/0942/2013 and *B.S.N.L. vs. Bburumal* (11.12.2013 - SC): MANU/SC/1276/2013.