HIGH COURT OF GUJARAT

PRABHAKAR TRIMBAK VIDWANS
Versus
STOVEC INDUSTRIES LTD

Date of Decision: 03 March 2011

Citation: 2011 LawSuit(Guj) 1566

Hon'ble Judges: H K Rathod

Eq. Citations: 2011 3 GLR 2310, 2011 2 GCD 998

Case Type: Special Civil Application

Case No: 6050 of 2002

Subject: Constitution, Labour and Industrial

Editor's Note:
(A) Industrial Disputes Act, 1947 - Sec 25F - Workman continued out of job for about five year from date of termination till he reached age of superannuation - Compensation - Held, Workman will not be entitled to back wages automatically if the termination is found illegal, workman has to established that in spite of sincere effort to get employment in the intervening period he did not get job - Award of compensation by Labour Court enhanced

(B) Industrial Disputes Act, 1947 - Sec 25F - Workmens services terminated without holding departmental inquiry - Allegation of loss of confidence - Held, departmental inquiry illegal - Petition disposed of

Acts Referred:
Constitution Of India Art 227
Industrial Disputes Act, 1947 Sec 11A, Sec 2(s)

Advocates: Ashish H Shah, Nanavati Associates

Cases Referred in (+): 5

H. K. Rathod, J.

[1] Heard learned Advocate Mr. Ashish H. Shah for petitioner-workman and learned Advocate Mr. K. D. Gandhi for Nanavati Associates for respondent-Company.

[2] In this petition, petitioner has challenged award passed by Labour Court, Ahmedabad in Reference (L.C.A.) No. 171 of 1994 dated 4th January, 2002 wherein Labour Court, Ahmedabad has granted an amount of Rs. 85,000-00 being lumsum amount against claim of back wages and other service benefits while setting aside order of termination. Labour Court has considered one fact that on 5th December, 1998, petitioner-employee had reached age of superannuation and his service was terminated on 12th June, 1993.

Learned Advocate Mr. A. H. Shah appearing for petitioner has raised contention that petitioner was appointed as Mechanical Draftsman on probation for a period of six months on monthly pay of Rs. 740-00 in respondent-Company with effect from 11th March, 1977, and thereafter, petitioner was made permanent by respondent-Company as Mechanical Draftsman in scale of Rs. 500-1020 with effect from 5th November, 1977. During period from 1977 to 1993, petitioner had worked in respondent-Company as Draftsman and later on as Planning Assistant in Drawing and Designing Section of respondent-Company. He submitted that service of petitioner was terminated by respondent-Company without holding departmental inquiry on 12-6-1993 on ground that respondent-Company has lost confidence in him. He submitted, that thereafter, in 1994, petitioner raised an industrial dispute challenging order of termination which was referred for adjudication on 11th January, 1994 being registered as Reference No. 171 of 1994.

Learned Advocate Mr. Shah for petitioner also raised contention before this Court that though service was terminated on the ground of loss of confidence, which is considered to be stigma, however, no departmental inquiry was initiated against petitioner, and therefore, order of termination itself is violative of basic principles of natural justice, and therefore, back wages for interim period ought to have been awarded by Labour Court. He submitted that before Labour Court, gainful employment of petitioner has not been proved by Management and though there was specific evidence led by petitioner before Labour Court that he has remained totally unemployed during interim period from date of termination till date of his reaching age of superannuation, Labour Court has not granted any back wages for interim period. He also submitted that lumsum amount which has been awarded by Labour Court which includes retirement benefits and if it is to be considered, then, petitioner is entitled for more amount which comes to approximately Rs. 5,00,000-00 which has not been granted by Labour Court and small or meagre amount has been awarded by Labour Court being lumsum compensation for which Labour Court has not exercised discretionary powers properly and Labour Court has ignored total

interim period of more than five years during which petitioner had remained unemployed, and thus sufficient care and relevant factors have not been taken into account by Labour Court while awarding lumsum amount in favour of petitioner, and therefore, interference of this Court is necessary while exercising jurisdiction under Art. 227 of Constitution of India.

[3] Learned Advocate Mr. Shah has referred to page 11, order of termination dated 12th June, 1993 where it is mentioned that petitioner has indulged in activities which are against interest of company, therefore, Management has lost confidence in him, and therefore, petitioner is hereby discharged by paying him one month's wages in lieu of notice and also advised petitioner to collect his legal dues from Accounts Department.

Learned Advocate Mr. K. D. Gandhi appearing for respondent-Company has submitted that Labour Court has rightly exercised discretionary powers since workman has reached age of superannuation in the year 1998 and sufficient and reasonable care has been taken and relevant factors have been taken into account while awarding lumpsum amount covering period of unemployment about five years and also considered that at the time of terminating services of workman, an amount of Rs. 50,484/- has been paid by respondent-Company to petitioner-workman. He also submitted that workman was examined before Labour Court and in cross-examination of workman as discussed by Labour Court in Para 17, no sufficient evidence has been produced on record by workman that he was totally remained unemployed during interim period from date of his discharge till date of his reaching age of superannuation and finding has been given by Labour Court that the workman is not having any evidence of his having made any application for getting employment, and therefore, it would mean that workman has not made any sincere efforts for securing employment elsewhere after termination of his service no sincere efforts have been made by petitioner. In short, his submission is that no documentary evidence was produced by petitioner before Labour Court to prove unemployment during interim period and mere sentence in deposition of workman cannot be believed, and therefore, Labour Court has rightly examined matter and considering period of back wages as well as service benefits, Labour Court has rightly awarded Rs. 85,000/- over and above amount of Rs. 50,484/- which has been paid by respondent-Company to petitioner-workman. However, he also submitted that if the amount of compensation can be reasonably enhanced by this Court, for that, respondent-Company is not having any objection and it is left to discretionary powers of this Court.

[4] I have considered submissions made by learned Advocates for both sides. I have also perused award made by Labour Court, Ahmedabad which is under challenge

before this Court.

Before Labour Court, statement of claim was filed by petitioner-workman vide Exh. 4 against which written statement was filed by respondent-Company vide Exh. 11 raising contention that petitioner-workman is not covered by definition of workman under Sec. 2(s) of I. D. Act, 1947. Before Labour Court, vide Exhs. 5/1, 13 documents have been produced by petitioner-workman, and thereafter, at Exh. 18, petitioner was examined and his oral evidence was also cross-examined by respondent-Company. Before Labour Court, vide Exh. 22, witness for respondent-Company, Mr. Jayantibhai Anilbhai has been examined and vide Exh. 33, evidence was closed by respondent-Company. Before Labour Court, written arguments have been filed by workman at Exh. 24, and thereafter, oral submissions were also made by Advocates for both sides before Labour Court. Thereafter, Labour Court has considered contention whether petitioner is covered by definition of workman under Sec. 2(s) of I. D. Act, 1947 or not. After considering evidence on record, Labour Court has come to conclusion that there was no evidence produced on record by respondent which would show that petitioner is not a workman as defined under Sec. 2(s) of I. D. Act, 1947, and thereafter, Labour Court has come to conclusion that petitioner is a workman covered by definition under Sec. 2(s) of I. D. Act, 1947. However, Labour Court has examined evidence of workman and evidence of respondent-Company and came to conclusion that order of termination which has been passed by respondent-Company, for that, departmental inquiry is necessary and at least, show-cause notice is must but without giving any show-cause notice and without holding departmental inquiry against workman, workman has been discharged and for that, no detailed evidence has been produced by respondent-Company before Labour Court. Therefore, Labour Court has come to conclusion that order of termination based on loss of confidence is violative of basic principles of natural justice, and therefore, same has been set aside. It is necessary to note that this award made by Labour Court has not been challenged by respondent-Company before this Court. In Para 16 of award, Labour Court has considered that at the time of terminating services of petitioner, respondent-Company has paid Rs. 50,484/- in lieu of notice pay and compensation which has been received by petitioner-workman but considering order of termination of service of petitioner as illegal as discussed by Labour Court in earlier part of award, it is required to be decided whether petitioner is entitled to receive full back wages for interim period from the date of his termination till he completed age of 60 years or not. Thereafter, in Para 17 of award, Labour Court considered cross-examination of workman wherein it was stated by workman that after his service was terminated, attempts were made for getting employment elsewhere but could not secure employment. Workman has stated that he is not having documentary evidence to

show that how many attempts were made. In light of this fact, Labour Court has considered that the petitioner-workman is an educated, technically qualified person and he had joined respondent-Company by making application in reference to advertisement issued by company in newspaper and he is well aware that application is required to be made for securing employment elsewhere but having no evidence to show that any such application was made which would mean that the workman has not made any attempts which are required to be made for getting employment, but at the same time, even respondent-Company has also failed in proving that the workman has made earning or income by working elsewhere, and therefore, in such circumstances, petitioner-workman is not entitled to get full back wages for interim period but considering that services of petitioner-workman was terminated wrongly and petitioner-workman has reached age of 60 years in year 1998 and has crossed age of 63 years at time of award, Labour Court considered that it would be reasonable and proper if lumpsum amount is awarded and accordingly awarded Rs. 85,000/- in lieu of back wages for interim period and all other lawful rights as service benefits. Therefore, Labour Court has accordingly made award of lumpsum amount in lieu of back wages from date of termination of his services till 5-12-1998, and other legal rights of service.

In light of such findings given by Labour Court in Para 17 of award after considering oral evidence of petitioner-workman, according to my opinion, mere statement made by workman on oath before Labour Court that he was not able to get employment elsewhere during interim period is not sufficient and enough and would not entitle workman to claim and receive full back wages for interim period. Workman must produce sufficient documents before Labour Court to justify that sincere and serious efforts were made by him for getting employment in other establishment because workman is a technically qualified employee equipped with technical degree, and therefore, Labour Court has rightly examined these issues both way- one is that there was no enough evidence produced by workman which would satisfy conscience of Labour Court that workman remained unemployed totally for a period of five years from 1993 to 1998 because workman is qualified employee having technical knowledge and degree then such person cannot remain unemployed for such a period from 1993 to 1998. Based upon such presumption against workman, Labour Court has made award in question. It is also necessary to consider that during this period of five years, when workman was unemployed and was not gainfully employed in any establishment, then, how he has been able to maintain himself and his family? For that, there was no evidence produced by workman before Labour Court and same is not explained in his evidence. Labour Court also examined conduct of employer that there was no sufficient evidence produced by employer before Labour Court to show that workman had been

gainfully employed in any establishment during interim period. Therefore, in view of such half-hearted evidence produced by both parties in respect to question of back wages, Labour Court has come to conclusion that in light of this evidence, it is very difficult to grant full back wages for interim period, and therefore, exercising powers under Sec. 11A of I. D. Act, 1947, Labour Court has kept in mind two things, one termination order of 1993 and another is 1998, in which year workman reached age of superannuation and was paid Rs. 50,484/- at the time of termination, and therefore, Labour Court came to conclusion that if Rs. 85,000/- is paid as lumpsum amount of compensation, that would met ends of justice between the parties.

[5] Learned Advocate Mr. Shah submitted that workman is entitled for total amount of back wages which is more than Rs. 5 lakhs and no reason has been given by Labour Court for denying it for such a period of five years.

[6] I have considered these submissions made by learned Advocate Mr. Shah on behalf of petitioner-workman. I have also kept in mind cross-examination of petitioner-workman Exh. 18, Para 17 in particular. I have also kept in mind concession which has been given by learned Advocate Mr. K. D. Gandhi on behalf of respondent-Company that the amount of compensation may reasonably be enhanced in favour of petitioner-workman while deciding this petition.

In light of this background, there is no challenge made by respondent-Company to present award and total length of service of workman comes to 16 years and five years period from date of termination till date of his having reached age of superannuation and salary of Rs. 7000/- of workman at the time of termination of his services as mentioned in order of termination dated 12th June, 1993. According to my opinion, setting aside termination order as violative of statutory provisions or basic principles of natural justice, that itself would not automatically entitle petitioner-workman for full back wages for interim period as a matter of right. Workman must have to prove by sufficient evidence before Labour Court that he remained unemployed for interim period in spite of serious efforts made by him for getting employment elsewhere during interim period. Petitioner-workman has not produced any documentary evidence to prove this aspect before Labour Court. This aspect has to be considered by Labour Court on the basis of evidence on record and exercising powers under Sec. 11A of I. D. Act, 1947.

This aspect has been considered by this Court in Rohitsinh Vakhatsinh Darbar v. Arvind Rubber Well Control Ltd., 2011 1 GLR 31, wherein this Court observed as under in Paras 7, 8 and 9 of judgment (at page No. 38 of GLR) : "7. It is not a settled law that in case if termination order is found to be bad or violative of

mandatory provisions of Sec. 25F of I. D. Act, 1947, then, workman automatically becomes entitled for relief of reinstatement with 100 per cent back wages. It is for employee to prove unemployment during interim period and it is also required to be proved by employee that all sincere and most earnest efforts were made by him to secure job but he failed to get job. In this case, this has not been proved by employee before Labour Court. In light of this reasoning given by Labour Court, two decisions which are relied upon by learned Advocate Mr. Chaudhari namely, 2010 124 FLR 72 in case of M/s. Reetu Marbles v. Prabhakant Shukla, 2009 2 LLJ 9 in case of Novartis India Ltd. v. State of West Bengal, have been considered by this Court. 8. In case of M/s. Reetu Marbles v. Prabhakant Shukla, 2010 124 FLR 72, Labour Court has not granted any amount of back wages while granting reinstatement after period of fifteen years. High Court granted full back wages for interim period which has been modified by Supreme Court in peculiar facts of that case to 50 per cent from the date of termination till date of reinstatement. This decision of Apex Court is almost based on peculiar facts of that case, but relevant discussions made in Paragraphs 20 and 21 are quoted as under :

"20. After examining the relevant case-law, it has been held as follows : Although, direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result, but now with the passage of time, a pragmatic view of the matter is being taken by the Court realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.

In Haryana Urban Development Authority v. Om Pal, it is stated that :

"7.... It is now also well settled that despite a wide discretionary power conferred upon the Industrial Courts under Sec. 11A of the 1947 Act, the relief of reinstatement with full back wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation obtaining in each case. It will depend upon several factors, one of which would be as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any."

In deciding the question, as to whether the employee should be recompensated with full back wages and other benefits until the date of reinstatement, the Tribunals and the Courts have to be realistic albeit the ordinary rule of full back wages on reinstatement. (Western India Match Co. Ltd. v. Industrial Tribunal)" 21.

Applying the aforesaid ratio of law, we have examined the factual situation in the present case. The services of the respondent were admittedly terminated on 11-6-1987. The Labour Court gave its award on 27-9-2002. Therefore, there is a gap of more than 15 years from the date of termination till the award of reinstatement in service. Labour Court upon examination of the entire issue concluded that the respondent would not be entitled to any back wages for the period he did not work. A perusal of the award also shows that the respondent did not place on the record of the Labour Court any material or evidence to show that he was not gainfully employed during the long spell of 15 years when he was out of service of the appellant. In the writ petition, the respondent was mainly concerned with receiving wages in accordance with the Minimum Wages Act and for inclusion of the period spent in conciliation proceedings for the calculation of financial benefits. The High Court without examining the factual situation, and placing reliance on the judgment in M/s. Hindustan Tin Works Pvt. Ltd. v. The Employees of M/s. Hindustan Tin Works Pvt. Ltd., held that the normal rule of full back wages ought to be followed in this case. We are of the considered opinion that such a conclusion could have been reached by the High Court only after recording cogent reasons in support thereof. Especially, since the award of the Labour Court was being modified. The Labour Court exercising its discretionary jurisdiction concluded that it was not a fit case for the grant of back wages. In the case of P.V.K. Distillery Ltd. , it is observed as follows :

"The issue as raised in the matter of back wages has been dealt with by the Labour Court in the manner as above having regard to the facts and circumstances of the matter in the issue, upon exercise of its discretion and obviously in a manner which cannot but be judicious in nature. There exists an obligation on the part of the High Court to record in the judgment, the reasoning before however denouncing a judgment of an inferior Tribunal, in the absence of which, the judgment in our view cannot stand the scrutiny of otherwise being reasonable."

9. I have also considered another decision of Apex Court reported in in case of Novartis India Ltd. v. State of West Bengal, 2009 2 LLJ 9, where learned Advocate Mr. Chaudhari relied on Paragraphs 35, 36 and 37 which I have considered. In aforesaid decision, relief of reinstatement has been denied to workmen because they have attained age of superannuation. In light of these facts, it was observed by Apex Court that in such circumstances, when workman has reached age of superannuation within few years, back wages was the only relief which could have been granted, and therefore, aforesaid decision cannot be made applicable in facts of this case because in this case, Labour Court has granted reinstatement with continuity of service in favour of present petitioner with 25 per cent back wages,

so, in this case, petitioner is getting relief of reinstatement over and above 25 per cent back wages for interim period. So, it is not a case wherein workman has reached age of superannuation and so only relief which can be granted is about back wages. However, Labour Court has considered facts which are on record, conduct of petitioner-employee who was offered job but not accepted it and insisted for particular post of machine operator. If petitioner would have been really unemployed, then, he would have readily and willingly accepted offer made by employer and would have happily worked on the post of helper without insisting for being reinstated on the post of machine operator. Therefore, that conduct is also rightly appreciated by Labour Court and on that basis, presumption has also rightly been drawn by Labour Court that workman must have been earning or having gainful employment, otherwise, he cannot survive for a period of thirteen years and based upon such consideration, Labour Court has rightly denied 75 per cent back wages for interim period and has rightly granted only 25 per cent back wages for interim period, and therefore, discretionary power has been rightly exercised which is found to be just and proper and same cannot be considered to be unreasonable or unjust or arbitrary, therefore, contentions raised by learned Advocate Mr. Chaudhari relying upon aforesaid two decisions cannot be accepted because of peculiar facts and circumstances of the case which have been discussed by Labour Court and also reasoning is given accordingly in Paragraph 25 and presumption of earning has been rightly drawn by Labour Court on the basis of conduct of workman who has not accepted job offered by employer for reinstatement on the post of helper, therefore, in light of this background, according to my opinion, Labour Court has rightly examined matter in respect of back wages in Paragraph 25 and has rightly given reasoning for denying 75 per cent back wages for interim period and workman has not produced cogent evidence before Labour Court that whether he has made sincere efforts for obtaining job or gainful employment at any other place, therefore, contentions raised by learned Advocate Mr. Chaudhari cannot be accepted and hence same are rejected. Labour Court has not committed any error in denying 75 per cent back wages for interim period, and according to my opinion, Labour Court has rightly passed balanced award granting relief of reinstatement with 25 per cent back wages for interim period. Mere technical breach of Sec. 25F of I. D. Act, 1947 would not automatically entitle workman for relief of reinstatement with full back wages for interim period. There is no straight-jacket formula decided by Apex Court that in such circumstances, full back wages must have to be granted in favour of employee. Therefore, considering powers enjoyed by Labour Court under Sec. 11A of 1. D. Act, 1947 which give discretion to Labour Court to grant reinstatement, if Labour Court is satisfied, with such terms and conditions thinks proper. That discretionary powers have been rightly exercised by Labour Court and such exercise cannot be considered to be arbitrary or unjust in

any manner, therefore, there is no substance in the present petition and present petition is liable to be dismissed."

[7] In case of C. N. Malta v. State of J. & K., 2009 AIR(SCW) 5459, Apex Court observed as under in Paras 12 and 13 :

"12. The legal position is fairly settled by catena of decisions that direction to pay back wages in its entirety is not automatic consequent upon declaration of dismissal order bad in law. The concept of discretion is in-built in such exercise. The Court is required to exercise discretion reasonably and judiciously keeping in view the facts and circumstances of the case. Each case, of course, would depend on its own facts. INsofar as the present case is concerned, the Division Bench was mainly influenced by two reasons in denying the appellant back wages viz., (one) unauthorised leave and (two) delay in approaching the Court. The two reasons noticed by the Division Bench neither collectively nor individually justify denial of back wages to the appellant in its entirety. The allegation of unauthorized absence has not been established as no enquiry was held; the case of the appellant was that he had sent several applications for extension of leave for undergoing further training. As regards the second reason viz., delay, suffice it to say that this aspect was clearly taken note of by the single Judge and it was for this reason that back wages were not awarded to him for the period from date of termination until date of filing writ petition. The observation of the Division Bench that if the Court orders payment of back wages to the petitioner (appellant herein), it will be against the public interest and also will drain the public exchequer is founded on no legal premise.

13. Regard being had to all relevant facts and circumstances, particularly the fact that the appellant is a doctor by profession and must not have remained idle even after filing writ petition, full back wages from the date of filing writ petition until date of superannuation may not be justified. IN our considered view, the demand of justice would be met if the appellant is awarded 50% back wages from the date of filing writ petition until he attained the age of superannuation."

In Gopal Nandkishor Sharma v. Manager, Atul Products Ltd., 2007 3 GCD 1932, this Court considered Sec. 11A, award, denial of back wages while setting aside dismissal. Relevant observations made by this Court in Paras 10, 11 and 12 are quoted as under :

"10. In view of the aforesaid observations made by the Apex Court and considering the provisions of Sec. 11A of the I. D. Act, 1947, the Labour Court has power to impose punishment while exercising powers under Sec. 11A of the 1. D. Act, 1947

and while exercising such powers, Labour Court can deny the back wages for interim period by way of punishment and that has been done by the Labour Court in the case before hand wherein no error has been committed by the Labour Court as per the opinion of this Court. Finding has been given by the Labour Court that the misconduct against the workman is proved but it is not so serious and it was the first misconduct of the workman and conduct of the workman is partly serious in nature, and therefore, it requires some punishment by way of denial of total back wages for interim period. Labour Court has exercised discretion vested in it based on the discussion in Para 14 while noting the conduct of the workman to remain unemployed and not to make any efforts for securing any job or work or employment during the interim period because elder son of the petitioner is working and receiving wages. Therefore, Labour Court has rightly denied back wages for the interim period and in doing so, no error has been committed by the Labour Court warranting interference of this Court in exercise of the powers under Art. 227 of the Constitution of India. It is the discretionary jurisdiction of the Labour Court which has been exercised by the Labour Court by giving cogent and convincing reasons for not awarding back wages for intervening period. Therefore, as per my opinion, Labour Court was right in denying the back wages to the petitioner, and therefore, award does not require any interference of this Court. 11. The decisions referred to above cited by the learned Advocate Mr. Y. V. Shah have been considered by this Court. Said decisions are not applicable to the facts of the case before hand because there is no straight-jacket formula to grant back wages for interim period. Each case depend upon its own facts and circumstances. In the said decisions, question examined was whether the award of back wages for interim period would be normal consequence or not when the order of dismissal or discharge is set aside on merits. Here, the case is totally different because here the dismissal is not set aside on the ground that charge levelled against the petitioner is not proved but considering the reasoning of Labour Court, it is clear that it has been modified by considering that punishment of dismissal is disproportionate and thus Labour Court has not completely exonerated the workman from the charges levelled against him, and therefore, in view of the peculiar facts of the case before hand, those decisions are not applicable to this case. Therefore, decisions referred to by the learned Advocate Mr. Y. V. Shah are not helpful to the petitioner in the facts of this case. In view of that, the contention of learned Advocate Mr. Shah that Labour Court has not considered relevant circumstances while denying back wages to petitioner cannot be accepted and same is, therefore, rejected. 12. Further, even if the workman would have been absolutely exonerated from the charges levelled against him, then also that itself would not entitle the workman to claim the back wages for the interim period. Here, the petitioner has in terms stated that he has not made any efforts to secure any job or employment during the interim period.

For claiming back wages for interim period, it is necessary for the workman to depose on oath that he has remained unemployed in spite of his earnest assiduous efforts to secure job or employment. If the workman makes such statement in his deposition, then, it becomes necessary for the employer to controvert it. Therefore, on that ground also, Labour Court was justified in rejecting the claim of workman for back wages for interim period since he has not deposed before the Labour Court that he has remained unemployed during the intervening period. Therefore, contention raised by learned Advocate Mr. Shah that the respondent has not proved gainful employment of the workman, and therefore, workman is entitled for back wages for interim period cannot be accepted and same is, therefore, rejected."

[8] Now, in light of facts of this case and decisions of this Court and Apex Court as referred to above, I am considering concession which has been given by learned Advocate Mr. K. D. Gandhi on behalf of respondent-Company to reasonably enhance amount of compensation considering fact that amount of Rs. 85,000/- if it is found by this Court that no adequate sufficient compensation given by Labour Court. I have considered submissions made by both learned Advocates on this issue. Considering fact that workman is having technical knowledge and qualified as well as termination is found to be invalid because no departmental inquiry has been initiated against workman and it is violative of basic principles of natural justice, five years period being interim period and considering directions issued by Labour Court granting Rs. 85,000/- being lumpsum amount against all service benefits which includes retirement benefits, according to my opinion, this is not adequate and sufficient or reasonable compensation awarded by Labour Court, and therefore, considering concession given by learned Advocate Mr. Gandhi on behalf of respondent-Company, and also considering all benefits for which workman is entitled because of setting aside of termination order, it would be just and proper in peculiar facts and circumstances of case if amount of compensation is further enhanced by Rs. 75,000/- over and above amount of Rs. 85,000/- awarded by Labour Court, then total amount of compensation available to workman would come to Rs. 1,60,000/-. Therefore, award in question is modified to aforesaid extent and considering fact that Rs. 85,000/- is already paid by respondent-Company to workman, therefore, now, further amount of Rs. 75,000/- (Rupees seventy-five thousand only) is required to be paid by respondent-Company to petitioner-workman being lumpsum amount of compensation which includes all retirement benefits and also service benefits for which workman is entitled under Service Rules of respondent-Company. Let this payment be made by respondent-Company to petitioner-workman Prabhakar Trimbak Vidwans by way of an account payee cheque drawn in the name of petitioner-workman within fifteen days from date of receipt of copy of this order. In case of any difficulty, it is open for petitioner-workman to file note for revival of present petition.

Accordingly, award made by Labour Court, Ahmedabad in Reference (L.C.A.) No. 171 of 1994 dated 4th January, 2002 is hereby modified to aforesaid extent and Rule is made absolute to extent indicated hereinabove with no order as to costs. Rule made absolute.