

(2022) 03 GUJ CK 0007

In the Gujarat High Court

Case No : R/Special Civil Application No. 21483 Of 2019

Ajaysinh Khumansinh Zala/Rana

APPELLANT

Vs

Divisional Controller

RESPONDENT

Date of Decision : 03-03-2022

Acts Referred:

Citation : (2022) 03 GUJ CK 0007

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : P C Chaudhari, Hamesh C Naidu

Final Decision : Allowed

Judgement

A.S. Supehia, J

1. In the present petition, the petitioner is challenging the award dated 18.07.2018 passed by the Industrial Tribunal, Rajkot, below Exh.27 in Reference (I.T.) No. 294 of 2012, whereby the reference, with regard to not extending the benefit of time scale after completion of 180 days, has been rejected.

2. Learned advocate Mr.Chaudhari for the petitioner has vehemently submitted that the petitioner was appointed on 28.12.1999, as a Conductor however, he was not extended the benefit of time scale as per the settlement dated 21.12.1989. He has submitted that thereafter, the benefit of time scale was given on 05.01.2010 and the reference of industrial dispute indicates that he has claimed the benefit of time scale after completion of 180 days from his initial appointment. He has submitted that the respondent authority did not place the petitioner on time scale and continued him as Badli worker. He has submitted that the petitioner was denied the benefit of time scale since the settlement provides that after completion of 180 days, daily wager is to be placed in time scale hence, the Tribunal has failed to appreciate the aforesaid facts in its true perspective and, therefore, it is urged that the impugned award may be set aside.

2.1 Learned advocate for the petitioner has further submitted that the Tribunal is impressed with regard to the delay in raising the industrial dispute however, such view expressed by the Tribunal is incorrect since non-extending the benefit of time scale would be a continuous cause. Further, it is submitted that the respondent authority did not produce anything, which would show that they had prepared any seniority list of daily wagers and the post was not vacant and in absence of such details, the Tribunal should not have rejected the reference.

3. Learned advocate Mr.P.C.Chaudhari has submitted that one of the employees has been granted the benefit of time scale after he agreed to treat the intervening period to be treated as notional. Thus, he has submitted that the petitioner may not be discriminated.

4. Per contra, learned advocate Mr.Hamesh Naidu appearing for the respondent no.1, while placing reliance on the judgment dated 18.09.2014 passed in Special Civil Application No.11717 of 2014 and allied matters, which is confirmed by the Division Bench of this Court vide judgment and order dated 04.07.2017 in Letters Patent Appeal No.1185 of 2014, has submitted that in similar set of facts while considering the similar argument and identical issue, the Coordinate Bench of this Court has set aside the award passed by the Tribunal conferring the benefits of time scale on the completion of 180 days. He has submitted that for claiming the benefit under the settlement of 1989, there are three stipulations provided in Clause-20, such as after completion of 180 days as daily wager, the availability of the confirmed vacant post and seniority of the confirmed employees and only on satisfaction of these three conditions, the benefits of time scale can be extended. He has submitted that there is also delay in raising the industrial dispute since the petitioner is claiming the benefit of time scale w.e.f. 2000. It is submitted that in fact the petitioner was appointed as Badli Worker on 28.12.1999 and he never raised any dispute to convert him as a daily wager so that he could be extended the benefit of time scale. It is also submitted that the Division Bench of this Court has also considered the aspect of delay in raising the industrial dispute and hence, the writ petition may be rejected.

5. Heard and considered the rival submissions advanced by the learned advocates for the respective parties and also perused the documents as pointed out by them.

6. The facts, which are not in dispute, are that the petitioner was engaged as a Badli Worker since 28.12.1999. It is the case of the petitioner that though he was entitled to the benefit of time scale after completion of 180 days from his date of appointment he was not granted the same, but was granted w.e.f. 05.01.2010.

7. The Court has perused the terms of reference as stated in the impugned award and the same reveals that the petitioner has raised the industrial dispute for not extending the benefit of time scale to him after completion of 180 days i.e. from year 2000. The petitioner has been granted the benefit of time scale

w.e.f. 05.01.2010. The dispute has been raised in the year 2012. It is not disputed that the claim of time scale is governed by the Settlement of 1989. The aforesaid settlement was the subject matter of consideration before this Court in various judgments. While examining Clause-20 of the settlement, the Coordinate Bench of this Court in the judgment dated 18.09.2014 passed in Special Civil Application No.11717 of 2014 and allied matters has held thus:

"11.1 Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds that the point for consideration before this Court is, as to whether the concerned workmen were entitled to the benefits flowing from Clause:20 of the settlement, as claimed by them, and as accepted by the Tribunal.

11.2 The Corporation and the Workers' Union had entered into a settlement. Clause:20 of the said settlement is relevant, which is referred in the impugned award. It provides that, the case of a daily wager shall be considered for being taken on the regular time scale, after completion of 180 days as a daily wager, keeping in view the availability of confirmed vacant posts of the respective cadre. There is further stipulation that, the said consideration would be on the basis of the inter-se seniority of such daily wagers. Thus there are three fold stipulations under the said policy. The respondent workman claimed benefit under the said settlement.

11.3 The respondent workman asserted that, on completion of 180 days as a daily wager, he ought to have been granted time scale. This assertion is accepted by the Tribunal as it is. The final award is based on the finding recorded by the Tribunal, which is based on the misreading of the relevant clause of the settlement. The Tribunal has considered, as if there was only one stipulation in the said settlement, that as and when the concerned workman completes 180 days as a daily wager, he is entitled to claim the regular time scale. The Tribunal has recorded that, on completion of 180 days, counting from his initial date of engagement as a daily wager, he is entitled to get the said benefit. This finding of the Tribunal is based on misreading of Clause:20 of the settlement, since, out of the three stipulations as noted above, it considered only one stipulation. Thus, two of the total three stipulations are not taken into consideration by the Tribunal, leading to perversity and illegality. For this reason, the impugned awards need to be interfered with."

7.1 The Coordinate Bench of this Court has held that the case of daily wagers shall be considered for being taken on the regular time scale, after completion of 180 days as a daily wager, keeping in view the availability of the confirmed vacant posts of the respective cadres. There is further stipulation that, the said consideration would be on the basis of the inter se seniority of such daily wagers. There are 3 stipulations under the said policy, which are required to be fulfilled for claiming time scale.

7.2 The Coordinate Bench of this Court has also considered the similar

contentions as advanced in this Court by the learned advocate Mr.Chaudhari with regard to delay and grant of benefit to similarly situated employee. The observations of the Coordinate Bench of this Court in this regard are as under:

"13. So far the argument of learned advocates for the Union about the discriminatory stand adopted by the Corporation in different cases is concerned, learned advocates are right to the extent that, the workmen will have heart burning. It may, in some cases be even based on, if not extraneous, at least irrelevant consideration. Though such decisions need to be condemned in strongest words, while deciding the legality of the award under challenge, this Court should not be guided by the arbitrariness of the employer. The decision of the Corporation, in a particular case, not to challenge the award, in one's perception may be irrational, but solely on that ground, this Court can not uphold the award of the Tribunal which otherwise is found to be illegal and unsustainable. In this regard, reference may be made to the decisions of Honourable the Supreme Court of India in the case of (i) Chandigarh Administration vs. Jagjit Singh reported in (1995) 1 SCC 745, and (ii) State of Bihar vs. Upendra Narayan Singh reported in (2009) 5 SCC 65. Keeping above principle in view, this Court finds that the decision of the Corporation not to challenge the similar award passed in favour of few workmen would not be the relevant consideration while examining the legality and sustainability of the impugned awards of the Tribunal.

14. So far the argument of learned advocates for the Union that atleast notional benefit be given to the workmen is concerned, firstly it has to be decided as to whether the workman is entitled to the said benefit at all, and if yes, the question may crop up as to whether he should be given the said benefit with arrears or notionally. Since this Court has, on merits, found that the concerned workman was not entitled to the benefit claimed by him, the question of treating the said benefit notional or actual, would not arise at all. This alternative argument, therefore is rejected. Since, in some cases, the Corporation has given such benefit notionally, it would definitely create heart burning to the workmen, however keeping in view the above referred principle laid down by Honourable the Supreme Court of India in the decisions in the case of (i) Chandigarh Administration vs. Jagjit Singh reported in (1995) 1 SCC 745, and (ii) State of Bihar vs. Upendra Narayan Singh reported in (2009) 5 SCC 65, this argument will not take the case of the Union / workmen any further. [It is recorded that, by the award of the Industrial Tribunal, Ahmedabad, which is the subject matter of Special Civil Application No.2262 of 2013, only notional benefit is granted.]

15.1 Both the sides have relied on number of precedents of this Court, referred above. If all those orders are taken into consideration, the picture which has emerged is that, all those orders can be classified in two different lines. One is the order of this Court (Coram: Honourable Mr.Justice Y.B.Bhatt, as His Lordship then was) recorded on Special Civil Application No.393 of 2000 dated 27.01.2000 in the case of Gujarat State Road Transport Corporation vs. Bharatkumar

Jashwantlal Rao. The second is the judgment of this Court (Coram: Honourable Ms. Justice R.M. Doshit, as Her Lordship then was) recorded on Special Civil Application No.10974 of 1993 dated 20.09.2004 in the case of Gujarat State Road Transport Corporation vs. S.T. Workers' Union. Both the above, i.e. the order and the judgment respectively, are confirmed by the Division Bench of this Court. Reference can be made to (i) the order of the Division Bench dated 12.03.2001 recorded on Letters Patent Appeal No.905 of 2000 in Special Civil Application No.393 of 2000, and (ii) the order of the Division Bench of this Court dated 13.12.2005 recorded on Letters Patent Appeal No.1544 of 2005 in Special Civil Application No.10976 of 1993. Both the appeals were dismissed, thus both the orders of learned Single Judges stood confirmed. In all other subsequent orders, either of the above is followed. Thus, now it is to be seen as to, of these two, which order or judgment should be followed in this group of petitions. Having minutely gone through both the orders i.e. of Special Civil Application No.393 of 2000 and Special Civil Application No.10974 of 1993, this Court finds that, it is the judgment in Special Civil Application No.10974 of 1993 which lays down the law and not the order recorded on Special Civil Application No.393 of 2000. Further, the order of the Division Bench of this Court, dismissing the appeal (Letters Patent Appeal No.905 of 2000) against the order recorded on Special Civil Application No.393 of 2000 also makes it clear that, while deciding Special Civil Application No.393 of 2000, this Court had not laid down any law and the decision was rendered considering the facts of that case. The Division Bench had, while dismissing the said appeal, observed thus.

"... Considering the fact that similar benefit has already been given by the S.T. Corporation to 32 other employees, we do not find any substance in this Letters Patent Appeal and we fully agree with the reasoning given by the learned single Judge as well as the Industrial Tribunal...."

15.2 It is the settled position of law that, a decision is an authority, for which it is decided, and not what can logically be deduced therefrom. Keeping this principle in view, and having read both the decisions of learned Single Judges, as well as both the orders of the Division Bench dismissing the appeals against those orders, this Court finds that, it is the judgment in Special Civil Application No.10974 of 1993 which lays down the law, and not the order recorded on Special Civil Application No.393 of 2000. While holding so, this Court is conscious of the fact that, the clause number has changed in the cases on hand, but the plain reading of clause-20 of the settlement which is on record, makes it clear that the decision of this Court in Special Civil Application No.10974 of 1993 would apply with full force as the law holding the field. 15.3 Further, the said judgment of this Court in Special Civil Application No.10974 of 1993 is followed as a precedent by this Court in more than one decisions. Reference can be made to one such decision i.e. the judgment of this Court recorded on Special Civil Application No.11711 of 2002 dated 11.01.2011. Keeping all these aspects in view, this Court arrives at the conclusion that, it is the judgment in Special Civil Application No.10974 of 1993 which should be followed while deciding this group

of petitions, and not the order recorded on Special Civil Application No.393 of 2000. 16. Over and above, the above referred decision of this Court in Special Civil Application No.10974 of 1993, on the plain reading of clause-20 of the settlement in question, independently also, this Court had recorded a judgment on Special Civil Application No.10908 of 2014 dated 20.08.2014. The said decision will also apply with full force in this group of petitions. 17. Since the impugned award of the Tribunal is found to be illegal and unsustainable on merits, the question of delay in approaching the Tribunal by the workmen may not have much relevance in the facts of these cases, however it needs to be observed that, if the concerned workmen were right in their assertion that on completion of 180 days service, counting from their initial date of engagement as a daily wager/ Badli worker, they ought to have been granted time scale, then there was inordinate and unexplained delay on their part in approaching the Tribunal. The situation in which the concerned workmen moved the Tribunal was such, where the concerned workmen can be said to have bound themselves by the doctrine of acceptance sub silentio, or that, at least the dispute raised was for a stale claim. A question may also crop up, as to whether, under those circumstances, the same could be even termed to be an industrial dispute. Reference in this regard can be made to the decisions of Honourable the Supreme Court of India in the cases of (i) Haryana State Coop. Land Development Bank vs. Neelam reported in (2005) 5 SCC 91, more particularly para:18 thereof, and (ii) Chief Engineer Ranjit Sagar Dam vs. Sham Lal reported in (2006) 9 SCC 124, more particularly paras:9 and 10 thereof. This aspect should not have been overlooked by the Tribunal. On this additional ground of delay as well, the concerned workmen had disentitled themselves from getting any relief, at least arrears, unless specific reasons to do the contrary are recorded by the Tribunal, which it has not. [It is recorded that, by the award of the Industrial Tribunal, Ahmedabad, which is the subject matter of Special Civil Application No.2262 of 2013, only notional benefit is granted.]”

7.3 The Coordinate Bench has condemned the conferring of benefit to some employees and has observed that such decision is based on extraneous consideration, and the Court cannot be guided by arbitrariness of the employer. It is also observed that by not raising the industrial dispute within a reasonable time, the workman said to have bound themselves by the doctrine of acceptance sub silentio, or that, at least the dispute raised was for a stale claim. The aforesaid judgment was subject matter of challenge in Letters Patent Appeal No.1185 of 2014 and allied matters. The Division Bench of this Court confirmed the observations made by the Coordinate Bench of this Court and Letters Patent Appeals were rejected by observing thus:

“11. At the outset, it is required to be noted that after the concerned workmen were put in regular time-scale somewhere in the year 2008, thereafter after a period of 14 years from the date of cause of action ie., in the year 1998, the concerned workmen raised industrial dispute in the year 2012 by making a grievance that they ought to have been put in regular time-scale in the year

1998 on their completing 180 days' of service. That, in support of their above claim, they had relied upon Clause 20 of the Settlement and despite the fact that while granting benefit of regular time-scale, as per Clause 20, three conditions are required to be fulfilled, the learned Tribunal granted benefit of regular timescale on the ground that as the concerned workmen completed 180 days' of service, from that day, they are entitled to be put into regular time-scale. However, it is required to be noted that the learned Tribunal considered as if there was only one stipulation in the said Settlement that as and when concerned workman completes 180 days' service as a Daily Wager, he is entitled to claim regular time-scale. The Tribunal has recorded that upon completion of 180 days – counting from the date of initial engagement as a daily wager, he is entitled to get such benefit. However, the learned Tribunal ignored and had not considered other two conditions/stipulations. As per Clause 20 of the Settlement, entered into by and between GSRTC and the Workmen's Union, upon which reliance was placed by the concerned workmen for the benefit of regular time-scale, it provides that the case of a daily wager shall be considered for being taken on regular timescale, after completion of 180 days as a daily wager; keeping in view the availability of the concerned vacant posts of the respective cadres. There is a further stipulation that the said consideration would be on the basis of inter se seniority of such daily wagers. Under the circumstances, when the learned Industrial Tribunal directed the management to grant regular time scale to the concerned workmen solely on fulfillment of one of the conditions i.e., completion of 180 days' service and it was found that the other two conditions/stipulations are not at all considered and/or fulfilled, thereafter when the learned Single Judge has allowed the said Special Civil Applications and has quashed and set aside the respective Awards, it cannot be said that the learned Single Judge has committed an error of law, nor the order passed by the learned Single Judge can be said to be contrary to Clause 20 of the Settlement, which calls for interference by this Court in exercise of intra-court appellate jurisdiction. As such, the issue involved in the present Appeals is squarely covered against the concerned workmen and in favour of the Management, in light of aforesaid decision of learned Single Judge rendered in SCA No. 12817/2014 & 13641/2016 which has been confirmed by the Division Bench in respective Letters Patent Appeals. In all these aforesaid matters, the learned Single Judge has set aside similar Awards passed by the Industrial Tribunal granting benefit of regular time scale solely on completion of 180 days' by the concerned workmen, when other conditions were ignored and/or not satisfied. Under the circumstances, as such, the issue involved in the present Appeals is no more res integra.

12. Now so far as reliance placed upon decision of learned Single Judge in SCA No. 393 of 2000 by Shri PP Majmudar, learned advocate appearing on behalf of some of the workmen is concerned, at the outset, it is required to be noted that in the said case, even the learned Single Judge concerned, on considering the reasonings given; more particularly in para 5 thereof, we are of the opinion that in the said decision, the learned Single Judge has not properly interpreted

stipulations mentioned in Clause 20 of the Settlement. In any case, we are not in agreement with the reasonings given by the learned Single Judge in para-5 of the said decision. Even otherwise, in light of the decision rendered by Division Bench in LPAs referred to hereinabove, the decision of Division Bench is binding, rather than the decision of learned Single Judge.”

7.4 Thus, on both the points, the law is well settled that only those daily wagers, who have completed 180 days and have satisfied the further two conditions i.e. availability of the post and looking to the inter se seniority, they are conferred the benefit of time scale. The aforesaid judgment of Division Bench of this Court was subject matter of challenge before the Apex Court in Civil Appeal No.2546 of 2018 and the Apex Court, by the detailed judgment dated 07.03.2018, has confirmed the observations made by the Division Bench of this Court.

8. In the present case, it is not disputed that the petitioner was appointed as “Badli Worker” and he has never raised the dispute with regard to placing him as a daily wager and it is undisputed that only after he is conferred the status of the “daily wager” and on completion of 180 days, he can be extended the benefit of time scale. Assuming that the respondent authority has not produced anything to show that the post was vacant and seniority list was prepared, the same would not give benefit to the petitioner since unquestionably the petitioner was a “Badli Worker” and continued to remain the same. The petitioner has raised industrial dispute for claiming the time scale from the year 2000, but the said benefit could not have been extended in wake of the fact that his status was a Badli Worker in 2000 and he was not a daily wager. The petitioner has been conferred the benefit w.e.f. 05.01.2010 after he was confirmed as a daily wager. Thus, the Badli Worker admittedly could not have been extended the benefit of time scale even if he had completed 180 days in 2000. As held in the aforesaid judgments, there is also delay in raising the dispute for claiming the time scale w.e.f. 2000 and that is also after a period of 12 years.

9. In light of the foregoing observations, the writ petition fails. Notice is discharged.