

(2015) 07 GUJ CK 0058
In the Gujarat High Court

Case No : Special Civil Application No. 10896 to 10899 of 2014

Ashwin Nareshbhai Baraiya		APPELLANT
	Vs	
Bhavnagar Municipal Corporation		RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 25-T, 30

Citation : (2015) 147 FLR 101

Hon'ble Judges : J.B. Pardiwala, J

Bench : Single Bench

Advocate : D.G. Shukla, for the Appellant; Nikunt K. Raval, Advocates for the Respondent

Final Decision : Allowed

Judgement

J.B. Pardiwala, J—Since the issue falling for my consideration is common in the all four writ-applications, those were heard analogously and are being disposed of by this common Judgment and order. RULE returnable forthwith. Mr. Nikunt Raval, the learned Counsel waives service of notice of rule for and on behalf of the respondent-Corporation.

2. By these writ-applications under Article 226 of the Constitution of India, the petitioners, working as daily wagers with the Bhavnagar Municipal Corporation, have prayed for the following reliefs:

"(A) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondent Corporation to pay full salary (Basic Pay, Dearness Allowance and other allowances) to the petitioner with effect from his date of appointment as per the pay-scale of "Safai Kamdar" (Sweeper) - Class-IV revised from time to time including the 6th Pay Commission pay-scale benefits and other monetary benefits and perquisites being given to other "Safai Kamdars" (Sweepers) by the respondent Corporation along with 12% interest treating the petitioner as a

permanent and regular employee of the respondent Corporation.

(B) During the pendency of this petition. Your Lordships may be pleased to direct the respondent Corporation to pay the monthly wages to the petitioner as per the 6th Pay Commission pay-scale benefits in the pay-scale of "Safai Kamdar" (Sweeper) - Class-IV.

(C) During the pendency of this petition, Your Lordships may be further pleased to direct the respondent Corporation to permit the petitioner to perform his duties as "Safai Kamdar" (Sweeper) Class-IV and restrain the respondent Corporation from changing the service conditions of the petitioner herein.

(D) An ex-parte ad interim relief in terms of paragraphs 11(B) and 11(C) above may kindly be granted.

(E) Any other and further reliefs as this Hon"ble Court may deem fit and proper in the circumstances of the case."

3. It is the case of the petitioners that initially they were appointed on the wages of Rs. 1,500=00 per month. The appointment orders stipulate various terms and conditions. The condition No. 17 specifically stipulates that after five years of satisfactory service, the appointee would be placed in the regular pay-scale of "Safai Kamdar" (Sweeper). The condition further stipulates that after five years, the said posts would be automatically converted into the posts with full pay-scale and thereafter the employees would be entitled to the admissible allowances and perquisites according to the rules.

4. It is not in dispute that each of the petitioners have put in almost seven years of service and are still drawing the fixed wages.

5. It appears that the Office Superintendent, Bhavnagar Municipal Corporation also passed an order dated 11th February, 2014 declaring the services of the petitioners to be satisfactory and, therefore, they were continued in service.

6. The Corporation at present is paying ad-hoc wages of Rs. 4300=00. On the other hand, a permanent "Safai Kamdar" draws a salary of Rs. 14,000=00 approximately. The duties and functions remain the same.

7. In such circumstances referred to above, Mr. Shukla, the learned Counsel appearing for the petitioners, submits that the petitioners also should be paid the regular salary i.e. equivalent to the one paid to the permanent Sweepers. Mr. Shukla has placed reliance on a recent decision of the Supreme Court in the case of Umralla Gram Panchayat Vs. The Secretary, Municipal Employees Union and Others(2015) 4 AD 401 : (2015) 145 FLR 688 : (2015) 2 LLJ 403 : (2015) 2 LLN 313 : (2015) LLR 449 : (2015) 4 SCALE 334 : (2015) 4 SCJ 188 . He has placed reliance on the observations made by the Supreme Court as contained in paras 13 to 18 as under:

"13. Further, section 25-T of the ID Act clearly states that unfair labour practice should not be encouraged and the same should be discontinued. In the present

case, the principle "equal work, equal pay" has been violated by the appellant-Panchayat as they have been treating the concerned workmen unfairly and therefore, the demand raised by the respondent-Union needs to be accepted.

The High Court has thus, rightly not interfered with the Award of the Labour Court as the same is legal and supported with cogent and valid reasons.

14. Therefore, the learned single Judge as well as the Division Bench of the High Court have exercised the power under Articles 226 and 227 of the Constitution of India and have rightly held that the Labour Court has jurisdiction to decide the industrial dispute that has been referred to it by the Dy. Commissioner of Labour, Ahmedabad. Reliance has been placed upon the decision of this Court in the case of Maharashtra State Road Transport Corporation and another v. Casteribe Rajya P. Karmchari Sanghatana, wherein it has been held thus:

"32. The power given to the Industrial and Labour Courts under section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer." Further, reliance has been placed upon the decision of this Court in the case of Durgapur Casual Workers Union v. Food Corporation of India, wherein it has been held thus:

"19. Almost similar issue relating to unfair trade practice by employer and the effect of decision of Umadevi (3) in the grant of relief was considered by this Court in Ajaypal Singh v. Haryana Warehousing Corporation, in Civil Appeal No. 6327 of 2014 decided on 9th July, 2014. In the said case, this Court observed and held as follows:

20. The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case.

21. We have noticed that Industrial Disputes Act is made for settlement of industrial disputes and for certain other purposes as mentioned therein. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for a long period without giving them the status and privileges of permanent employees...."

15. Thus, in the light of the above referred cases of this Court, it is amply clear that the judgments and orders of the High Court and the Award passed by the Labour Court are reasonable and the same have been arrived at in a just and fair manner.

16. The reliance placed by the learned senior Counsel for the appellant upon the decision of this Court in *Secretary, State of Karnataka and others v. Umadevi and others*, does not apply to the fact situation of the present case and the same cannot be accepted by us in the light of the cogent reasons arrived at by the Courts below.

17. In view of the reasons stated *supra* and in the light of the facts and circumstances of the present case, we hold that the services of the concerned workmen are permanent in nature, since they have worked for more than 240 days in a calendar year from the date of their initial appointment, which is clear from the evidence on record. Therefore, not making their services permanent by the appellant-Panchayat is erroneous and also amounts to error in law. Hence, the same cannot be allowed to sustain in law.

18. For the reasons stated *supra*, we dismiss the appeals and direct the appellants to treat the services of the concerned workmen as permanent employees, after five years of their initial appointment as daily wage workmen till they attain the age of superannuation for the purpose of granting terminal benefits to them."

8. On the other hand, Mr. Raval, the learned Counsel appearing for the Corporation has opposed these applications. He submitted that the petitioners cannot, as a matter of right, claim to be treated at par with the regular employees. He submitted that at the time of their appointment, it was made clear that the same was on ad-hoc basis. Mr. Raval submits that mere being no merit in this application, the same be rejected.

9. Having heard the learned Counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is, whether the petitioners are entitled to draw the regular salary of the post of Sweeper.

10. I find substance in these writ-applications considering the following aspects:

"(1) The terms of appointment itself provide that after a period of five years they would be considered for being treated at par with the regular employees.

(2) The Corporation has found their work satisfactory and an order to that effect has also been passed as referred to above.

(3) After putting in more than seven years of service, the petitioners are atleast entitled to draw the salary at par with the regular "Safai Kamdar" working on the establishment of the Corporation."

11. I am not going into any other issues raised in these writ- applications. To be precise, I am not looking into any other reliefs other than the pay-scale.

12. At this stage, Mr. Shukla pointed out that the petitioners were appointed by a regular recruitment process, and that too, on vacant sanctioned posts. As on today, there are 260 posts of Sweeper vacant on the establishment of the

Bhavnagar Municipal Corporation.

13. If that be so, it is for the Corporation to take appropriate decision and forward a proposal for filling up those posts in accordance with the rules and regulations.

14. Mr. Shukla also clarified that all the four petitioners are very much in service today.

15. In the result, these applications are allowed to the aforesaid extent. The Corporation is directed to pay to the petitioners the regular salary equivalent to that of the regularly appointed "Safai Kamdar". The petitioners shall start drawing the regular pay-scale/salary from the next month onwards. Rule made absolute to the aforesaid extent. Direct service is permitted.