

(2023) 04 GUJ CK 0054

In the Gujarat High Court

Case No : R/Letters Patent Appeal No. 384 Of 2023 In R/Special Civil Application No. 2276 Of 2019

Axaykumar Tulsidas Patel

APPELLANT

Vs

Gujarat Vidyapith

RESPONDENT

Date of Decision : 12-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 21

Citation : (2023) 04 GUJ CK 0054

Hon'ble Judges : Vipul M. Pancholi, J;Hasmukh D. Suthar, J

Bench : Division Bench

Advocate : Aditya A Gupta, Mohit A Gupta

Final Decision : Dismissed

Judgement

Vipul M. Pancholi, J

1. When the matter is called out, learned advocate for the appellant has fairly pointed out that in identical matters being Letters Patent Appeals Nos.437 of 2023 and 439 of 2023, this Court has passed an order dated 6.4.2023, whereby the appeals filed by the concerned appellants have been dismissed. It is also pointed out that the learned Single Judge had passed a common order on 12.10.2022 in all the three petitions filed by the concerned petitioners.

2. In view of the aforesaid, the issue involved in the present appeal is squarely covered by the order dated 6.4.2023, wherein this Court has observed as under :

"1. As common issue arises in both these appeal, both these appeals are heard together and are being decided by this common order.

2. Both these appeals arise out of the common oral order dated 12.10.2022 rendered by the learned Single Judge, whereby learned Single Judge dismissed the petitions filed by the respective appellants and, hence, the appellants have filed two different appeals under Clause 15 of the Letters Patent.

3. Heard learned advocate, Mr. Aditya Gupta for the appellant and learned advocate, Mr. M.K. Vakharia for the respondent.

4. For the sake of convenience, facts of Letters Patent Appeal No.437/2023 are taken into consideration.

5. Learned advocate, Mr. Gupta submitted that the petitioner was engaged on contractual basis pursuant to the advertisement issued by the respondent on 04.10.2011 and after following recruitment process, he was appointed on the post of 'Lower Division Clerk' on adhoc basis for a period of

12 months, which was extended from time to time till his last extension, which was ended on 31.12.2019. It is the submission of learned advocate for the petitioner that having been appointed through regular selection process after an advertisement and an interview, the appointment of the appellant - original petitioner cannot be termed as illegal and irregular. It is submitted that at the relevant time, there were 36 sanctioned posts of Lower Division Clerks, on which, only 11 posts have been filled in and when the petitioner had worked for a period of 8 years, he is entitled to be regularized in service. It is submitted that only because of the fact that the petitioner filed captioned petition before this Court, the respondent authority did not extend contractual period. It is also contended that during the period of 9 years' of service, there was no complaint with regard to the work of the petitioner.

6. Learned advocate would submit that learned Single Judge has committed an error while placing reliance upon the decision rendered by the learned Single Judge of this Court in Special Civil Application No.3463/2019, which was confirmed by the Division Bench of this Court in Letters Patent Appeal No.835/2019 and allied matters. Learned advocate has referred to relevant observations made by the Division Bench of this Court in the order dated 20.01.2020 passed in Letters Patent Appeal No.835/2019 and allied matters. It is submitted that in the said case, the concerned appellants were appointed without following due procedure of law and de hors the recruitment rules. Thus, it was the case of back door entry and, therefore in the facts of the said case, the Division Bench did not entertain the said appeal filed by the concerned appellant - petitioner. Learned advocate, therefore, urged that the impugned order passed by the learned Single Judge be set aside and relief as prayed for by the appellant - original petitioner in the petition be granted.

7. Learned advocate for the appellant has also placed reliance upon the decision rendered by the Hon'ble Supreme Court in case of Ashwani Kumar & Ors. Vs. State of Bihar & Ors., reported in (1997) 2 SCC 1. Learned advocate has more particularly placed reliance upon Paragraph No.14 of the said decision.

8. On the other hand, learned advocate, Mr. Vakharia has opposed these appeals. Learned advocate for the respondent would submit that learned Single Judge has rightly placed reliance upon the order passed by the learned Single Judge in Special Civil Application No.3463/2019, which has been confirmed by the Division

Bench of this Court in Letters Patent Appeal No.835/2019 and allied matters. Learned advocate has also referred to the facts of the said case and pointed out that the facts of the present case and the aforesaid case are similar and, therefore, learned Single Judge has not committed any error while passing impugned order and while relying upon the order passed in Special Civil Application No.3463/2019. Learned advocate, at this stage, would also submit that even otherwise, when the contract of the appellant - original petitioner has not been extended by the respondent authority and when the appellants - original petitioners are not in service after 2019, it is not open for them to request for regularization of the services. It is submitted that the action of the respondent is not challenged by the appellant - original petitioner by filing separate petition. Thus, it is contended that relief as prayed for by the appellant - original petitioner cannot be granted to him in the facts of the present case. Leaned advocate, therefore, urged that both these appeals be dismissed.

9. We have considered the submissions canvassed by leaned advocates for the parties. We have also perused the material placed on record including the order dated 08.03.2019 passed by the learned Single Judge in Special Civil Application No.3463/2019, which was confirmed by the Division Bench of this Court in Letters Patent Appeal No.835/2019 and allied matters.

10. It would emerge from the record that the appellants - original petitioners were discontinued from service and the said action of the respondent is not challenged by the appellants - original petitioners by filing separate petition. In the captioned petition, the original petitioner prayed that his services be regularized for the reasons stated in the memo of petition and on the grounds canvassed by learned advocate appearing for the original petitioner.

11. It is pertinent to note that only contention, which is taken in the present appeals by learned advocate for the appellants, is that the facts of the present case are different from the case of Special Civil Application No.3463/2019. We have gone through the facts of the present case as well as the case decided by this Court in case of similarly situated persons. We are of the view that the facts of the present case are almost similar. In the present case, the original petitioners are appointed purely on adhoc basis and contractual period was extended upto 2019, thereafter, their contractual period was not extended after 2019. Thus, the learned Single Judge has rightly placed reliance upon the aforesaid two orders passed by this Court. Learned Single Judge has observed in Paragraph No.5.2 as under :

"5.2 When the judgement was carried out to the Division Bench by way of an appeal, the Division Bench of this Court, by an oral order dated 20.01.2020, held as under:

"[5] We have heard Shri Mohit A. Gupta, learned counsel appearing on behalf of the appellants - original petitioners and Shri M. K. Vakharia, learned counsel appearing on behalf of the respondent - university.

[6] Shri Mohit A. Gupta, learned counsel appearing on behalf of the appellants - original petitioners has vehemently contended that throughout the tenure, the respondent - university has not taken any steps to see that services of the appellants - original petitioners are regularized. Instead they have adopted an exploitative pattern and now at the fag end of their service tenure, when they have become ineligible on account of age bar, an advertisement was published for recruitment of candidates, directly affecting the legitimate continuance in the service of the appellants - original petitioners. This reflects serious arbitrariness by respondent - university, which according to Shir Gupta, learned counsel is neither in right spirit nor in consonance with the proposition of law laid down by the wellknown decision of the Apex Court in the case of Secretary, State of Karnataka and Others versus Umadevi and Others reported in (2006) 4 SCC 1.

[6.1] Shri Gupta, learned counsel for the appellants - original petitioners has further contended that so far as eligibility criteria is concerned, the appellants - original petitioners have continued throughout. They would have been eligible to hold the posts if the recruitment process and appropriate steps had been undertaken promptly. This eventuality might not have arisen for the appellants - original petitioners under reasonable circumstances and hence they have been forced to approach this Court. It is this deliberates serious inaction on the part of respondent - university of not considering this case for regularization and the action deserves to be held as arbitrary and violative under Article 14 of the Constitution of India. It has been further contended that this contract of employment under which the appellants - original petitioners have been made to continue cannot stand on the touch stone of the Articles 14 and 16 of the Constitution of India. Hence, this contractual employment is a classic example of exploitative patterns and the learned Single Judge ought to have taken a serious note of this fact and ought to have made appropriate directions to regularize the services, instead of allowing fresh recruitment. It has been further contended that by now the appellants - original petitioners, have reached the age bar on the basis of which fresh recruitment is to take place leading to a serious and irreversible situation being created for them. Hence, the order in question deserves to be set aside.

[6.2] Shri Gupta, learned counsel for the appellants - original petitioners has further contended that if the tenure of an ad hoc employee lasts for longer than 10 years, then by virtue of the proposition of law laid down in the case of Umadevi (supra), regularization deserves to be considered by the university. The pick and choose policy adopted by the university in not considering their case in itself is violative of Article 14 of the Constitution of India. Resultantly, the relief prayed for in the original petitions should be granted in the interest of justice. It has been further contended that there are 36 posts sanctioned for Lower Division Clerks available to the university, out of which only 11 posts have been filled up, while 25 posts remain vacant. If the respondent - university, wishes to undertake fresh recruitment process, which can be done proportionately, through advertisement, without disturbing the present appellants. This way the situation

can be taken care of without causing any harm to either side.

[6.3] Shri Gupta, learned counsel for the appellants – original petitioners, has further contended that on account of the efflux of time and the sincere service imparted by them, the appellants – original petitioners are well experienced and their continuance would lead to better administration for the respondent – university.

This aspect ought not to have been ignored by the learned Single Judge in disposing of the petitions. It has been submitted that while liberty is reserved in making a representation in the principles laid down in case of *Umadevi* (supra), however, the appellants – original petitioners, are sure that the same has not been taken in the right spirit. That being the position, a request is made to set aside the impugned orders by granting reliefs prayed for in the specific form.

[6.4] Shri Gupta, learned counsel for the appellants – original petitioners has further submitted that in a catena of decisions, the Apex Court has laid down the proposition of a clear distinction between irregular and illegal appointments. According to Shri Gupta, learned counsel the appointment of the appellants – original petitioners, cannot be held to be illegal appointment that cannot be considered for regularization. On the contrary, it is the specific contention of the Vice Chancellor that the services taken from the respective appellants – original petitioners have been on a contractually basis. Additionally, the length of service also deserves to be considered. By not having done so, the order passed by the learned Single Judge cannot be said to be just and proper. Hence, the same should be set aside.

[6.5] To strengthen his case, learned counsel, Shri Gupta appearing on behalf of the appellants – original petitioners has relied upon two decisions delivered by the Apex Court. First is the case of *Secretary, State of Karnataka and Ors. versus Umadevi and Ors.* passed in Civil Appeal Nos. 3595 - 3612 of 1999 and other allied matters on 10.04.2006. The second is the case of *State of Karnataka and Ors. versus M. L. Kesari and Ors.* passed in Civil Appeal arising out of SLP (C) No.15774 of 2006 on 03.08.2010. By referring to the material contained in paragraph 53 and paragraph 5 respectively, a contention is raised that the orders passed by the learned Single Judge deserve to be quashed. Shri Gupta, the learned counsel for the appellants – original petitioners has tendered a rejoinder affidavit, and the thrust is laid on the aforesaid contention reiterating the request to set aside the impugned orders of the learned Single Judge. No other submissions have been made.

[7] To meet the stand taken by the learned counsel, Shri Gupta appearing on behalf of the appellants – original petitioners, Shri M. K. Vakharia, learned counsel appearing on behalf of respondent – university has vehemently contended that these appellants – original petitioners, were appointed purely on a contractual basis for a limited period and the extension of their contract period from time to time, does not vest any absolute right to continue in the post. In

the absence of any legal right to stick to the post, there is hardly any reason to grant any relief to the appellants – original petitioners. Shri Vakharia, learned counsel for the university has further submitted that the status of an ad hoc employee on one yearly contract basis is well-settled by a series of decisions. Simply on account of certain number of years having been put in by the appellants – original petitioners, it does not create any absolute right in their favour. On the contrary, these appellants – original petitioners have been recruited by bypassing the recruitment process. Therefore, they are to be treated as back door entrants. In view of a series of decisions delivered by the Apex Court such back door entry is impermissible, irrespective of the continuance of their tenure and service. In view of that, hardly any case has been made out by the appellants – original petitioners, to seek relief from the Court. It has been further submitted that a bare reading of the contract itself makes it clear that their tenure of service is purely on a contractual basis and is based certain conditions that have been well accepted by these present appellants – original petitioners.

[7.1] Shri Vakharia, learned counsel for the respondent – university has further submitted that the university has full sympathy with these appellants – original petitioners. However, on account of serious audit objections with regard to their payments and service tenure, no alternative is left with the university apart from recruiting a person lawfully. Shri Vakharia, learned counsel for the respondent – university has further submitted that these appellants – original petitioners have no right to continue on the post since in a previous recruitment process undertaken for the Lower Division Clerk, one of the petitioners Mr. Ashok Muljibhai Chauhan appeared but was not selector for the employment. Resultantly, this is unfortunate situation for the appellants but this does not create any vested legal right of continuance. Hence, since the learned Single Judge has considered all relevant observations contained in various decisions at length, including Umadevi's (supra) case, such a detailed order on merit cannot be said to be erroneous in any form. On the contrary, with a view to strike balance between both, the last paragraph of the judgment grants / allows liberty to the appellants to make a representation seeking regularization. Hence, a detailed and reasoned order does not deserve to be interfered with.

[8] Having heard the learned counsels appearing for the respective parties and having gone through the material on record placed before us ex facie it appears that the tenure of the appellants – original petitioners, had remained on a contractual basis which might have been extended from time to time but the status has remained merely ad hoc contractual employment and nothing beyond. Further, it appears ex facie from the contract of service that it was not through any detailed process of any recruitment, rather only on the basis of the consent of the then Vice Chancellor, that the appellants – original petitioners, have been employed for service. It appears that despite knowing their status of employment neither one appeared in an examination to seek regular employment and it is not possible to digest that they were completely unaware

of their status of employment. Hence, the contention that it is the university that has deliberately not taken any step is ill founded and not acceptable since the appellants – original petitioners themselves have not taken any prompt steps. Therefore, no fault can be found with the university. Further they had opportunity in the past to complete and save the situation, but could not do so successfully.

[9] Additionally, it has been seen from the orders that a large number of decisions have been taken into consideration by the learned Single Judge in arriving at a decision and reaching the ultimate conclusion dated 08.03.2019 passed in the respective petitions. Since those observations have been examined by us and deemed relevant we may reiterate and reproduce the same to substantiate the ultimate conclusion:

"4. In support of the prayer made, learned advocate for the petitioner pressed into service the decision of the Apex Court in *Secretary, State of Karnataka and Others vs. Umadevi (3) and Others [(2006) 4 SCC 1]*, more particularly para No. 53 thereof, which is reproduced herein under:

"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa (supra)*, *R.N. Nanjudappa (supra)*, and *B.N. Nagarajan (supra)*, and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

4.1 The next judgment relied on by learned advocate for the petitioner was in *State of Karnataka vs. M. L. Kesari [AIR 2010 SC 2587]* in which judgment of *Umadevi (3) (supra)*, was referred to, to lay down the principle that a temporary, contractual, casual or a dailywaged employee does not have a legal right to be made permanent unless he was appointed in terms of the relevant rules. It was, however, stated that each department should undertake a onetime exercise and prepare a list of all casual, dailywage or ad hoc employees who had work for

more than ten years without protection of any interim order of any court or tribunal.

4.2 Still another decision of the Apex Court in *State of Jharkhand & Ors. vs. Kamal Prasad & Ors.* [(2014) 7 SCC 223] was relied on by learned advocate for the petitioner to pinpoint therefrom the observations in para 40, 41 and 42. Learned advocate for the petitioner emphasised in particular observations in para 42, in which the supreme court quoted its own decision in *Olga Telis vs. Bombay Municipal Corpn.* [(1985) 3 SCC 545],

“As we have stated while summing up the petitioners’ case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live: only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas, J. in *Baksey* that the right to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. “Life”, as observed by Field, J. in *Munn v. Illinois* means something more than mere animal existence and the

inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in *Kharak Singh v. State of U.P.*”

4.3 Learned advocate for the petitioner thereafter proceeded to cite the law laid down in *Narendra Kumar Tiwari & Ors. vs. State of Jharkhand and Others* [(2018) 8 SCC 238]. Learned advocate emphasised paragraph Nos. 6 to 11 from this decision. In para 6, the supreme court explained the concept of one time measure explained in the decision of *M. L. Kesari (supra)*, in which the following was observed, “The term “one-time measure” has to be understood in its proper perspective. This would normally mean that after the decision in *Umadevi (3)*, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or adhoc employees who have been working for more than then years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularise their services.”

5. The principles emanating from the above decisions are applied to the facts of the present case. It is true that in *Umadevi (3) (supra)*, the supreme court observed that all the government departments shall offer as one time measure to all the employees working as temporary or on ad hoc basis without protection of order of any court or tribunal, the benefit of regularisation. This is equally true that before the benefit could be conferred, several other attendant aspects are required to be considered such as the availability of posts in the sanctioned setup, whether there is need of work, whether the person concerned has been working against the sanctioned posts etc.. In other words, in the ultimate analysis, the question of regularisation of services of temporary employee would depend upon the host of factors and considerations. The factual aspect would have to be gone into to be established for the purpose of determining the right to be made regular. Whether the employee working as back door entrant is also a criteria to be applied. The length of service may not in all cases entitle the employee to seek regularisation.”

[10] Looking to the aforesaid situation prevailing on the record and the law laid down by the Apex Court in various decisions, we are unable to accept the stand of the appellants – original petitioners. We are also benefited by another decision delivered recently by the Apex Court in the case of *Yogesh Mahajan versus Professor R. C. Deka, Director, All India Institute of Medical Sciences* reported in (2018) 3 SCC 218, dealing with contractual appointment and nonrenewal of contract. The Hon’ble Supreme Court has observed following line, which we deem proper to reproduce hereinafter:-

“6. It is settled law that no contract employee has a right to have his or her contract renewed from time to time. That being so, we are in agreement with the Central Administrative Tribunal and the High Court that the petitioner was unable to show any statutory or other right to have his contract extended beyond 30th

June, 2010. At best, the petitioner could claim that the concerned authorities should consider extending his contract. We find that in fact due consideration was given to this and in spite of a favourable recommendation having been made, the All India Institute of Medical Sciences did not find it appropriate or necessary to continue with his services on a contractual basis. We do not find any arbitrariness in the view taken by the concerned authorities and therefore reject this contention of the petitioner.

7. We are also in agreement with the view expressed by the Central Administrative Tribunal and the High Court that the petitioner is not entitled to the benefit of the decision of this Court in Umadevi. There is nothing on record to indicate that the appointment of the petitioner on a contractual basis or on an ad hoc basis was made in accordance with any regular procedure or by following the necessary rules. That being so, no right accrues in favour of the petitioner for regularisation of his services. The decision in Umadevi does not advance the case of the petitioner.”

[11] Considering the aforesaid decision which is recent pronouncement of the Apex Court in this regard and upon careful analysis of reasons assigned by the learned Single Judge in the material placed before us, we are in complete agreement with the view taken. Accordingly, we see no merit in the present Letters Patent Appeals. On the contrary, a liberty is kept open for the appellants – original petitioners, to make appropriate representation as contained in paragraph 6 of the decision. Hence, the present Letters Patent Appeals have no merit and deserve to be dismissed. Accordingly, they are dismissed with no order as to costs. Notice discharged.

[12] In view of the order passed in the main matters, the connected Civil Applications stand dismissed accordingly.”

12. Thus from the aforesaid order, it is revealed that the tenure of the appellants – original petitioners, had remained on a contractual basis which might have been extended from time to time but the status has remained merely adhoc contractual employment and nothing beyond.

13. As observed hereinabove, the petitioners have not challenged the action of the respondent, by which, their contractual period has not been extended and, therefore also, we are of the view that the relief prayed for by the appellants - original petitioners cannot be granted in their favour.

14. We have also gone through the decision rendered by the Hon'ble Supreme Court in case of Ashwani Kumar (supra), upon which reliance has been placed by learned advocate for the appellant - original petitioner. However we are of the view that the said decision would not render any assistance to the appellant - original petitioner in the present case.

15. We have also gone through the reasoning recorded by learned Single Judge while passing impugned order and we are of the view that learned Single Judge

has not committed any error, which requires any interference in the present appeals. Accordingly, both these appeals stand dismissed.

16. Connected civil application, if any, also stands disposed of.”

3. In view of the aforesaid, we are not inclined to entertain the present appeal. Therefore, this appeal is dismissed.