

(2001) 04 GUJ CK 0043

In the Gujarat High Court

Case No : Special Civil Application No. 870 of 1991

Bavaji Mohanbhai Karsanbharti

APPELLANT

Vs

Maliya Hatina Gram Panchayat

RESPONDENT

Date of Decision : 03-04-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2002) 1 GLR 524

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : M.D. Rana, for the Appellant; Manoj N. Popat, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Keshote, J.—By this petition under Article 226 of the Constitution of India, the petitioner an employee of the respondent- Maliya Hatina Gram Panchayat, is praying for direction to the respondents to grant the petitioner pay scale as prescribed by the Pay Commissions which is already made available to the Panchayat employees of the various Panchayats and State Government employees on regular establishment with arrears for the class IV post with increments.

2. The facts of the case are that the petitioner was initially appointed as Gardener temporarily on probation and on daily wage basis in the year 1977. It is to state here that the petitioner has not produced the copy of his appointment order. It is submitted that he was giving fixed monthly pay of Rs.200/- and this employment of the petitioner came to be made permanent on and from 7/8-3-79. It is to be mentioned here that the petitioner also not produced any resolution of the Gram Panchayat under which he was given the fixed monthly pay of Rs.200/- and made permanent. It is alleged by the petitioner that a new body duly elected of the Gram Panchayat under the resolution of the General Body dated 29-8-79, the services of the petitioner were brought to an end w.e.f 30-8-79. This resolution of the Gram Panchayat has been challenged by the

petitioner in the Civil Court by filing a regular civil suit No.192/79 in the Court of Civil Judge (JD) at Maliya Hatina. The suit was dismissed by the learned trial court. Here also, the petitioner has not produced the copy of the judgment of the learned trial court i.e. Civil Judge (JD), Maliya Hatina. Against the judgment and decree of the learned trial court, the petitioner preferred regular appeal No.55/82 in the District Court at Junagadh. This appeal came to be decided by the learned District Judge, Junagadh on 4-4-1983. The judgment of the learned District Judge is there on the record as annexure 'A'. The petitioner urges that he is in employment of the Panchayat since 1977 and the District Judge has granted him the declaration in his favour that he continues in services, still the Gram Panchayat is paying him the consolidated salary. It is stated that the Panchayat employees are also State government employees and pay scales which are made applicable to the employees of the Government are applicable to the employees of the Gram Panchayat. The payscale of Class IV was Rs.196-232 as per the recommendations of the 2nd Pay Commission which was revised to Rs.750-950 in pursuance of the 3rd Pay Commission's recommendations. The Gram Panchayat is continuing the petitioner still on consolidated salary and this action of the Gram Panchayat is stated to be ultra vires of the provisions of Articles 14 and 16 of the Constitution.

3. The respondent- Gram Panchayat has not chosen to file reply to the special civil application.

4. On 23-10-1997, this Court ordered for impleading the State of Gujarat through its Secretary, Panchayat and Rural Housing, Sachivalaya, Gandhinagar as respondent No.2. Nobody is present on behalf of respondent No.2. Not only this, the respondent No.2 has also not cared to file reply to the special civil application.

5. Learned counsel for the petitioner contended that the petitioner is a permanent employee of the Gram Panchayat. He is a Class IV employee and he is entitled for the pay in the pay scale of Class IV employee, which has been revised from time to time with all consequential benefits. It is further submitted that the Gram Panchayat made permanent the petitioner under resolution dated 7/8-3-79 though subsequently this resolution has been recalled by the Gram Panchayat but the Civil Court has granted relief to the petitioner and as per the declaration given by the Civil Court, he continued in service of the Panchayat and as a result of which he is entitled for all the service benefits.

6. In contra, Shri Popat, learned counsel for the respondent- Gram Panchayat submitted that the very induction of the petitioner in the services was illegal and contrary to the provisions of Article 14 and 16 of the Constitution. He was taken in service as daily wager without making selection whatsoever. It is submitted that the Gram Panchayat has no right to make the petitioner permanent as there was no permanent post available. Otherwise also, it is not the case of making petitioner permanent but he was given consolidated salary instead of daily wages. The resolution passed by the Gram Panchayat was correct though it is

different matter that civil court declared it to be illegal. The judgment of the Civil Court, what Shri Popat states is not in consonance with the provisions of Articles 14 and 16 of the Constitution. It is a judgment of which no benefit could have been given to the petitioner. On the principle of 'equal pay for equal work' also, the petitioner has no claim.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

8. At the cost of repetition it is to be stated that the petitioner has not produced on the record of this special civil application, the order under which he was appointed on alleged temporary post on probation and on daily wage basis in the year 1977. Secondly he has also not produced the copy of resolution dated 7/8-3-79 under which he was made permanent on consolidated salary. Not only this, the copy of the resolution of the General Body dated 29-8-79 has also not been produced. The petitioner has also not produced the judgment of the learned trial court given in the suit.

9. The petitioner in this petition is claiming the benefit of Articles 14 and 16 of the Constitution. Before a litigant seeks the benefit of his fundamental rights, naturally he has to come up in the court with a clear case for grant of those rights in his favour. In this case, the petitioner failed to show and establish that in the year 1977 he was engaged in the services as daily wager on a permanent sanctioned post of Gardener in the Gram Panchayat. Unless in the staffing pattern of the Gram Panchayat, a permanent sanctioned post is there, how the petitioner could have been made permanent in the service. The petitioner has placed reliance on the resolution of the Gram Panchayat dated 7/8-3-79 under which he was made permanent but even from the petitioner's own pleadings, it is difficult to accept that such a resolution could have been passed by the Gram Panchayat. Not only this, on the basis of the pleadings of the petitioner, as stated earlier, he has not produced the copy of the resolution on the record of this case, it can reasonably inferred that it is not the case of making petitioner permanent on the post of Gardener. If in case he would have been made permanent on the post of Gardener, he could not have been given consolidated salary of Rs.200/-.

10. The matter if is examined from another angle, this claim of the petitioner is wholly untenable. If a sanctioned permanent post was there how the petitioner could have been made permanent on this post. This post has to be filled in in accordance with the recruitment rules of the Gram Panchayat. Even if it is taken that the Gram Panchayat has not framed its own recruitment rules, then it has to follow the provisions of Articles 14 and 16 of the Constitution of India. The applications would have been invited from open market and after making selection, the appointment could have been given. In this case, the very entry of the petitioner in the service was a back door entry and this resolution dated 7/8-3-79 is nothing but only a favour which has been extended to him. When the petitioner's very initial entry was a back door entry, how only on the basis he continued as daily wager, these benefits could have been given to him. The very

appointment of the petitioner under the resolution dated 7/8-3-79 is contrary to the provisions of Article 16 of the Constitution. In view of this fact, in case the Gram Panchayat by its later resolution dated 29-8-79 terminated the services of the petitioner, it cannot be said to be illegal or arbitrary or perverse action. When the petitioner's very initial appointment is contrary to Article 16 of the Constitution, how he could have been given the benefit of the nature as prayed for in this special civil application. Otherwise also, unless a permanent post is sanctioned with payscale and regular appointment is made on that post in accordance with the recruitment rules or in accordance with the provisions of Article 16 of the Constitution, no benefit whatsoever can be conferred upon the petitioner of the post. Much reliance has been placed by the petitioner on the decision of the District Judge in Regular Civil Appeal No.55/82. It is true that this judgment of the learned District Judge, Junagadh has not been challenged by the respondent and it attained the finality, this judgment is a binding decision no doubt between the petitioner and the Gram Panchayat but it is not binding on this Court. The petitioner in the suit challenged the resolution dated 29-8-79 under which his services were brought to an end. The learned District Judge under his judgment declared this resolution to be illegal and ultra vires and further declaration has been given that the plaintiff continues in services of the defendant-panchayat. If we go by the judgment of the learned District Judge, Junagadh, I find that this judgment is not the judgment in consonance with the provisions of Articles 14 and 16 of the Constitution. Learned District Judge has not considered an important aspect that the petitioner cannot be given the status of a permanent employee in the manner and fashion as it has been given under the resolution dated 7/8-3-79. In para-8 of the judgment of the learned District Judge, Junagadh, this action of the termination of the services of the petitioner was found to be violative of the principles of natural justice and that the required formalities under the Discipline and Appeal Rules applicable to a Panchayat servant. From para-7 of the judgment, I find that the learned District Judge, Junagadh has proceeded that the Panchayat seems to be levelling under a misapprehension that the plaintiff, herein the petitioner, is a temporary worker of the Panchayat. The Court stated that he was working since July, 1977 and came to be appointed on fixed salary on and from 1-3-79. Even if the learned District Judge as stated aforesaid is taken to be correct, how it can be taken to be a case of substantive permanent appointment of the petitioner on the post. From 1-3-79, he was appointed on consolidated salary. It cannot be said to be a permanent appointment. For substantive permanent appointment, three things are necessary. First is permanent sanctioned post. Second, regular budget for the post and third that the appointment has been made in accordance with the recruitment rules or by making open selection. In this case, this aspect of the matter has not been considered and simply on the basis of what the resolution contemplates that from 1-3-79, the petitioner has been given consolidated salary, this decision has been given. The Courts are not distributing charity. The Courts are there to protect the fundamental rights of the citizens and where the very induction of the person in the services is illegal or contrary to the rules or

constitutional provisions, no protection could have been given. The Courts are not there to perpetuate illegality. If we go by the decision of the learned District Judge that what precisely has been done therein. The petitioner's appointment remains to be only a temporary appointment for all the purposes and it does not confer any right to continue him in the services. Unless temporary appointment is culminated in a permanent substantive appointment, it continues to be a temporary appointment and for termination of services of a temporary employee, it is to be mentioned that, even notice needs not to be given by the employer. Not only this, even the order of termination needs not to be passed. Here, reference may have to the decision of the Apex Court in the case of M.P.H.S.V.N. vs. Davendra Kumar reported in JT 1995 (1) SC 198 and of this Court in the case of Bhanmati Tapubhai Muliya vs. State of Gujarat reported in 1995 (2) GLH 228.

11. Here reference may have to the part of the judgment of the learned District Judge in para-10. I fail to see how it can be taken to be a case of appointment of the petitioner on probation. He was appointed on daily wages and thereafter he was given consolidated salary. For appointment on probation, again it is to be stated at the cost of repetition, there should be a permanent post and appointment after selection. Both the requisite ingredients are missing in the present case. This judgment of the learned District Judge, Junagadh, has not been challenged by the respondent. For termination of services of probationer, not stigmatic, principles of natural justice are not required to be complied with. The learned counsel has failed to point out any provision from the service rules or resolution or standing order of the Government which provides compliance of principles of natural justice in the case of termination of services of a probationer.

12. A question does arise whether this Court can suo motu take the matter under its power of superintendence under Article 227 of the Constitution over the subordinate court and set aside the judgment. Learned counsel for the petitioner orally submitted that is not permissible to the Court but he has failed to cite any decision in support of his contention. Learned counsel for the respondent No.1 also is unable to assist this Court on this point. It is not open to the court to act contrary to the statutory rules, regulations, acts or constitutional provisions. Daily wager even cannot be given the benefit of 'equal pay for equal work' unless he has been appointed on daily wages against a permanent post. Reference in this respect may have to the Division Bench decision of this Court in the case of GMDC Employees' Union vs. Gujarat Mineral Dev. Corpn. reported in 2000 (2) GLH 523 . It is not the case of the petitioner that a permanent sanctioned post of Gardener was there in the Gram Panchayat. He entered in the services as daily wager on which also there is no dispute. Under the resolution dated 7/8-3-79 the petitioner was made permanent on consolidated salary. That cannot be accepted as there cannot be permanent appointment unless permanent post is there. It is also not the case of the petitioner that there is a permanent sanctioned post in the pay scale of Gardener. In view of these facts, this appointment of the petitioner is nothing but only a way to continue his services by the Gram Panchayat. It is a clear example of favoritism extended to

the petitioner by his friends or relations sitting in the Gram Panchayat. This daily wage appointment, otherwise also, cannot be made a conduit pipe for regular appointment. The very appointment of the petitioner under the resolution dated 7/8-3-79 is contrary to the provisions of Article 16 of the Constitution of India, and this judgment given by the learned District Judge is not correct. Even if it is taken that this appointment has been brought to an end by the Gram Panchayat later on without notice and opportunity of hearing to the petitioner, it will not make any difference because in case second resolution of the Gram Panchayat is set aside on this ground as what it is done by the District Judge, it will result in perpetuating unconstitutionality. Here reference may have to the latest pronouncement of the Hon"ble Supreme Court of India in the case of Aligarh Muslim University vs. Mansoor Ali Khan reported in 2000 AIR SC 2976. That is not permissible to this Court. In case the relief of the nature as prayed for by the petitioner is granted then what this Court will do, to legalise not only the judgment of the District Judge but also the resolution of the Gram Panchayat dated 7/8-3-79 which is totally against the provisions of Article 16 of the Constitution. Fruitfully here reference may have to the following decisions:

Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, .

Jagan Singh Vs. State Transport Appellate Tribunal, Rajasthan and Another, .

AIR 1968 KERALA 76 A.M. Mani vs. Kerala State Electricity Board.

AIR 1977 PATNA 166 Devendra Prasad Gupta vs. State of Bihar.

AIR 1994 RAJ 5 Himmat Jain vs. State

AIR 1990 PATNA 165 Chintamani Sharan Nath Sahadev vs. State of Bihar.

Sitting under Article 226 of the Constitution, this Court cannot perpetuate illegality nor it will confer any legality on the resolution which is ab initio void and contrary to the provisions of the Constitution. It is a fit case where suo motu power of this Court is to be exercised under Article 227 of the Constitution and to set aside the judgment and consequent relief thereof granted by the learned District Judge, Junagadh in regular Civil Appeal No.55/82 dated 4-4-1983.

13. In the result, this petition fails and the same is dismissed. By exercising suo motu power of superintendence under Article 227 of the Constitution of India, the judgment and decree of the District Judge, Junagadh, in Regular Civil Appeal No.55/82 decided on 4-4-1983 is quashed and set aside. As a result of the quashing and setting aside of the judgment of the learned District Judge, Junagadh in Regular Civil Appeal No.55/82 dated 4-4-1983, the resolution of the Gram Panchayat under which the services of the petitioner were brought to an end is revived and the petitioner shall no more be in service henceforth. However, whatever salary paid to the petitioner during this period as well as the consequential benefits given to him in pursuance of the decree of the learned District Judge, Junagadh shall not be recoverable by the Gram Panchayat from him. Rule is accordingly discharged. In the facts of this case, no order as to costs.