

(2016) 06 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No. 4280 of 2004

Bhagwan Raghurambhai Jani

APPELLANT

Vs

District Panchayat and 1 Another

RESPONDENT

Date of Decision : 06-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 LLJ 156

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

Bench : Single Bench

Advocate : Ms. Sejal K. Mandavia, Advocate, for the Appellant; Mr. HS Munshaw, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

J.B. Pardiwala, J.(Oral) - By this writ application under Article 226 of the Constitution of India, a daily wager, whose services came to be terminated in the year 2004, has prayed for the following reliefs;

"(A) To issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the impugned order dated 31.3.2004 passed by respondent no. 2 (Annexure A to the petition) and further be pleased to direct the respondents to give the benefits under Resolution dated 17.10.1988 to the petitioner.

(B) During the pendency, admission and final disposal of this petition Your Lordship be pleased to stay the implementation, execution of the impugned order dated 31.3.2004 passed by respondent no. 2 (Annexure A to the petition) and further be pleased to direct the respondents to give posting to the petitioner in any other dispensary in Bhavnagar District.

(C) Your Lordships be pleased to pass such other and further relief(s) as are deemed fit in the interest of justice."

2. The facts of this case may be summarised as under;

2.1 The petitioner was appointed in the year 1976 as a daily wager by the District Panchayat, Bhavnagar. He came to be posted in the dispensary, run and managed by the Panchayat. In 1988, the petitioner apprehended termination from the service. In such circumstances, he preferred a Regular Civil Suit No.55 of 1988 in the court of the learned Civil Judge, Junior Division, Shihor, District: Bhavnagar.

2.2 It also appears that the Civil Court passed an order of injunction, restraining the authorities from terminating the services of the petitioner. In the meantime, the Government Resolution dated 17.10.1988 came to be issued. The Government Resolution dated 17.10.1988 confers the following benefits;

"(i) They are entitled to daily wages as per the prevailing Daily Wages. If there is presence of more than 240 days in first year, daily wagers are eligible for paid Sunday, medical allowance and national festival holidays.

(ii) Daily wagers and semi skilled workers who has service of more than five years and less than 10 years are entitled for fixed monthly salary along with dearness allowance as per prevailing standard, for his working days. Such daily wagers will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. Such daily wagers will also be eligible for getting medical allowance and deduction of provident fund.

(iii) Daily wagers and semi skilled workers who has service of more than ten years but less than 15 years are entitled to get minimum pay scale at par with skilled worker along with dearness allowance as per prevailing standard, for his working days. Moreover, such daily wagers will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. He/she will be eligible for getting medical allowance and deduction of provident fund.

(iv) Daily wagers and semi skilled workers who has service of more than 15 years will be considered as permanent worker and such semi skilled workers will get current pay scale of skilled worker along with dearness allowance, local city allowance and house rent allowance. They will get benefit as per the prevailing rules of gratuity, retired salary, general provident fund. Moreover, they will get two optional leave in addition to 14 misc. leave, 30 days earned leave, 20 days half pay leave, Sunday leave and national festival holidays. The daily wage workers and semi skilled who have completed more than 15 years of their service will get one increment, two increments for 20 years service and three increments for 25 years in the current pay scale of skilled workers and their salary will be fixed accordingly."

2.3 According to the petitioner, he was told that if he wanted the benefits of the Government Resolution dated 17.10.1988, then he would have to withdraw the civil suit unconditionally. Acting on such representation, the petitioner thought fit to withdraw the civil suit in June 1990, to be precise, on 21st June, 1990. He

continued in service from 1990 to 2004. All of a sudden, an order was passed dated 31.3.2004 by the District Ayurvedik Officer, District Panchayat, Bhavnagar, terminating the services of the petitioner along with eleven other identically situated daily wagers. Being dissatisfied, the petitioner has come up with this writ application.

3. Ms. Mandavia, the learned counsel appearing for the petitioner has two fold submissions to make. First, the impugned order of termination was passed without giving any opportunity of hearing, and secondly by the time the services of the petitioner came to be terminated, the right to get the benefits of the Government Resolution dated 17.10.1988 had already accrued.

4. This writ application is vehemently opposed by Mr. Munshaw, the learned counsel appearing for the respondents. Mr. Munshaw has relied on the affidavit-in-reply filed on behalf of the respondent No.2, duly affirmed by the District Ayurvedik Officer, Bhavnagar District Panchayat, Bhavnagar, inter alia, stating as under;

I, Dr. P.M. Upadhyay, District Ayurvedic Officer, Bhavnagar District Panchayat, Bhavnagar do hereby affirm and state on oath that I am conversant with the facts of the case as I have gone through the record of the office of Bhavnagar District Panchayat and also gone through the contentions raised in the memo Special Civil Application and thereupon I am in a position to file this short affidavit in reply to bring the correct facts on the record of the Hon''ble Court. The respondent No.2 reserves the right to file further and fuller affidavit in reply in future, if necessary in the interest of justice.

"1. It is most respectfully stated that Bhavnagar District Panchayat was running several Ayurvedic Clinics through out the District of Bhavnagar and Medical Officers Class-III were appointed in such Ayurvedic Clinics. It is stated that the present petitioner i.e. Mr. B.R.Jani was appointed as daily wage peon for miscellaneous work in the Ayurvedic Clinics at Village Devgana, Taluka Shihor District Bhavnagar. It is stated that the petitioner was appointed through orders dated 14/09/1977 and his appointment was purely on daily wage basis till the appointment of permanent attendant and a copy of the same is annexed herewith and marked as Annexure A. It is stated that the petitioner was continued on the same basis through similar type of appointment orders for a period of 29 days depending upon the administrative requirement at Village Devgana. It is stated that accordingly the petitioner continued purely on daily wage basis and he was paid his wages as per the wages determined by the competent authority under the payment of Minimum Wages Act. It is most respectfully stated that the case of the petitioner that he is entitled to the benefits of the Government Resolution dated 17/10/1988 and accordingly regular pay scale and regularisation in service is tenable in an eye of law. The respondent no. 2 most respectfully states that the Government Resolution dated 17/10/1988 relied upon by the petitioner is issued by the Government of Gujarat through its Roads & Buildings Department and it is applicable only to those daily

wagers working in such other Department and the said G.R. Is not applicable so far as Ayurvedic Branch is concerned. The respondent No. 2 craves leave to annex herewith a copy of G.R. Dated 17/10/1988 and marked as Annexure B.

2. The respondent No. 2 humbly states that the petitioner was never assured any of the benefit under G.R. Dated 17/10/1988 at any point of time. It is further stated that through inadvertently certain daily wagers working in Ayurvedic Branch of the District Panchayat were given the benefits of said G.R. Dated 17/10/1988 and monetary benefits were also released, but at the later point of time the Audit Department raised objections and therefore, the said daily wagers are reverted back to the original position and even recovery is also ordered. It is humbly stated that such daily wagers have approached the Hon'ble High Court of Gujarat by way of filing Special Civil Applications. In view of this factual background and more particularly as audit objection raised by the Audit Department, the present petitioner is not entitled to the benefits of regularisation and regular pay scale as claimed by him. The respondent No. 2 craves leave to annex herewith the xerox copies of audit objections raised by the office of Assistant Examiner of Local Fund Audit at Bhavnagar.

3. It is most respectfully stated that the Government of Gujarat through its Panchayat, Rural Housing and Rural Development Department passed an order on 19/01/2004 through which all the posts of Medical Officers (Ayurved Class - III) are abolished and a copy of the same is annexed herewith and marked as Annexure ? C. In view of these directions, it is clear that the respondent No. 2 authority would not get any grant from the Government of Gujarat and therefore, the District Development Officer, Bhavnagar has passed an order on 31/03/2004 through which in all 47 Ayurvedic Clinics are closed down and a copy of the same is annexed herewith and marked as Annexure D. It is pertinent to note that due to closure of the Ayurvedic Clinics, there is no work and therefore, the daily wagers working in such Ayurvedic Clinics are not required to be continued.

4. It is stated that due to this development, the Primary Health Center at Village Budhana, Taluka Sihor, District Bhavnagar where the petitioner was working since 01/07/2003 was required to be closed down due to non availability of medical officer and therefore, the petitioner was not provided work with effect from 31/3/2004. The respondent No. 2 craves leave to annex herewith a copy of orders dated 31/03/2004 and marked as Annexure E. It is pertinent to note that in view of this, in all the services of 20 daily wagers working at different Ayurvedic Clinics were required to brought to an end due to non availability of work and fund. In other words, in all 20 daily wagers were working through out the Bhavnagar District Panchayat at different places. However, due to pendency of various Special Civil Applications before the Hon'ble High Court of Gujarat it was not possible to terminate the services of in all 9 daily wagers and a copy of the list showing full details is annexed herewith and marked as Annexure F. As in all 9 daily wagers were enjoying the interim relief ordered in the Court proceedings, though they were to be relieved , they were accommodated by way

of appointing them in Ayurvedic Clinics run by Medical Officer (Class II) and accordingly appropriate transfer orders were passed to see that the orders of the Hon"ble Court are not violated. It is stated that at present there are in all 8 Ayurvedic Clinics headed by Medical Officer (Ayurved Class II). The respondent No. 2 craves leave to clarify that through there is no requirement of daily wagers for such Ayurvedic Clinics, only because of interim orders passed by the Hon"ble Court, such daily wagers are accommodated and continued. It is stated that the respondent No. 2 is running only 2 Ayurvedic Clinics headed by Medical Officer (Ayurved Class ? III) only because of department and administrative exigencies and within a short time they are also required to be upgraded. It is stated that one daily wager is accommodated in one out of two Ayurvedic Clinics at Village Ningala, Taluka Gadhada by way of transferring from other Clinics. The respondent No. 2 craves leave to annex herewith a list of all the 20 daily wagers who are required to be relieved as such. At the cost of repetition it is stated that in all 9 daily wagers are discontinued and accommodated due to the pendency of Court's proceedings and 11 daily wagers are already relieved due to non availability of work and fund. It is further stated that those 9 daily wagers who are continued and accommodated, are required to be relieved due to non availability of work at such Class II Ayurvedic Clinics due to regular staff is available.

5. In view of the above mentioned facts and circumstances it is clear that the present petitioner is not entitled to any relief as prayed by him and therefore, the Hon"ble Court is prayed to reject the Special Civil Application with cost in the interest of justice."

5. Thus, it appears from the stance of the respondents as reflected from the reply that the order of termination had to be passed because the dispensaries were closed. According to Mr. Munshaw, at the relevant point of time, the audit department took an objection that since the petitioner was working as a daily wager in the dispensary, he could not be said to be in the department of repairs and maintenance. According to Mr. Munshaw, the Government resolution, at that point of time, i.e. of 17.10.1988 was existed as being applicable only to those employees connected with the repairs and maintenance department.

6. In rejoinder, Ms. Mandavia clarified that if at all the dispensaries had to be closed, the authorities could have accommodated the daily wagers, like the petitioner herein, in any other department. According to her, the stance of the respondents regarding the applicability of 17.10.1988 resolution is also not tenable now in the light of the decision of the Supreme Court in the case of State of Gujarat v. P.W.D. Employees' Union, 2013 (8) Scale 579.

7. Mr. Munshaw also submitted that in the light of the decision of the Supreme Court in the case of Secretary, State of Karnataka & Ors. v. Umadevi & Ors. 2006 (4) SCC 1, the petitioner has no case.

8. Mr. Munshaw has also placed strong reliance on a Division Bench's decision of

this Court rendered in Letters Patent Appeal No.170 of 2013 dated 2nd April, 2014.

9. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the petitioner is entitled to any of the reliefs as prayed for in this writ application.

10. So far as the applicability of the decision of the Supreme Court in the case of Umadevi & Ors. (supra) is concerned, there need not be any debate now in view of the subsequent decisions of the Supreme Court, more particularly after the pronouncement in the case of P.W.D. Employees' Union (supra). Therefore, this petition is without any basis.

11. It is not in dispute that the petitioner was a daily wager. It is also not in dispute that due to administrative exigencies, in all, 47 Ayurvedik clinics had to be closed down. As such, as a daily wager, no legal right could be said to have accrued in favour of the petitioner, to be accommodated in any other department.

12. So far as the termination part is concerned, I am not inclined to interfere. It has been almost 12 years now that the petitioner has been out of service. He would have otherwise retired four years back.

13. The only thing which needs to be considered is the benefits of the Government Resolution dated 17.10.1988 which could be said to have accrued in favour of the petitioner much before his services came to be terminated. In such circumstances referred to above, the authorities concerned are directed to look into the issue as regards the benefits of the Government Resolution dated 17.10.1988 taking 2004 as the year of last service. Let such decision be taken in accordance with law within a period of two months from the date of the receipt of the writ of the order.

14. With the above, this writ application is disposed of. Rule is made absolute to the aforesaid extent. Direct service is permitted.