
(2016) 07 GUJ CK 0076

In the Gujarat High Court

Case No : Special Civil Application No. 16964 of 2005

Bhavnagar District Panchayat

APPELLANT

Vs

Mahendra Jashvantrai Dave

RESPONDENT

Date of Decision : 22-07-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(j)

Citation : (2016) 3 GujLH 476

Hon'ble Judges : Mr. A.J. Shashtri, J.

Bench : Single Bench

Advocate : Mr. H.S. Munshaw, Advocate, for the Petitioner No. 1 - 2; Deleted, for the Respondent No. 2; Mr. T.R. Mishra, Advocate, for the Respondent No. 1

Final Decision : Dismissed

Judgement

Mr. A.J. Shastri (CAV) - The present petition is filed by the petitioners for challenging the legality, validity and propriety of an award passed by the learned Presiding officer of the Labour Court, Bhavnagar in Reference (LCB-D) No.45 of 1994 on 9.12.2003 whereby, the learned Presiding officer had directed the petitioners to regularize the services of respondent ? workman w.e.f. 31.8.1994 and to pay all consequential monetary benefit w.e.f. 1.1.2002. However, in the said Reference, the petitioners sought a relief to hold that respondent ? workman is not eligible or entitled to regularize in the services of the Bhavnagar District Panchayat. It is in the context of this relief, the petitioners have brought this petition before this Court.

2. It is the case of the petitioners that respondent ? workman was working as a daily wager on a purely temporary basis and ad-hoc basis and was appointed without following any due process and recruitment rules. It is further the case of the petitioners that respondent ? workman was not appointed on any permanent sanctioned post and no recruitment has taken place after following due procedure and the workman was paid the wages as per the provisions of the Minimum Wages Act and therefore, in the background of this brief set of

circumstance, the petitioners have questioned the validity of the award passed by the learned Presiding officer.

3. Before dealing with the contentions, it appears from the material on record that respondent ? workman was no doubt a daily rated employee kept by the petitioners authority in the month of January, 1985 to the post of Dressor and after almost a period of more than 4 years, w.e.f. 1.1.1989 he was discontinued from the services and that discontinuance was the subject matter of earlier Reference before the learned Presiding officer and in response thereof, w.e.f. 1.1.1992 respondent ? workman was reinstated in the services by the present petitioners. It is the case of the workman appearing from the record that w.e.f.1.1.1985 continuously, as per the say of the respondent ? workman, he was working for all these years and the duties which are being performed by the respondent ? workman are of a permanent nature. When the discontinuance set at rest, the respondent ? workman was all throughout allowed to work in the employment and long lapse of period has constrained the respondent ? workman to seek a reference for regularization of his services in the employment. The said industrial dispute was referred to the learned Presiding officer of the Labour Court which was registered as Reference (LCB-D) No.45 of 1994 and the terms of the reference was that whether respondent ? workman is entitled to be continued to the post and is also entitled to monetary benefits or not and this reference, as indicated in Para.1 of the award, is the subject matter before the learned Presiding officer. Vide Exh.5, the claim statement was submitted by respondent ? workman and ultimately, by mentioning the fact that he is working since so many years continuously all throughout, is entitled to seek regularization in view of proposition of law propounded by series of decisions. It has been contended as appearing that other employees have been regularized and it has been submitted by respondent ? workman that petitioners authority have to act as a model employer and it was submitted that by not regularizing his services, not only unfair labour practise is adopted by the petitioners but, exploitation is made by the petitioners and therefore, under these circumstance, the workman had claimed regularization.

4. To meet with the said claim statement, opponents ? here present petitioners have submitted a joint reply at Exh.8 before the learned Presiding officer and has taken up a plea that respondent ? workman is a daily rated employee, is not recruited in the permanent set up. It was also contended that his services/duties are not of a permanent in nature and therefore, opposed the regularization of the workman. It was, inter-alia, contended that for a period of 9 years, the respondent ? workman is not working on the post and that he has not been recruited in terms of the Recruitment Rules nor against a permanent set up. Upon adjudication further, the documentary evidence in the form of Exh.9 came to be produced as also by the establishment vide Exh.21. In addition to documentary evidence adduced by both the sides referred to above, oral deposition has also taken place of applicant vide Exh.16 and one Dr. Arvindkumar Baidhnath Sharma came to be examined as a witness on behalf of petitioners

authority vide Exh.20. Vide Exh.24 also, another witness came to be examined by the authority and later on, respective parties have stated to close their respective stage. After examination of documentary material as well as depositions led before the learned Presiding officer, upon adjudication and upon analysis of evidence on record, the learned Presiding officer found that respondent ? workman is entitled to seek all benefits amenable to a permanent employee and in view of settled position of law propounded by series of decisions, he deserves to be treated as regularized and permanent on the establishment. While coming to this conclusion, learned Presiding officer, first of all, has dealt with an issue related to industry. After considering the decision delivered by the Court and referred to in the award, it has been concluded that the petitioners authority is coming within the purview of definition of "industry" as defined under Section 2(j) of the I.D.Act,1947. At this stage, it is pertinent to note that during the course of present petition, none of the respective parties have agitated on this issue, whether the petitioners authority is an industry or not and therefore, this Court has no occasion to dwell into such issue which has not been raised by either side. The main conflict between the respective parties posed before the Court is with respect to regularization and payment of consequential benefits to the workman and in that context, the submissions were made.

5. From bare reading of the award passed in exercise of due discretion, learned Presiding officer has dealt with each and every aspect encircling the main reference which has been made for proper adjudication. It has been found by the learned Presiding officer that respondent ? workman continuously working since number of years and on appreciation of deposition at Exh.20, in cross-examination the petitioners authority has accepted that respondent ? workman is working since 1985. In addition thereto, learned Presiding officer has also examined entire material on record and found that petitioners authority have not produced any material on record which would indicate that respondent ? workman was not working nor any material was produced before it to indicate date of appointment, tenure of service which would dislodge the case of the respondent ? workman and therefore, learned Presiding officer on the basis of material on record as well as from the depositions in detail found specifically in favour of respondent ? workman and has specifically held that for a pretty long period of more than 18 years since the respondent ? workman has been allowed to continue as daily rated employee only, such action on the part of petitioners is not in consonance with the labour practise and the evidence on record has led the learned Presiding officer not to believe the case of petitioners authority. The learned Presiding officer in exercise of due discretion found that respondent ? workman in the background of material on record deserves to be treated as permanent and has been made available the consequential benefits w.e.f. 1.1.2002 by striking the balance between both the sides and it is in this detailed well reasoned judgment in the form of award dated 9.12.2003 is made the subject matter of this petition under Articles 226 and 227 of the Constitution of

India.

6. Mr. Rajesh Chauhan, learned counsel appearing on behalf of Mr. H.S. Munshaw, learned counsel representing the petitioners authority has contended that while passing an award, learned Presiding officer has materially erred in analysing evidence and also submitted that respondent ? workman was merely appointed and kept as a daily rated employee. It was contended that his continuation in the services was not against the sanctioned post and that pattern of employment has radically changed after 1987 and the post of Dressor has been abolished. It was ultimately contended that recruitment of respondent ? workman was nothing but a back-door entry and is against the procedure established for employment and therefore, the award of Labour Court of making the respondent ? workman as permanent is unjust and arbitrary. It was contended on behalf of petitioners that in a Full Bench decision delivered by this Court in case of Amreli Municipality v. Gujarat Pradesh Municipal Employees Union, reported in 2004 (3) GLR 1841, it has been held that Labour Court and Industrial Court are not empowered to regularize the services of the workman and therefore, strenuously argued that irrespective of fact that respondent ? workman is working since 1985, this fact ipso facto is not entitling respondent ? workman to seek regularization or permanent status as has been granted by the learned Presiding officer. It was also contended that there are large number of decisions one of which reported in (2014) 5 SCC 300 and contended that the award passed by the learned Presiding officer is unjust, arbitrary and not in consonance with the law applicable to the controversy and thereby, requested to quash and set aside the same in exercise of extraordinary jurisdiction of this Court.

7. To oppose the stand of the petitioners authority, Mr. T.R. Mishra, learned counsel appearing on behalf of respondent ? workman has contended that learned Presiding officer of the Labour Court has rightly exercised the jurisdiction in due discharge of his statutory function and has submitted that well reasoned order is passed by the learned Presiding officer which may not be disturbed in exercise of extraordinary jurisdiction of this Court. It was also contended by learned counsel that while passing the award impugned, the entire material on record, documentary as well as oral depositions have been analysed, examined and appreciated and only thereafter, the award came to be passed and therefore, there is no error of jurisdiction of any nature which would warrant this Court to substitute said finding in extraordinary jurisdiction of this Court.

7.1 Learned counsel for the respondent ? workman submitted that respondent ? workman has been exploited by the petitioners authority. It has been undisputedly reflected from the evidence that since 1985, the respondent ? workman is working with the establishment and for a period of almost more than 31 years, now at this stage of the proceeding if the order of making him permanent is disturbed, the same would nothing but tantamounts to miscarriage of justice. Mr. Mishra has contended that it is the petitioners authority who have

kept the respondent workman in employment, has allowed to work for a pretty long period and therefore, now the petitioners authority may not be allowed to take a plea that his employment is de-hors the procedure or de-hors the Recruitment Rules. Even if it is so, it would be a mistake on the part of authorities for which by disturbing the award, no premium be given to the petitioners and thereby, learned counsel submitted to dismiss the petition.

8. On the issue of regularization, learned counsel for the respondent ? workman has submitted that in case of Secretary, State of Karnataka and Ors. v. Uma Devi, reported in 2006 II CLR 261 SC, the Hon''ble Apex Court has, in Para.52, carved out an exception whereby, if a workman is continuously working for more than period of 10 years then, the ratio laid down in that decision of Uma Devi may not be applied in strict form. It was also contended that even after the decision in case of Uma Devi (supra), there are large number of cases in which various High Courts as well as even the Hon''ble Apex Court have held that if continuously for a long period of time if the workman is allowed to continue then, regularization is permissible. For that purpose, learned counsel for the respondent has drawn attention of this Court to a decision in case of Rajender Singh v. UOI, reported in 2015-I-LLJ-389 (Del.) Learned counsel also relied upon a decision in case of Durgapur Casual Workers Union & Ors. v. Food Corporation of India & Ors., reported in 2015 I CLR 379 wherein also, aspect of absorption and regularization is dealt with by the Hon''ble Supreme Court. Learned counsel also relied upon another decision to substantiate the stand of the respondent - workman in case of State of Karnataka & Anr. v. M.L. Kesari & Ors., reported in (2010) 9 SCC 247 wherein, Para.53 of the Uma Devi's case (supra) has also been dealt with and after considering that only, it has been spelt out that workman if irregularly appointed is entitled to be absorbed or regularized. Further attention is drawn to a decision delivered by this Court in SCA No.17567 of 205 decided on 8.8.2013 wherein also, an issue of regularization at length is considered by this Court and the said decision pursuant to which a benefit is passed on to the concerned workman. A reliance is also placed on a decision of this Court rendered in SCA No.6124 of 2007 decided on 28.1.2013 wherein, this Court in a similar situation has considered various authorities and has held that the award of regularization passed by the Court is just and proper. While delivering this judgment, the Court has also dealt with the case of Uma Devi (supra) as well as Amreli Municipality (supra) and despite that, the order of regularization is not disturbed.

9. Learned counsel appearing for the respondent workman has further drawn attention to another decision of this Court in case of Gujarat Maritime Board and Ors. v. Ashokkumar Ijjatrai Anjariya and Anr., reported in 2008 (3) GLH 767 and contended that the Court has consistently held that if long lapse of period is reflecting, it is justified to pass an order of regularization and by contending that, Mr. Mishra has requested the Court to dismiss the petition. It was also pointed out to the Court that decision delivered on 28.1.2013 in SCA No.6124 of 2007, is confirmed by the Hon''ble Supreme Court. Learned counsel, therefore, submitted

that even after the decision of this Court delivered by the Full Bench as well as Uma Devi's case (supra), there is consistent practise to grant the benefit of regularization and therefore, these submissions are made with a view to see that extraordinary jurisdiction may not be exercised by this Court in favour of petitioners authority.

10. Having heard learned counsel for the respective parties, few facts are emerging from the record (i) the respondent ? workman was kept in the employment by petitioners authority right from 1985 (ii) it is also emerging from the record that on earlier occasion, when the very respondent workman was discontinued w.e.f.1.1.1989, pursuant to the order of the Labour Court, respondent ? workman was allowed to be reinstated and all throughout, the respondent ? workman has worked with the petitioners authority for a pretty long period. It is also further emerging from the record that categorical stand has been taken by the respondent ? workman in the form of affidavit-in-reply filed before this Court wherein, entire tenure has been explained in detail and to such affidavit-in-reply, there seems to be no dispute as no affidavit-in-rejoinder is filed to controvert to this fact what has been stated on oath by the petitioners authority. For the purpose of dealing with the submissions made by respective parties, the stand taken by the respondent workman in affidavit-in-reply explaining the tenure is worth to be taken note of and therefore, perused hereinafter. Relevant Para.1 and 2 of the affidavit-in-reply is quoted as under :

"1. I say that the petitioner Bhavnagar District Panchayat has produced copy of the award passed by the Labour Court from page 11 to 23. The petitioner has not brought on record the entire facts of the case. I say that I was initially appointed in the year 1984 as Dressor/Peon/Ward Boy in Primary Health Center, Thadiya and worked continuously upto 31.12.1988. From 1.1.1989 my services were terminated and therefore, an industrial dispute was raised which was registered as Reference (LCB) No.153/89. The Labour Court passed award on 4.12.91 holding the termination as illegal and further directed to reinstate the workman from 1.1.1989 with continuity of service with full back wages and further direction was issued to pay a sum of Rs.250/- by way of costs. I say that I was thereafter reinstated immediately in the services of the respondent in January,92 and since then I am continuously and uninterruptedly working as Peon/Dressorand performing the responsibility of Peon and also doing the job of Dresser. The Labour Court has granted continuity of service and therefore, since 1984 I am in the continuous employment of the petitioner herein above. I am presently being paid Rs.3000/- per month as wages. I say that I was appointed on the clear vacancy of Peon right from 1984 as the post of Peon or Dressor has never been filled in since 1994 and I am working continuously as Peon/Dressor from 1984 but is being paid wages of Rs.3000/- per month. The pre-revised scale of Peon in the Panchayat is Rs.750-1250 which has been subsequently revised to Rs.2550/-. As per the record produced by the petitioner himself, there is a post of Peon vacant as would be seen at page.28 of the record of the SCA. The order of the District Panchayat, Health Department, Bhavnagar is dated

1.7.1987. The post of Peon has never been filled in and I am shouldering the responsibility of Peon-cum-Dressor. There is no Dressor and therefore, the work of Dressor is also required to be done by me. Thus, I am shouldering double responsibility of Peon and Dressor both since 1984. I am annexing the undermentioned certificates issued by the Medical officer, Primary Health Centre, asunder :

- 1) Certificate dated 26.4.1985
- 2) Certificate dated 17.2.1986
- 3) Certificate dated 21.6.1988
- 4) Certificate dated 20.1.1986
- 5) Certificate dated 1.1.1987
- 6) Certificate dated 1.1.1987
- 7) Certificate dated 31.12.1998
- 8) Certificate dated 7.1.1999
- 9) Certificate dated 8.2.2001
- 10) Certificate dated 31.12.1999
- 11) Certificate dated 5.7.2002
- 12) Certificate dated 1.1.2007
- 13) Certificate dated 23.2.2004
- 14) Certificate dated 2.3.2005
- 15) Certificate dated 2.2.2005
- 16) Certificate dated 8.10.2006
- 17) Certificate dated 11.1.2007

2. I say that though I am working on the permanent vacant post of peon, I am being paid consolidated wages of Rs.3000/- p.m. Earlier the wages was hardly Rs.2000/- p.m. The current wage is of Rs.3000/- p.m. though I am working on the clear and vacant post of Peon and looking after the work of Dressor as well."

11. From the aforesaid background which is emerging from the record, whether to disturb the award passed by the learned Presiding officer is justifiable or not, more particularly in exercise of extraordinary jurisdiction essentially under Article 227 of the Constitution of India, is a vital issue before the Court and therefore, before dealing with the same, the scope of Article 227 of the Constitution of India is worth to be taken into consideration and for that purpose, taking aid of various decisions of the Hon"ble Apex Court, this Court is coming to the conclusion that well reasoned award passed by the learned Presiding officer does

not call for any interference. The scope of Article 227 which is analysed by various authorities deserves to be quoted hereinafter.

11.1 In a decision of the Hon"ble Apex Court in case of Mohd. Yunus v. Mohd. Mustaqim and Ors., reported in AIR 1984 SC 38, it is held in Para 7 as under :

7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

11.2 In a decision of the Hon"ble Apex Court in case of State of Haryana v. Manoj Kumar, reported in 2010 Law Suit (SC) 120, it is held in Para.22 to 29 as under :

"22. The appellants urged that the jurisdiction of the High Court under Article 227 is very limited and the High Court, while exercising the jurisdiction under Article 227, has to ensure that the courts below work within the bounds of their authority.

23. More than half a century ago, the Constitution Bench of this court in Nagendra Nath Bora and Another v. Commissioner of Hills Division and Appeals, Assam & Others AIR 1958 SC 398 settled that power under Article 227 is limited to seeing that the courts below function within the limit of its authority or jurisdiction.

24. This court placed reliance on Nagendra Nath's case in a subsequent judgment in Nibaran Chandra Bag v. Mahendra Nath Ghughu AIR 1963 SC 1895. The court observed that jurisdiction conferred under Article 227 is not by any means appellate in its nature for correcting errors in the decisions of subordinate courts or tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority.

25. This court had an occasion to examine this aspect of the matter in the case of Mohd. Yunus v. Mohd. Mustaqim & Others (1983) 4 SCC 566. The court observed as under:-

"The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority," and not to correct an error apparent on the face of the record, much less an error of law. for this case there was, in our opinion,

no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

26. This court again clearly reiterated the legal position in *Laxmikant Revchand Bhojwani & Another v. Pratapsing Mohansingh Pardeshi* (1995) 6 SCC 576. The court again cautioned that the High Court under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

27. A three-Judge Bench of this court in *Rena Drego (Mrs.) v. Lalchand Soni & Others* (1998) 3 SCC 341 again abundantly made it clear that the High Court cannot interfere with the findings of fact recorded by the subordinate court or the tribunal while exercising its jurisdiction under Article 227. Its function is limited to seeing that the subordinate court or the tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and re-appreciating it.

28. In *Virendra Kashinath Ravat & Another v. Vinayak N. Joshi & Others* (1999) 1 SCC 47 this court held that the limited power under Article 227 cannot be invoked except for ensuring that the subordinate courts function within its limits.

29. This court over 50 years has been consistently observing that limited jurisdiction of the High Court under Article 227 cannot be exercised by interfering with the findings of fact and set aside the judgments of the courts below on merit."

11.3 In a decision of the Hon^{ble} Apex Court in case of *Sameer Suresh Gupta TR PA Holder v. Rahul Kumar Agarwal*, reported in 2013 Law Suit (SC) 651, it is held in Para.7 to 9 as under :

"7. In our view, the impugned order is liable to be set aside because while deciding the writ petition filed by the respondent the learned Single Judge ignored the limitations of the High Court's jurisdiction under Article 227 of the Constitution. The parameters for exercise of power by the High Court under that Article were considered by the two Judge Bench of this Court in *Surya Dev Rai v. Ram Chander Rai and others* (2003) 6 SCC 675. After considering various facets of the issue, the two Judge Bench culled out the following principles:

"(1) Amendment by Act No.46 of 1999 with effect from 01-07-2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the

jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e. when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of

correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practise, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."

8. The same question was considered by another Bench in *Shalini Shyam Shetty and another v. Rajendra Shankar Patil* (2010) 8 SCC 329, and it was held:

"(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* and the principles in *Waryam Singh* have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh*, followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order

only to keep the tribunals and courts subordinate to it, "within the bounds of their authority".

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in *L. Chandra Kumar v. Union of India* and therefore abridgment by a constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for

promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality."

12. Keeping aforesaid proposition of law reverting back to the case of the petitioners that respondent ? workman is not entitled to be regularized and in that case, reliance is placed on the Full Bench decision of this Court in case of Amreli Municipality (supra). No doubt, this Court is bound by the said ratio laid down in the said Full Bench decision of this Court. However, a fact deserves to be taken note of that this Court despite the aforesaid Full Bench decision has over a period of time change in the position of law, has propounded and held that regularization is permissible and therefore, if the current position is to be taken into consideration, the award in question is not required to be disturbed.

13. Learned counsel for the petitioners also relied upon a decision of the Hon''ble Apex Court in case of Nand Kumar v. State of Bihar and Ors., reported in (2014) 5 SCC 300 wherein, it has been held that regularization cannot be, as a matter of course, made. The same would depend upon the facts of the case and can be then by strict adherence to the Rules and Regulations. The Hon''ble Apex Court in that particular case has no doubt held that proposition but, this proposition has later on being gradually altered as it appears and therefore, in the background of present facts and circumstances, this Court is bound by the later decision delivered by the Hon''ble Apex Court which have been cited. In that case, the Legislature in the year 2006 has passed Bihar Agriculture Produce Market (Repeal) Act, 2006 w.e.f. 1.9.2006. With the result, the Bihar Agriculture Produce Market Act, 1960 and the Rules framed thereunder in 1975 stood repealed and the validity of the provisions of the said Act was never challenged and in that set of circumstance, claim of regularization of a daily rated employee was a subject matter of controversy before the Hon''ble Apex Court since the under the said Repeal Act, the concerned workmen were to be relieved and therefore, the background of the said case appearing to be almost different from the case on hand.

14. This Court, no doubt, respectfully agrees with the said ratio laid down by the Hon''ble Apex Court but, is of the opinion that present case appearing to be in a different set of circumstance and therefore, in stricto sensu the ratio laid down in the said case may not be applied as a straight jacket formula. No other citations were brought to the notice by the petitioners authority and therefore, to deal with the citations referred to by the learned counsel for the respondent, first case to be dealt with is in case of Rajender Singh (supra). While delivering the said judgment, the Delhi High Court has considered several decisions of the Hon''ble Apex Court in case of Chief Conservator of Forest and Anr. v. Jagannath Maruti Kondhare and Anr., reported in 1996 I LLJ 1223 (SC) and another decision in

case of Maharashtra State Road Transport Corporation and Anr. v. Casteribe Rajya P. Karmachari Sangha, reported in AIR 2009 SC 2656, as also a decision in case of State of Karnataka and Ors. v. M.L. Kesari and Ors., reported in AIR 2010 SC 2587 and ultimately, upon analysing has come to the conclusion that regularization is permissible. Learned counsel for the respondent has also relied upon the recent decision of the Hon''ble Apex Court in case of Durgapur Casual Workers Union (supra). One of the points contained in the said decision for consideration is, whether the absorption and regularization can be made or not? While delivering the said judgment in case of M.L. Kesari and Ors. (supra), again the Hon''ble Apex Court has also considered the ratio laid down in Uma Devi's case (supra). Para.6 and 7 of the said judgment are worth to be taken note of, which reads as under :

"6. This Court in Umadevi (3) further held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution. This Court however made one exception to the above position and the same is extracted below :

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.Narayanappa [1967 (1) SCR 128], R.N. Nanjundappa [1972 (1) SCC 409] and B.N. Nagarajan [1979 (4) SCC 507] and referred to in para 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 the 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 the 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."

6. It is evident from the above that there is an exception to the general principles against "regularization" enunciated in Umadevi, if the following conditions are fulfilled :

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

14.1 In Para.11 of the aforesaid judgment, the object behind direction contained in Para.53 of Uma Devi's case (supra) is also analysed and ultimately, final direction is contained in Para.13 is also deserves to be taken note of, which is reproduced herein below :

"11. The object behind the said direction in para 53 of Umadevi is two-fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practise of employing persons on daily-wage/adhoc/ casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi as a onetime measure.

13. The Division Bench of the High Court has directed that the cases of respondents should be considered in accordance with law. The only further direction that needs be given, in view of Umadevi, is that the Zila Panchayat, Gadag should now undertake an exercise within six months, a general one-time regularization exercise, to find out whether there are any daily wage/casual/adhoc employees serving the Zila Panchayat and if so whether such employees (including the respondents) fulfil the requirements mentioned in para 53 of Umadevi. If they fulfil them, their services have to be regularized. If such an exercise has already been undertaken by ignoring or omitting the cases of respondents 1 to 3 because of the pendency of these cases, then their cases shall have to be considered in continuation of the said one time exercise within three months. It is needless to say that if the respondents do not fulfil the requirements of Para 53 of Umadevi, their services need not be regularised. If the employees who have completed ten years service do not possess the

educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularization in suitable lower posts."

15. In a decision delivered by this Court in SCA No.17567 of 2005 decided on 8.8.2013, wherein also several decisions including the decision of Amreli Municipality (supra) is taken into consideration and has refrained from interfering with the award passed by the learned Presiding officer, Industrial Tribunal, Rajkot. This decision is also squarely covering the grievances of respondent ? workman in his favour. In an another decision of this Court rendered in SCA No.6124 of 2007 decided on 28.1.2013, several decisions on the issue of regularization have been considering including of Uma Devi's case (supra) and ultimately, held in Para.4 and 5 as under :

"4. In view of aforesaid, when the issue involved in the present petition has already been decided by this Court by way of above cited decision and considering the peculiar facts and circumstances of the case and keeping in mind the principle laid down in the decision of the Apex Court in the case of Secretary, State of Karnataka & Ors. v. Uma Devi (2006) 4 SCC 1 and the decision of this Court in the case of Amreli Municipality v. Gujarat Pradesh Municipal Employees Union 2004 (3) GLR 1841, the petitioner is directed to regularize the services of the members/workmen of the respondent-Sangh as per the sanctioned posts and as per the seniority lists. It is, however, clarified that if no seniority list is there, the petitioner shall regularize the services of the respondent-workmen on completion of ten years of service. The aforesaid exercise shall be completed within a period of seven months from today.

5. With the aforesaid directions, the petition stands disposed of. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated."

16. It appears that ultimate outcome of the aforesaid decision reported to have been confirmed by the Hon'ble Apex Court as stated by Mr. Mishra, learned counsel for the respondent ? workman and therefore, said decision is squarely covering the case of the respondent ? workman.

17. Another decision upon which learned counsel for the respondent placed reliance is in case of Gujarat Maritime Board (supra), wherein also it has been held that judgment in case of Uma Devi (supra) was not applicable in the background of that fact. The normal trend is to regularize the services and therefore, sitting in an extraordinary jurisdiction of this Court and in view of the proposition of law, this Court is not inclined to disturb the award passed by the learned Presiding officer. The contentions raised by the petitioners are held to be not acceptable and tenable.

18. One another facet to be taken into consideration that a plea is taken by the petitioners authority that the services of the respondent ? workman was not as per the recruitment process, not in consonance with the Rules and therefore, the respondent ? workman is not entitled to seek any regularization or absorption on permanent set up as a matter of right. It is this point which deserves to be dealt

with in the context that it is this very petitioners authority, who kept the respondent ? workman in employment and it is this very authority despite the rule having been available to them as per their say, has recruited and allowed continuance in the employment and now, to allow this plea to be taken at the behest of petitioners authority, it would tantamount to give a premium to their mistake, if any and therefore, in one of the decisions of the Hon''ble Apex Court, it has been propounded that this plea is not available to the petitioners authority as it is the authority who committed that mistake and allowed the workman to be in employment. Therefore, in the background of this fact, a decision of the Hon''ble Supreme Court in case of Bhartiya Seva Samaj Trust Tr. Pres. & Anr. v. Yogeshbhai Ambalal Patel & Anr., reported in AIR 2012 SC 3285 is also worth to be taken note of while coming to a final conclusion in the present proceedings. Relevant Para.21, 22 and 23 of the aforesaid decision read as under :

"21. A person alleging his own infamy cannot be heard at any forum, what to talk of a Writ Court, as explained by the legal maxim "*allegans suam turpitudinem non est audiendus*". If a party has committed a wrong, he cannot be permitted to take the benefit of his own wrong.

(Vide: G. S. Lamba & Ors. v. Union of India & Ors., AIR 1985 SC 1019; Narender Chadha & Ors. v. Union of India & Ors., AIR 1986 SC 638; Molly Joseph @ Nish v. George Sebastian @ Joy, AIR 1997 SC 109; Jose v. Alice & Anr., (1996) 6 SCC 342; and T. Srinivasan v. T. Varalakshmi (Mrs.), AIR 1999 SC 595). This concept is also explained by the legal maxims "*Commodum ex injuria sua nemo habere debet*"; and "*nullus commodum capere potest de injuria sua propria*". (See also: Eureka Forbes Ltd. v. Allahabad Bank & Ors., (2010) 6 SCC 193; and Inderjit Singh Grewal v. State of Punjab & Anr., (2011) 12 SCC 588).

22. Thus, it is evident that the appellant has acted with malice along with respondent and held that it was not merely a case of discrimination rather it is a clear case of victimisation of respondent No.1 by School Management for raising his voice against exploitation.

23. After going through the material on record and considering the submissions made by learned counsel for the appellant and the respondent No.1-in-person, we do not find any cogent reason whatsoever to interfere with the aforesaid findings of fact."

19. Relying upon aforesaid decision of the Hon''ble Apex Court, even this Court in case of Upleta Nagarpalika v. Amrutaben Devshibhai Vadher rendered in SCA No.13468 of 2012, decided on 3.12.2012 wherein, dismissing the petition of Nagarpalika, the Court has considered the aforesaid decision and held in Para.6 as under :

"6. It appears from the record that the petitioner-Municipality has itself issued appointment order on 11.10.1994 to the respondent-workman, which is apparent from mark 12/1 and now the petitioner-Municipality cannot take advantage of his own wrong. Therefore, in view of the principle laid down in the case of

Yogeshbhai Ambalal Patel and another(Supra), the present petition deserves to be dismissed and the same is accordingly dismissed. "

19.1 In the facts on hand also, similar plea which is tried to be taken by the petitioners authority is not amenable.

20. Though from the material on record it appears that this petition is basically under Article 227 of the Constitution of India, however, if it is to be treated as a petition under Article 226 of the Constitution of India then also, in view of the background of facts and material on record and the principle laid down by series of decisions, no different conclusion is possible to be taken and therefore, irrespective of Article 227 or Article 226 of the Constitution of India, this Court is constrained to take the view which is expressed under.

21. For this proposition, the Court is taking aid of proposition of law on the issue of judicial review in exercise of powers under Article 226 of the Constitution of India as laid down by the Hon"ble Apex Court in case of State of U.P. & Anr. v. Johri Mal, reported in AIR 2004 SC 3800. Relevant observations of the said decision are in Para.30 which reads, thus:

"30. It is well-settled that while exercising the power of judicial review the Court is more concerned with the decision making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the Court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the Tribunal or the decision of the fact finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision maker's opinion on facts is final. But while examining and scrutinizing the decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the Court of judicial review can re appreciate the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touch-stone of the tests laid down by the Court with special reference to a given case. This position is well settled in Indian Administrative Law. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of facts by the decision maker."

22. In view of above-mentioned circumstance prevailing on record and analysing all material on record and the contentions raised by the respective parties and in consideration of ratio laid down by various decisions cited before this Court, this Court is of the opinion that only one conclusion can safely be arrived at is not to disturb the award passed by the learned Presiding officer of the Labour Court. If the stand taken by the petitioners is allowed to be accepted, it would nothing but

miscarriage of justice and any conclusion in their favour would violate the well recognised principles as propounded by series of decisions referred to above. Therefore, this Court is left with no alternate but to dismiss the petition and accordingly, the present petition is dismissed by vacating the interim relief, if operative so far. Rule is discharged.