

(2011) 07 GUJ CK 0082
In the Gujarat High Court

Case No : Letters Patent Appeal No. 2626 of 2010 in Special Civil Application No. 11393 of 2000

Dashratbhai Naranbhai Tadvi and Others APPELLANT
Vs

Secretary and Another RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Citation : (2011) 07 GUJ CK 0082

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : T.H. Sompura, for the Appellant; N.J. Shah, Asstt. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Shah, J.—We have heard learned Counsel Mr. T.H. Sompura, for the Appellants and learned Assistant Government Pleader Mr. N.J. Shah, for the Respondents.

2. Being aggrieved and dissatisfied with the order passed by the learned Single Judge dated 16.8.2010 in Special Civil Application No. 11393 of 2000, the Appellants have preferred this Letters Patent Appeal on the grounds stated in the memo of appeal.

3. Brief facts of the present Appeal are that the Appellants- Petitioners are daily wager workmen working under the Respondent No. 2. There were different associations of such workers and due to several demands raised by them, one man Committee under chairmanship of Shri Dolatbhai Parmar, the then Minister of Roads and Buildings Department, came to be appointed by the State Government. On 1st October 1988, a bi-parte agreement came to be entered into between the Government and different Associations whereby all the demands were accepted.

3.1. Pursuant to the agreement dated 1.10.1988, the Government issued

Resolution dated 17.10.1988 wherein the Scheme for regularization of the daily wagers according to their period of service came to be framed. Though it was agreed upon by and between the parties that those daily wagers who have passed SSC examination, should be taken on regular establishment of Class III posts, the Government issued Resolution dated 10.11.1997 wherein it was provided that such SSC pass daily wagers will be taken on regular establishment of Class-III posts. A clarification to the said Government Resolution was issued on 21.1.1998, whereby the daily wagers who passed the SSC examination before 31.12.1990 were to be placed on work-charge establishment. Thereafter, the Government issued a letter dated 23.5.2000, imposing the same restriction as mentioned in letter dated 21.1.1998.

3.2. The Appellants who were working with the Respondents since more than several years have not been taken on work-charge establishment. Therefore, the Appellants preferred Special Civil Application No. 11393 of 2000 before this Court for being quashed and set aside the executive instructions dated 10.11.1997, 21.1.1998 and 23.5.2000 and also the Appellants sought direction, directing the Respondent No. 2 to take the Appellants on regular establishment on and from their passing the SSC examination with all consequential and incidental benefits. The learned Single Judge vide judgment and order dated 16.8.2010, dismissed the said petition on the ground that the Appellants were appointed on daily wage basis and therefore, they cannot claim right of regularization.

4. The learned Counsel for the Appellants submitted that the learned Single Judge has failed to appreciate that the Petitioners were not praying for regularization but, as such, they have prayed to direct the Respondents to give certain benefits which are already conferred upon them on papers. He has further submitted that the benefits asked for by the Appellants should be given in reality instead of being on papers without any fruitfulness.

5. We have considered the above-referred submission made by the learned Counsel for the Appellants and the documentary evidence forthcoming on record. We have carefully perused order dated 1.3.2001 passed by the learned Single Judge in Special Civil Application No. 5248 of 2000 to Special Civil Application Nos. 889 to 939 of 2001, which is at page Nos. 101 to 105. Referring the order dated 18.8.2010, in our view, the learned Single Judge has covered all the above-referred contentions raised by the learned Counsel for the Appellants/ original Petitioners, the same reads as under:

2. The Petitioners are daily wager workmen working under the Respondent No. 2 - Department since last more than 15 to 20 years. There are different associations of such workers and due to several demands raised by them, a committee came to be appointed by the State Government. On 01.10.1988, a bi-partite agreement came to be entered into between the Government and different Associations whereby all the demands were accepted. Pursuant to the agreement dated 01.10.1988, the Government issued Resolution dated 17.10.1988 wherein the scheme for regularization of the daily wagers according to their period of

service came to be framed. Though it was agreed upon by and between the parties that those daily wagers who have passed SSC examination, should be taken on regular establishment of Class III posts, the Government issued Resolution dated 10.11.1997 wherein it was provided that such SSC pass daily wagers will be taken on work charge establishment. A clarification to the above Government Resolution was issued on 21.01.1998, whereby the daily wagers who passed the SSC examination before 31.12.1990 were to be placed on work charge establishment. Thereafter on 23.05.2000, the Government has issued a letter whereby the same restriction are placed as mentioned in letter dated 21.01.1998. The aforesaid executive instructions dated 10.11.1997, 21.01.1998 and 23.05.2000 are violation of the agreement. Hence, this petition.

3. Learned advocate for the Petitioners submitted that in view of agreement dated 01.10.1988 between the State Government and Petitioner-Union and in view of Clause 3 of the said agreement, the Petitioners are entitled to regularization. He further contended that the Petitioner being S.S.C pass are entitled to the benefit from the deemed date.

4. Learned Assistant Government Pleader appearing for the Respondent-State that in view of decision in case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and submitted that Petitioners are not entitled for regularization. She further invited attention of the decision rendered in Special Civil Application No. 5248 of 2000 with Special Civil Application Nos. 889 to 939 of 2001 filed by the Gujarat Rajya Jahar Bandhkam Majoor Mandal, Union representing cases of workman who have passed Secondary School Certificate Examination after 31.12.1990 and the same was dismissed.

5. After hearing and perusal of the record, it is found that the Petitioners were appointed as daily wagers.

6. In view of decision in the case of Secretary, State of Karnataka and Ors. v. Umadevi and Ors. reported in (2006) 4 SCC 1, it is held as under:

Merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right.

7. Admittedly, the Petitioners were appointed on daily wage basis and they cannot claim any right of regularization. In view of the above decision, the Petitioners are not entitled for any relief. The petition stands dismissed. Rule is discharged. Interim relief, if any, stands vacated.

6. We found ourselves in agreement with the above-referred findings of the

learned Single Judge and there appears no infirmity or illegality committed by the learned Single Judge in the above-referred order. Accordingly, this Appeal fails and is dismissed with no order as to costs.