

(2010) 07 GUJ CK 0058
In the Gujarat High Court

Case No : Special Civil Application No's. 2015 of 2001, 13000 and 13995 of 2003 and 873, 1372 and 8371 of 2004

Deputy Executive Engineer

APPELLANT

Vs

Babubhai Barsibhai Gamit

RESPONDENT

Date of Decision : 28-07-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : (2010) 07 GUJ CK 0058

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

Bench : Single Bench

Advocate : J.V. Bhairavia, in S.C.A. No. 2015/2001, for the Appellant;

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.

All these petitions involve common questions on law and facts and therefore, they are disposed of by this common judgment.

1. In these petitions, the petitioners have challenged the impugned awards passed by the Courts below, whereby, they have directed to place the concerned workmen on time-scale, having completed 180 days of service and to grant other ancillary benefits.

2. The issued involved in this petition is covered by a decision of this Court rendered in S.C.A. No. 393/2000 dated 27.01.2000, which reads as under;

1. This is a petition under Article 227 of the Constitution of India though styled as one under Articles 14, 226 and 227 of the Constitution.

2. Before proceeding further on the merits of the matter it is desirable to keep in mind the observations of the Supreme Court in the case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, and Khalil Ahmed Bashir Ahmed Vs. Tufelhussein Samasbhai Sarangpurwala, on the question of the scope and ambit of the

jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution. The Supreme Court has observed in the aforesaid two cases that the High Court, while examining a petition under Article 227 of the Constitution of India, cannot reappreciate the evidence and cannot disturb the findings of fact recorded by the courts below except where the same are perverse, and even errors of law cannot be corrected.

3. The only contention raised herein is in the context of the observations and findings recorded by the Industrial Tribunal, that in paragraph 7 of the impugned judgement, the Tribunal has interpreted the earlier settlement dated 23rd November 1984, and in that context found that those persons who find a place on the select list of daily wagers who have been given work in the place of workmen appointed on a regularly sanctioned post, and where such daily wagers have put in 180 days as specified in the said settlement will be taken on the regular time scale. The petitioner had occasion to file the reference since he was not given the benefit of regular time scale although, according to him, he was qualified. The Labour Court, therefore, after interpreting the said settlement and in view of the undisputed facts on record, allowed the reference.

4. It is pertinent to note that neither side has led any oral evidence and that the respondent Corporation has not produced any documentary evidence whatsoever as regards the attendance of the workman. On the other hand the workman had filed Exh.6 in the list of documents pertaining to his attendance.

5. There is no dispute that the workman was a reliever watchman and that he has been working as such for over 20 years. The Tribunal found on the facts of the case that he has put in more than 180 days and therefore at least this condition is satisfied.

6. The only contention raised before me by learned Counsel for the petitioner is that the Tribunal has not considered the other conditions imposed by the settlement under reference viz. that the workman should have been on the select list, and that he should have been assigned for work against persons on regularly sanctioned post. It may be that the Tribunal has not specifically discussed this issue for the simple reason that this contention was not raised before it in the present form. However, from the discussion found in the impugned judgement and award it becomes obvious that the basic facts pertaining to these questions were not in dispute. It was not in dispute that the workman was a reliever watchman, and that he was being assigned work as and when necessary, when the regular watchman was not available. It has never been the petitioner's case that the workman was not assigned work in the place of a person who was not a regular employee. Both the sides have taken the situation for granted, and the entire matter was contested before the Tribunal on the basis that the regular watchmen, on account of whose absence such reliever watchman came to be employed, were employees who were regular employees in a regular time scale. Secondly it was never a specific case put up by the petitioner before the Tribunal that the workman's name did not figure on the list of such reliever watchmen

who would be offered employment as and when required. It is obvious that a select list, in the context of the present circumstances, could only mean a select list of such casual workmen who would be offered work when the regular employees in the regular time-scale happen to be absent. Thus, the list of such daily wagers or a list of such casual workmen would be the select list in the context of the relevant clause (Clause 20) of the settlement in question which has been discussed and relied upon in the impugned judgement and award.

7. The Tribunal has also referred to and relied upon an earlier judgement and award delivered by the Industrial Tribunal, Rajkot cited in paragraph 10 of the present judgement and award, and noted that 32 such reliever-watchmen have been granted a regular time-scale, and that the said award has been implemented by the petitioner Corporation. In the light of this fact viz. that 32 such reliever watchmen have been granted a regular time-scale, the Tribunal had occasion to note that the Corporation has made no submission whatsoever. Thus, if the petitioner Corporation has chosen to grant a regular time scale to 32 such reliever watchmen, based upon the earlier Award referred to hereinabove, there is no reason why the present respondent workman should not have been granted the same benefit.

8. In the premises aforesaid, there is no substance in the present petition and the same is, therefore, summarily dismissed.

3. The aforesaid order was challenged in L.P.A. No. 905/2000. However, the same came to be dismissed vide order dated 12.03.2001. Against the said order, SLP (Civil) No. 12607/2001 was filed before the Apex Court, which, also came to be dismissed vide judgment and order dated 10.08.2001.

4. In view of the above, this group of petitions also stand rejected. Rule is discharged. Interim relief, if any, stands vacated.