
(1998) 01 GUJ CK 0008
In the Gujarat High Court

Dinubhai Revabhai Vankar

APPELLANT

Vs

President, Talod Nagar Panchayat

RESPONDENT

Date of Decision : 23-01-1998

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 227, 311, 40
Industrial Disputes Act, 1947 — Section 25F, 33C(2)

Citation : (1998) 3 GLR 2193

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

Bench : Single Bench

Judgement

S.K. Keshote, J.—In both these matters identical facts and issues have been raised and as such the same are being decided by this common order. Notice has been issued to the respondents in these matters and reply to the Special Civil Applications has also been filed, but none is present to make oral submissions on behalf of the respondent. The respondent is Talod Nagar Palika, but it is unfortunate that it is unrepresented before This Court though it has engaged Advocate and paid fees.

2. The facts of the case are taken from Special Civil Application No. 7920 of 1997. Petitioner was engaged as peon on daily wages by the respondent on 1-7-1992. The petitioner filed application u/s 33-C(2) of the Industrial Disputes Act, 1947 in the Labour Court at Himatnagar for the claim of permanency, continuity of service and regular pay-scale of the post. The respondent entered into compromise with the petitioners and in terms of the compromise the Labour Court passed order on 29th November, 1996 under which the respondent was ordered to give to the petitioners all benefits of service from 1-1-1997 as permanent employees. The grievance of the petitioners is that the respondent did not implement the order of the Labour Court, Himatnagar. It is further stated that the respondent informed the petitioners that the order passed by the Labour Court, Himatnagar be treated as cancelled as the respondent had agreed to the award by mistake. The respondent filed application before the Labour Court, Himatnagar for recalling of its order dated 29th November, 1996, but that

application came to be dismissed on 30th April, 1997. Under the order dated 15th September, 1997 the services of the petitioners were terminated. Hence, these Special Civil Applications before This Court.

3. First prayer has been made by the petitioners for direction to the respondent to treat the petitioners as continued in service as permanent employees in accordance with the order passed by the Labour Court. The second prayer has been made by way of interim relief that pending final hearing and disposal of these petitions the respondents be directed to maintain status quo and allow the petitioner to resume his duties. In Special Civil Application No. 7922 of 1997 prayer has been made to declare the order dated 15th September, 1997 under which the services of the petitioner were terminated to be as non-est. Though services of both the petitioners were terminated, in one case prayer has not been made for setting aside the order of termination but in the other case that prayer has been made.

4.1 may first deal with Special Civil Application No. 7920 of 1997. In Special Civil Application No. 7920 of 1997 admittedly services of the petitioner were terminated under order dated 15th September, 1997 and he was not allowed to join his duty on 16th September, 1997. In para 8 of the Special Civil Application the petitioner admitted this fact that respondent had sent order of termination of his services by registered post at his home address. He further stated that he is not in possession of that order as he got it refused by his family members. So the petitioner in this case got this letter, but refused to receive through his own family members, and as such the plea that he has not received that letter cannot be accepted.

5. Learned Counsel for the petitioners contended that the petitioners being permanent employees by law of the respondents, their services could not have been terminated summarily. The action of the respondents to terminate the services the petitioners is in violation of Articles 311, 40 and 21 of the Constitution of India. It has next been contended that the action of the respondents is also mala fide and is afflicted by mala fide motives, and in case this action of the respondent is allowed to stand, it will deprive the petitioners of their right of livelihood and bring them nearer to starvation.

6. From the contentions raised orally as well as raised in para 9 of the Special Civil Applications it is clear that the termination of service of the petitioners has been challenged. As none is present on behalf of the respondent, I have to take the contentions raised in the reply filed on behalf of it. The respondent has come up with the case that the compromise has been entered into by mistake. The application has also been filed before the Labour Court, Himatnagar, for review of the order of the Labour Court, but the same has been rejected. In the alternative, respondent contended that the petitioners are giving wrong interpretation to the order of the Labour Court. The order of the Labour Court is only to the extent of giving benefits of permanent employees to the petitioners. But that does not mean that the petitioners became permanent employees of the

respondent. For becoming permanent employees of the respondent, it is stated by the respondent in the reply that due procedure is required to be followed. Permanent appointment can be made only against sanctioned post and that too after approval of the Director of Municipalities. No vacant post is there in the respondent-Municipality. It has further been stated that the petitioners have not been appointed after following due procedure of law. They were not appointed after being selected by the duly constituted selection committee, nor any approval was obtained for appointing the petitioners as daily wagers. In the year 1992 the then President arbitrarily appointed 22 persons on daily wagers without there being any sanctioned post and/or obtaining necessary approval from the Director of Municipalities, which is required to be obtained under the provisions of the Gujarat Municipalities Act. Reasons for termination of services of the petitioners have also been given elaborately. Termination of the services of the petitioners has been necessitated for the reason that it results in incurring extra expenditure than what it has been sanctioned by the Government. The financial position of the Municipality was not sound. This is another ground given for termination of the services of the petitioners. It has further been stated that not only the petitioners but many other employees have also been retrenched. Audit objection is raised and thereafter under resolution No. 82 dated 30th October, 1997 it was resolved by the Municipality to retrench the employees who are on daily wages after payment of notice pay as well as retrenchment benefit. Provisions of Section 25F of the Industrial Disputes Act, 1947 have been complied with as stated by the respondent. The benefit of permanency etc., could have been available only to those daily wages employees who were appointed prior to 1-1-1989.

7. The petitioners have not filed rejoinder to the reply filed by the respondent, and as such the averments made therein stand uncontroverted.

8. As whole of the petitioners' case based on the order of the Labour Court, Himatnagar, passed on the basis of the settlement between the parties, and further the petitioners have prayed for enforcement of the judgment of the Labour Court, and the respondent has come up with the case by mistake the said settlement has been arrived at, it has become necessary for This Court to examine the validity of the said order. It is true that the respondent has not challenged the order of the Labour Court by taking appropriate legal remedy. But it is equally true that the respondent has not accepted that order on the ground that by mistake the compromise has been entered into; and review petition was filed by the respondent, but it is a different matter that the Labour Court has dismissed the same. The necessity to examine the validity of this order has arisen for the reason that sitting under Article 226 of the Constitution of India This Court can only enforce legal and lawful orders of the Labour Courts. Secondly, as on the basis of this order the petitioners claim status of permanent employees and challenge to termination of their service, it is necessary to examine the validity of this order.

9. The facts are not in dispute that the petitioners were appointed on daily wages without there being sanctioned posts, even on daily wages. Without any selection and sanction of the Director of Municipalities to the expenditure under the head of salaries as prescribed by the Government these 22 appointments of daily wagers have resulted in exceeding the sanctioned budgets under the head. The audit has raised objection and on that basis the Municipality has taken decision to retrench excess staff who are on daily wages.

10. The petitioners were appointed on daily wages on 1-7-1992. Application u/s 33-C(2) of the I.D. Act, 1947 appears to have been filed on 21st December, 1994. The financial condition of the Municipality is not sound. Provisions of Section 25F of the Act have been complied with before terminating the services of the petitioners.

11. In the case of Municipal Corporation of Delhi Vs. Ganesh Razak and Another, , the Apex Court held that where the very basis of claim of entitlement of workmen to certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of proceedings u/s 33-C(2) of the Act. The Apex Court further held that the Labour Court has no jurisdiction to decide the workmen's entitlement and then decide to compute the benefit so adjudicated on that basis in exercise of powers u/s 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that is treated as incidental powers of Labour Court u/s 33-C(2) of the I.D. Act, 1947 like that of the executing Court. The power of the Labour Court u/s 33-C(2) of the I.D. Act, 1947 extends to interpretation of the award or settlement on which the workmen's rights rest. In the case before the Apex Court the claim of the respondent-workmen who were daily wagers/casual workers was for wages to be paid to them at the same rate as regular workers are being paid. That claim of the respondent-workmen therein had not been earlier settled by adjudication or recognition by the employer. The workmen's claim of doing same kind of work and their entitlement to pay wages at the same rate as regular workman on the principle of equal pay for equal work being disputed and without adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of benefits on that basis u/s 33-C(2) of the I.D., Act, 1947. So in the present case also claim of the petitioner as daily wagers was for getting the status of permanency as well as regular pay-scale, which was not earlier adjudicated and recognised by the Nagar Palika.

12. The petitioners haven't come up with the case nor have they produced on record any resolution of the Nagar Palika that it has been decided by it to regularise their services. Not only this, the petitioners failed to produce on record of the Special Civil Application any statutory Act or Rules or any resolution of the State Government which provides for giving permanent status to the petitioners

who were appointed on daily wages and further to give them regular pay-scale. The claim is only on the basis of the order passed by the Labour Court in the proceedings u/s 33-C(2) of the I.D. Act, 1947 on the basis of the terms of the compromise pursis. From the reply of the respondent it transpires that even pursis has been passed by the Chief Officer. The respondent is not accepting that order also to be correct as under erroneous impression the pursis has been passed as only those employees who were working prior to 1-1-1989 were entitled to be given the benefit of permanent employees. It is true that the review petition has been dismissed. But in the absence of any prior adjudication as well recognition of the rights of the petitioner by the Municipality in accordance with law, only on the basis of the terms of compromise pursis order has been passed in the proceedings u/s 33-C(2) of the Act, which cannot be enforced by This Court. The respondent cannot enter into compromise, otherwise also contrary to the Acts and the Rules and settled position of law. The services of daily wagers could have been regularised only when it is permissible under some statute or rule or resolution of the Government. The Government provides grant-in-aid to the respondent and in such matter before entering into such a compromise and putting financial burden on the Government it was obligatory on the part of the respondent to take prior sanction of the Government for entering into such compromise with daily wagers. It is people's money with which the Municipality runs, and that money cannot be permitted to be squandered away only for giving benefit to those daily wagers who have been inducted by back-door entry by the then President of the Nagar Palika. The daily wagers have no right to the post nor they can be on a better pedestal than temporary Government servants. It is settled law that a temporary Government servant does not become permanent unless he acquires that right by force of any rule or declared as permanent servant. Declaration of permanent service may have been also only in accordance with law and not by mere will or desire of the then Chief Executive Officer of the Nagar Palika or by the Nagar Palika itself. The petitioners have not controverted the position that by mistake compromise pursis has been passed. Secondly, only those daily wagers who were appointed prior to 1-1-1989 could have been given those benefits is also not controverted. In presence of these uncontroverted facts the terms of those compromise pursis passed by the respondent is certainly an error, though it is a different matter that the Labour Court, Himatnagar has not entertained the review application. Filing of the review petition by the respondent further fortifies the fact that it was not an order passed on the basis of the legal compromise pursis passed by the Chief Executive Officer. Not only this, on 21st February, 1997 this has been made clear to the petitioners that the respondents cannot implement the terms of the award as it had agreed to the award by mistake. Taking into consideration totality of the facts of this case the order passed by the Labour Court on the basis of the terms of compromise pursis in the proceedings u/s 33-C(2) of the Act cannot be said to be legal and just, and as such This Court sitting under Article 226 of the Constitution of India cannot enforce the same. It is equally settled law that even This Court sitting under Article 226 of the Constitution of India cannot pass

orders in matters contrary to the provisions of law and how far it is open to the respondents to enter into compromise with daily wagers contrary to law, Act or the Rules or any Government Resolution which has not conferred any such benefit of permanency or regular pay-scale on daily wagers of the category to which the petitioners belong.

13. It is a fit case where This Court should exercise powers under Article 227 of the Constitution and the order of the Labour Court dated 29th November, 1996 is taken in suo motu revision and the same is quashed and set aside.

14. Now, I may revert to the next question raised by the Learned Counsel for the petitioners regarding validity of the order of termination of the petitioners' services. Petitioners are daily wagers and their entry in service was nothing but a back-door entry. Facts stated in the affidavit-in-reply, as noticed earlier, are uncontroverted. Appointment of the petitioners and 20 other daily wagers by the then President of the Nagar Panchayat results into heavy expenditure. It exceeded the permissible limits of expenditure, and in the audit objection it was found to be adversely affecting the financial condition of the Nagar Palika. Thus, the Municipality was within its competence to resolve to retrench these class of persons.

15. The financial condition of the Municipality was also not good. It is not the case where only the petitioners in these petitions have been picked up. Other persons have also been retrenched. The provisions of Section 25F of the Act have also been complied with and in the facts which have come on record of the Special Civil Applications retrenchment of the petitioners cannot be said to be illegal or arbitrary which calls for interference of This Court under Article 226 of the Constitution of India. Daily wagers have no right to the post and their services can be terminated at any point of time. In fact their service come to an end on the very same day, and in such cases order of termination is not required to be made. Still the respondent has acted very fairly and provisions of Section 25F of the I.D. Act have been complied with. None of the legal or fundamental rights of the petitioners have been infringed. On the other hand in case termination order is quashed and set aside then This Court will perpetuate the illegality, i.e., it will continue daily wager appointments which have been made through back-door entries. Further, This Court will not put additional financial burden on the respondent. Money which has to be utilised by the respondent for welfare of the people cannot be allowed to be used for paying salaries to excess staff. Merely because at one point of time the then President of the Nagar Palika has favoured his own persons, those persons cannot be allowed to continue at the cost of the people's welfare.

16. In the result both these Special Civil Applications fail and the same are dismissed. Notice discharged. No order as to costs.