

(2014) 08 GUJ CK 0091

In the Gujarat High Court

Case No : Special Civil Application No. 10908 of 2014

Divisional Controller, Gujarat State Road Transport Corporation

APPELLANT

Vs

Ghanshyamsinh Pratapsingh Parmar

RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Citation : (2015) 144 FLR 36 : (2015) 2 GLR 1094 : (2015) 3 SCT 336

Hon'ble Judges : Paresh Upadhyay, J

Bench : Single Bench

Advocate : Hardik C. Rawal, Advocates for the Appellant; Krutarth K. Pandya, Advocates for the Respondent

Judgement

Paresh Upadhyay, J.—Rule. Mr. Pandya, learned advocate waives service of rule on behalf of the contesting respondent - Workman.

Heard Mr. Hardik C. Rawal, learned advocate for the petitioner-Corporation and Mr. Krutarth K. Pandya, learned advocate for the contesting respondent-Workman.

Challenge in this petition is made to the award passed by the Industrial Tribunal, Rajkot in Reference (I.T.) No. 81 of 2012 dated 20.12.2013, whereby the reference is allowed, and the respondent workman is ordered to be treated as the regular driver on the time scale, since year 1998, with all consequential benefits, including: arrears for these 15 years.

2. Learned advocate for the petitioner has submitted that, the respondent used to come as Badli Driver since 20.5.1998, and was given work by the Corporation, as and when regular drivers were not available, or as a reliever etc., and ultimately he was engaged as a regular daily wager driver in the year 2008, and as per the policy of the Corporation, he was taken on the regular establishment in the pay scale with effect from 30.6.2008. It is submitted that thereafter, in the year 2012, the workman approached the Industrial Tribunal asserting that, the

action of the Corporation of taking him on the pay scale with effect from 30.6.2008 was illegal, and he ought to have been so taken in the year 1998 itself, on completion of 180 days. It is submitted that, there was inordinate delay on the part of the respondent workman. It is further submitted that, apart from delay, even on merits, he was not entitled to the benefits, which was claimed by turn. It is further submitted that, there will be huge financial burden on the Corporation, since, arrears for 15 years is ordered to be paid by the Tribunal, that too for the benefit which the respondent is not entitled to. It is submitted that, the impugned award be quashed and set aside.

Learned advocate for the petitioner Corporation has invited the attention of this Court to the judgment of this Court, recorded on Special Civil Application No. 10974 of 1993 and cognate matters dated 20.9.2004, and the order of the Division Bench of this Court, recorded on Letters Patent Appeal No. 1544 of 2005 dated 13.12.2005, confirming the said judgment of learned Single Judge. It is submitted that, the policy which was considered by this Court in that matter and the policy which has led to passing of the present order by the Tribunal is identical. Attention of this Court is also invited to Para 3 of the impugned award of the Tribunal, wherein Clause 20 of the settlement in question is quoted by the Tribunal. It is submitted that, when the Badli Driver is appointed, after completion of 180 days his case is to be considered, to take him on the regular establishment, in striatum, keeping in view the availability of regular posts. It is submitted that; thus there are three stipulations under the said policy. It is contended that, the impugned award of the Tribunal demonstrates that, out of these three stipulations, only one stipulation was taken as the fulfilment of the eligibility of the respondent workman, and that is how there is misreading of the settlement by the Tribunal, which has led to passing of the impugned award, which be quashed and set aside.

3. On the other hand, Mr. Pandya, learned advocate for the contesting respondent workman has submitted that, the respondent was initially engaged on 20.5.1998 and therefore, on completion of 180 days, he ought to have been granted such benefit by the petitioner Corporation, which was not granted by it, but the same is granted by the Tribunal, and the Tribunal has not committed any error by doing so. It is submitted that, no interference be made by this Court. It is submitted that, this petition be dismissed.

4. Having heard learned advocates for the respective parties, and having gone through the material on record, this Court finds as under.

The petitioner Corporation and workers Union had entered into a settlement Clause 20 of the said settlement is relevant for this petition, which is quoted in Para 3 of the impugned award of the Tribunal. It provides that, the case of a daily wager, shall be considered to take him on the regular time scale, keeping in view the availability of confirmed vacant posts of the respective cadre. There is further stipulation that, the said consideration would be on the basis of the inter-se seniority of such daily wagers. Thus there are three fold stipulations under the

said policy. The respondent workman claimed benefit under the said settlement. It was asserted by him that, he had completed 180 days in the year 1998 and therefore, he ought to have been granted such benefit in the year 1998 itself. This assertion was accepted by the Tribunal as it is. The final award is based on the finding recorded by the Tribunal in para 13 of the award, which is based on the misreading of the relevant clause of the settlement. The Tribunal has considered, as if there was only one stipulation in the said settlement, that as and when the concerned workman completes 180 days as a daily wager, he is entitled to claim the regular time scale. The Tribunal has recorded that, since the initial date of appointment of the respondent as a daily wager was 20.5.1998, on completion of 180 days counting from the said date, he is entitled to get the said benefit. This finding of the Tribunal is based on misreading of Clause 20 of the settlement, since, out of the three stipulations, as noted above, it considered only one stipulation. Thus, two of the total three stipulations are not taken into consideration by the Tribunal, leading to perversity and illegality. For this reason, the impugned award needs to be set aside.

Further, learned advocate for the petitioner Corporation is right in his contention that, the judgment of this Court in Special Civil Application No. 10974 of 1993 dated 20.9.2004 should apply with full force in the present case. In the said petition, this Court was dealing with identical question and in substance, it was held that, mere completion of 180 days, was not sufficient to claim, such benefit. Availability of posts and the inter-se seniority of such daily wagers are also relevant parameters. Further, the said judgment is confirmed by the Division Bench of this Court in the Letters Patent Appeal No. 1544 of 2005 vide order dated 13.12.2005. Thus, the parameters i.e. completion of 180 days, availability of regular vacant posts, and inter-se seniority of such claimants, all these three parameters ought to have been taken into consideration by the Tribunal which it has not, in this case. The award of the Tribunal is thus, unsustainable.

Since the impugned award of the Tribunal is found to be illegal and unsustainable on merits, the question of delay in approaching the Tribunal by the workman may not have much relevance in the facts of this case, however it needs to be observed that, if the concerned employee was right in his assertion that on completion of 180 days, counting from 20.5.1998, he ought to have been granted such benefit, then there was delay of about 14 years in approaching the Tribunal. This aspect should not have been overlooked by the Tribunal. This Court finds that, there is no discussion in that regard in the impugned award of the Tribunal. On this additional ground of delay as well, the respondent workman had dis-entitled himself from getting at least arrears, unless specific reasons to do the contrary are recorded by the Tribunal, which it has not.

Considering the totality, it is held that, the impugned award of the Tribunal is illegal and unsustainable, and the same needs to be quashed and set aside.

For the reasons recorded above, this petition is allowed. The impugned award passed by the Industrial Tribunal, Rajkot in Reference (I.T.) No. 81 of 2012 dated

20.12.2013 is quashed and set aside. Rule is made absolute. No order as to costs.