

(2011) 08 GUJ CK 0028
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1221 of 2011 in Special Civil Application No. 2938 of 2011 with Letters Patent Appeal No. 1222 of 2011 in Special Civil Application No. 2941 of 2011 To Letters Patent Appeal No. 1223 of 2011 in Special Civil Application No. 2942

Gondal Nagarpalika

APPELLANT

Vs

Dinesh Ravjibhai Pambhar

RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33(2)
Industrial Employment (Standing Orders) Act, 1946 — Section 13A

Citation : (2012) 134 FLR 984 : (2012) 1 GLH 523 : (2012) 3 LLJ 547

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

Bench : Division Bench

Advocate : Yatin Soni, for the Appellant; Shakeel A. Qureshi for Respondent : 1, for the Respondent

Judgement

MR. V. M. Sahai, J.—We have heard Mr. Yatin Soni, learned Counsel for the appellant and Mr. Shakeel A. Qureshi, learned Counsel appearing for the respondents. With the consent of the learned Counsel for the parties, we have taken up these Letters Patent Appeals for final disposal at the admission stage. The respondent workmen had filed application before the Labour Court, Rajkot for interpretation of nature of work performed by them u/s 13A of the Industrial Employment (Standing Orders) Act, 1946. By judgment dated 12.9.2001, it was decided by the Presiding Officer, Labour Court, Rajkot that the nature of work performed by the respondent workmen was of permanent nature. Thereafter the respondent workmen filed Recovery Application being No. 139 of 2002 u/s 33 (c) (2) of the Industrial Disputes Act, 1947 (for short, "the Act") which was allowed by the Labour Court by order dated 4.12.2010. This order was challenged before the learned Single Judge by way of filing Special Civil Application No. 2938 of 2011 with Special Civil Application No. 2941 and 2942 of 2011. The learned Single Judge by order dated 18.7.2011 dismissed the Special Civil Applications

on the ground that the order dated 12.09.2001 was not challenged. This order is challenged in these Letters Patent Appeals.

2. It may be that work of the respondent workmen was of permanent nature but whether the employee was a daily wager, temporary or permanent employee has to be adjudicated and decided by the Labour Court and unless such adjudication takes place u/s 10 of the Act, till then, in our opinion, the respondent workmen could not claim that they are permanent employees and they are entitled to wages and allowances that of permanent employees. When the workmen initiated recovery proceedings u/s 33(c)(2) of the Industrial Disputes Act and in the Recovery Application the order has been passed on 4.12.2010 by the Presiding Officer, Labour Court No. 1, Rajkot which was challenged by the appellants before the learned Single Judge in Special Civil Application No. 2938 of 2011 with Special Civil Application No. 2941 and 2942 of 2011 which has been dismissed by the learned Single Judge by order dated 18.7.2011 on the ground that the order dated 12.9.2001 was not challenged and if the order dated 12.9.2001 was not challenged, its only effect would be that it will be deemed in law that the respondents are performing a work which is of permanent nature. But the order dated 12.9.2001 is not declared the respondent workmen to be permanent employees of the appellant for which unless there is interpretation u/s 10 of the Act, no right could be claimed by the respondent workmen. It appears that this important aspect of the matter was not pointed out by the learned Counsel for the appellant properly before the learned Single Judge. Therefore, the writ petitions were dismissed by the learned Single Judge. In the result, these petitions succeed and are allowed accordingly. The order dated 18.7.2011 passed in Special Civil Application No. 2938 of 2011 with Special Civil Application No. 2941 and 2942 of 2011 as well as the order dated 4.12.2010 passed by the Presiding Officer, Labour Court No. 1, Rajkot in the recovery proceedings initiated by the respondent workmen is set aside. It shall be open to the respondent workmen to raise their appropriate claims in proceedings u/s 10 of the Industrial Disputes Act, 1947. The parties shall bear their own costs.