

(2005) 03 GUJ CK 0045

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1180 of 2003 in Special Civil Application No. 5705 of 2001 with Civil Application No. 8716 of 2002 and Civil Application No. 1846 of 2005

Gujarat Housing Board

APPELLANT

Vs

Meenakshiben Bhanushankar Bhatt

RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 17B, 2

Citation : (2005) 105 FLR 1012

Hon'ble Judges : R.S. Garg, J;J.N. Bhatt, J

Bench : Division Bench

Advocate : S.B. Pandit and Shailesh C. Parikh, for the Appellant; I.S. Supehia, for the Respondent

Judgement

J.N. Bhatt, J.—A short but interesting question, which has come to the surface in this Letters Patent Appeal, by invocation of Clause-15 of the Letters Patent, is as to "whether employer of a part-time, or daily-wager or 'ad hoc' appointee or any worker appointed for a stipulated period or for fixed hours (in this case for two hours) without there being regular process of recruitment for any sanctioned post and incompatible to and in contravention of the Recruitment Rules, could be directed by the Labour Court by passing, an award, under the Industrial Disputes Act, 1947 ("I.D. Act") for his service being regularised or to give benefit of permanency in service? This is the entire, lynchpin, of this Writ Petition.

2. With a view to appreciating the merits of this Letters Patent Appeal and the challenge against it, let us first screen and scan through a skeleton projection of factual profile leading to the rise of the appeal on hand i.e.:-

(i) The respondent came to be appointed, on 23-08-1982, as a part-time worker, for on 'ad hoc' basis for two hours work only for 29 days on the monthly honorarium of Rs. 75/= (fixed) by the Appellant-Gujarat Housing Board

("Board"), which is a statutory body and the complete control and administration of which has been essentially operated by the State Government.

(ii) She continued, as such, in the same capacity, working on 29 days for two hours on a fixed honorarium of Rs. 75/= till 31-11-1984 intermittently. The period during which the respondent-employee has worked is, also, placed on record (at Page 69 to state precisely) in the compilation of the appeal.

(iii) During the period of 1984 to 1989, it appears, it is the case of the employer that the respondent-worker joined work, elsewhere, and was gainfully employed. After the lapse of 5 years, the respondent raised the dispute, which was referred for adjudication, as L.C.R. 1394 of 1989. The Labour Court, Rajkot, allowed the reference and declared termination of service of the respondent, as illegal and unauthorised, and at the same time, directed the employer, the appellant before us, to treat the intervening period along with from the date of first joining as a continuous period in service without back-wages.

(iv) Thus, there is a direction to reinstate the respondent in service with all benefits of continuity but without back-wages. This award came to be made by the Labour Court on 30-12-2000, which was assailed, unsuccessfully, in a Writ Petition, being Special Civil Application No. 5705 of 2001 by the appellant by invocation of the provisions of Article 226 and 227 of the Constitution of India. That is how the emergence of this Letters Patent Appeal, at the instance of employer, original petitioner, Board.

3. During the course of the hearing of the rival submissions, the Learned Advocates appearing for the parties have taken us through the relevant and material `viva-voce", as well as, testimonial collections. We have, also, dispassionately examined the impugned, award, as well as, the impugned judgment of the learned Single Judge.

4. In order to consider the merits of the sole point, which is in focus and which We have, manifestly, articulated in the beginning of this judgment, the following factual profile has emerged, unquestionably, from the record of the present Letters Patent Appeal:

(i) The respondent had applied for the post of Junior Clerk-cum-Gujarati Typist. Since there was no such post in existence, at the relevant time, the employer-Board could not accede to the request for regular appointment, as requested in the application made by the respondent, on 31-01-1981, to the Executive Engineer in the Division of Rajkot of the appellant-Board.

(ii) The said application, which is placed on record and which we have scanned threadbare, was processed by the department concerned of the Appellant-Board. The application is self-eloquent, in which, it is specifically articulated that even there is no provision in the Recruitment Rules or any order of the Government, whereupon, even the respondent could be appointed as a part-time Typist with a fixed salary.

(iii) However, it appears from the record that the respondent was given appointment order for the purpose of two hours work, as a Gujarati Typist only on a part-time basis. But in absence of any specific provision, the hourly fixed remuneration or honorarium for the employees of Class-IV in the service of the Government came to be applied and recommended by the concerned Division to the officer concerned of the Estate - Branch of the appellant-Board and accordingly, the respondent came to be appointed only a part-time and 'ad hoc' basis only for two hours work and that too only for 29 days in a month on accepting the recommendations of the officer of the concerned Branch. The appointment order is placed on record in this compilation of the Letters Patent Appeal, (at page 56).

(iv) It appears that, the respondent-employee continued to work for a fixed term of 29 days. The appellant-Board terminated or discharged the respondent-worker w.e.f. 30-11-1984.

5. At this stage, We deem it expedient to refer and highlight, the settled juristic exposition of legal provisions and propositions applicable to such types of appointees and employees like respondent in the present case:

(i) Any appointment, which is 'per-se', 'de-hors' the relevant Recruitment Rules or any statutory provisions, cannot be directed to be a permanent or regular service or employment.

(ii) Even the termination of the service as an outcome of the non-renewal of contract of employment is not protected, being not a retrenchment.

(iii) Similarly, on expiry of or such a contractual appointment being terminated under a stipulation in that behalf contained therein in terms of provision of Section 2(o)(bb) of the Industrial Disputes Act, 1947, is not protected.

(iv) No back-door entry or any entry in the employment based on nepotism or favouritism or in contravention of the Recruitment Rules or established procedure can be upheld.

6. Our attention has been drawn to the Full Bench decision of this Court rendered in "Amreli Municipality Vs. Gujarat Pradesh Municipal Employees Union, 2004 (3) GLR 1841." We have examined the said decision carefully. Similar question was posed before the Full Bench in a reference in view of the three conflicting Division Bench decisions. The Full Bench has, extensively, explored and examined, as many as, 65 decisions and judgments of this High Court, Hon'ble Supreme Court and other High Courts in the back-drop of the such facts, which are, virtually, similar to the factual matrix We have in this Letters Patent Appeal, on hand. Since the relevant law in similarly situated cases has been extensively explored and examined, We would not deem it expedient to discuss all the aspects once again threadbare. We, therefore, propose to highlight the principles of relevant law propounded in the said judgment of Full Bench:-

(i) No regularisation or permanency can be effected 'de-hors' the statutory

provisions or the guidelines.

(ii) Long service put in by the worker itself may not be a ground to regularise service of an 'ad hoc' / temporary workman or employee or contractual appointees, against the sanctioned set up without following statutory or requisite procedure of recruitment. At the most, the Labour Court / Industrial Court could direct for consideration of absorption subject to availability of post on the establishment in an appropriate case.

(iii) To avoid nepotism and corruption, no back-door entry in service should be encouraged.

(iv) Financial capacity of the employer to have additional burden would be a relevant consideration to be kept on the mental radar while ordering for permanency or absorption or regularisation.

7. Mr. Supehia, learned Advocate for the respondent, has not only supported the judgment of the learned Single Judge and the award under challenge, but, also, repeatedly emphasised, the non-maintainability of the Letters Patent Appeal, placing reliance on a decision rendered in the case of "Kanhaiyalal Agrawal and Ors. v. Factory Manager, Gwalior Sugar Company Ltd. AIR 2000 SC 3645". We have, dispassionately, examined the said decision and the submission about the tenability of the Letters Patent Appeal against the order of the learned Single Judge. We have, also, considered the factum that the petition was filed by invocation of the provisions of Articles 226 and 227 of the Constitution of India, as well as, the observations of the learned Single Judge in last but three lines of paragraph-7, typed page 13 of the Judgment, wherein, it is manifestly observed:

".....These are the limitations of powers under Article 226 and 227 of the Constitution of India while examining the award passed by the Labour Court"

8. Similar observation is, also, made in paragraph-6, which we deem it necessary and profitable to reproduce, which reads hereunder:

"6. After perusing the entire award, it reveals that the labour court has discussed each and every aspect and all the evidence which were led before the labour court. Cogent reason given by the labour court in support of its conclusion. The labour court has not committed any jurisdictional error which requires any interference by this Court. However, it is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. The view taken by the Apex Court in *Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union* and Another reported in 2000 SCC [L&S] 471, the Apex Court has held that while exercising the powers under Article 226 and 227 of the Constitution, interference with pure finding of fact and Reappreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Article 226. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has

considered this aspect in case of Sugarbai M. Siddiq and Others Vs. Ramesh S. Hankare (D) by Lrs., the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower court / tribunal but with its decision-making process. High Court must ascertain whether such Court or tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise, not."

9. We have also considered the observations made in paragraphs 5 and 6 by the Hon"ble Apex Court in the decision relied on by Mr. Supheia, learned Advocate. Taking into consideration the observations made by the Hon"ble Apex Court in the aforesaid paragraphs, while viewed in the light of the factual matrix and the observations of the learned Single Judge in the impugned judgement, which we have quoted, hereinbefore, it leaves no any manner of doubt in our minds that the said decision is not at all attracted in this appeal on hand. Therefore, Mr. Supehia, learned Advocate, is unable to make any capital out of the said decision. We are, therefore, left with no alternative but to reject the said submission of Mr. Supehia, learned Advocate.

10. Upon true appraisal and correct evaluation of the entire factual profile and the appropriate and relevant latest legal settings propounded in the Service Jurisprudence from various judicial pronouncements and considered in the said Full Bench decision of this Court, with due respect, the impugned award of the Labour Court and affirmed by the learned Single Judge cannot be confirmed and approved by us in this Letters Patent Appeal, exercising our powers under Clause-15, of the Letters Patent, and, therefore, the impugned award and judgment of the learned Single Judge are required to be quashed and set aside while allowing the Letters Patent Appeal.

11. Before we record our conclusion, Mr. Supehia, learned Advocate, intercepted in the course of the judgment and stated, at the Bar, that the respondent would not like to press the Civil Application, being No. 1846 of 2005, u/s 17-B of the I.D. Act at this stage, which was filed yesterday on the stated ground that the execution of the impugned award is on. Since we have quashed and set aside the impugned award and the judgment of the learned Single Judge, the only legal fate, this Civil Application could meet with, is its rejection. Similarly, in view of the decision of the Letters Patent Appeal, there will not be any orders in another Civil Application, being No. 8716 of 2002, praying for interim relief by the Applicant-Board.

12. In the result, the impugned award and judgment shall stand quashed and set-aside for the elaborate foregoing grounds. The Civil Application No. 1846 of 2005 claiming benefit of Section 17B of the I.D. Act, also, shall stand rejected and there will be no any orders in Civil Application No. 8716 of 2002, having, now, no survival value and Rule shall stand discharged. No order as to costs in any of the matters.