

(2013) 07 GUJ CK 0040
In the Gujarat High Court

Case No : Special Civil Application No. 1946 of 2005

Gujarat Industrial Development Corporation	APPELLANT
Vs	
Revabhai Maganbhai Patel	RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Citation : (2013) 139 FLR 874

Hon'ble Judges : Paresh Upadhyay, J

Bench : Single Bench

Advocate : M.B. Gandhi, for the Appellant; T.R. Mishra, for the Respondent

Judgement

Paresh Upadhyay, J.—Heard Mr. M.B. Gandhi, learned advocate for the petitioner Employer and Mr. T.R. Mishra, learned advocate for the respondent Employee.

Challenge in this petition is made to the award passed by the Labour Court, Ahmedabad dated 23.12.2004 in Reference (LCA) No. 2348/1995, whereby the action of the petitioner Authorities of issuing an order on 18.5.1995, whereby the appointment of the respondent on 28.5.1992 was cancelled, is held to be illegal, and the respondent is ordered to be reinstated in service, with continuity, with 40% back wages.

The facts in brief, as emerging from record, are as under. The petitioner Corporation had, vide its advertisement dated 4.3.1992, invited applications for recruitment on the post of Assistant Manager. There was only one vacancy and it was reserved for Scheduled Tribe candidate. A copy of the said advertisement is on record. The respondent had made an application in response to the said advertisement and in the application form, it was specifically asserted by the respondent that he belongs to Schedule Tribe. A copy of the application form of the respondent is also on record and reference can be made to Column 5 of the said application form. Pursuant to this recruitment occasion and on the basis of the said assertion of the respondent the respondent was appointed as Assistant Manager as a Scheduled Tribe candidate, on the post which was reserved for a

Scheduled Tribe candidate, vide appointment order dated 28.5.1992, which is on record. Condition No. 5 of the said appointment order stipulated that in the event it is found that the caste certificate produced by the appointee is not found to be genuine, the appointment shall stand cancelled immediately. The petitioner Authorities, having learnt that the respondent does not belong to Scheduled Tribe, had moved the competent Authority of the Government in this regard for appropriate inquiry and decision thereon. The Director of Tribal Development, Gujarat State, issued notice to the present respondent and after hearing him, held that the respondent does not belong to Schedule Tribe community. It was further held that he belongs to Leuva Patel community, the caste which is neither Schedule Tribe, nor Scheduled Caste nor even any other Backward Class. The caste certificate obtained by the respondent was therefore cancelled. The order passed by the said Authority in that regard dated 6.3.1995 is on record. The said order was forwarded to the petitioner Authorities for information and doing needful. On the basis of the said order, which was passed by the Competent Authority after hearing the respondent, the petitioner Authority passed the order on 18.5.1995, to the effect that the appointment order dated 28.5.1992 of the respondent stands cancelled. It is this action of the petitioner Authorities which was challenged by the respondent before the Labour Court. Labour Court has set aside the order dated 28.5.1992 on the ground that it was in gross violation of principles of natural justice, which has given rise to the present petition.

2. Mr. M.B. Gandhi, learned advocate for the petitioner has contended that the very foundation of the appointment of the respondent with the petitioner Corporation was his claim that he is a Scheduled Tribe candidate and when that very foundation does not exist, the appointment would fall as the necessary consequence and the petitioner Corporation was under legal obligation to act in the manner in which it has acted and therefore, there was no occasion for the Labour Court to interfere in the said action, much less finding any illegality in it. It is contended that the award passed by the Labour Court is in straight conflict with the settled position of law and therefore, the same needs to be quashed and set aside. It is further contended that the say of the respondent with regard to his caste is already taken into consideration by the competent Authority of the Government and only after hearing him, it was held that he does not belong to Scheduled Tribe. It is contended that the said order of the competent Authority dated 6.3.1995, which has attained finality, is the base of the action of the petitioner and therefore, to expect initiation of regular departmental inquiry or hearing the respondent in that regard again, was legally not required and therefore, the same was not resorted to. It is contended that the very foundation of the Labour Court's award is this alleged lacuna, which is not contemplated under the law. It is therefore contended that the award of the Labour Court be quashed and set aside. It is further pointed out that for all these years, the petitioner Corporation has already made payment to the respondent under the provisions of section 17B of the Industrial Disputes Act, 1947.

3. On the other hand, Mr. T.R. Mishra, learned advocate for the respondent has

contended that even if the entire petition is accepted on its face value, nowhere it is contended what is the infirmity in the award passed by the Labour Court. It is contended that it is an undisputed position that the petitioner Authority had not only not initiated regular departmental inquiry, but even notice was not given to the respondent, and therefore, the findings recorded by the Labour Court to the effect that the termination of the respondent was without following due procedure stands as it is, and therefore, as per the settled proposition of law, no interference be made in the award of the Labour Court. Mr. Mishra, learned advocate further contended that even on the face of this fact, had the petitioner Authorities prayed for permission from the Labour Court to prove charges before it, Labour Court could have considered the same. By referring to the decision of the Hon"ble Supreme Court of India in the case of Karnataka State Road Transport Corpn. Vs. Smt. Lakshmiddevamma and Another, it is contended that even said request needs to be made at the first available opportunity. It is stated that keep aside making such request at the first available opportunity, at no stage, such prayer was made before the Labour Court, and therefore, there was no occasion for the Labour Court to consider such request of permitting the petitioner Authorities to prove such charge against the respondent, even before it. It is contended that having failed on merits before the Labour Court and after having missed to ask for the said opportunity before the Labour Court, at this belated stage, petitioner Authorities cannot be heard On merits. It is contended that considering the totality, this Court may not interfere with the impugned award.

4. Having heard learned advocates for the respective parties and having gone through the material on record, the picture which emerges, on the basis of above stated undisputed facts, is as under. The petitioner Corporation had, vide its advertisement dated 4.3.1992, invited applications to recruitment on the post of Assistant Manager. There was only one vacancy and it was reserved for Scheduled Tribe candidate. The respondent had made an application in response to the said advertisement and in the application form, it was specifically asserted by the respondent that he belongs to Schedule Tribe. Pursuant to this recruitment occasion and on the basis of the said assertion of the respondent, the respondent was appointed as Assistant Manager as a Scheduled Tribe candidate, on the post which was reserved for a Scheduled Tribe candidate. Condition No. 5 of the said appointment order stipulated that in the event it is found that the caste certificate produced by the appointee is not found to be genuine, the appointment shall stand cancelled immediately. The Director of Tribal Development, Gujarat State, after hearing respondent, held that the respondent does not belong to Schedule Tribe community. It was further held that he belongs to Leuva Patel community, the caste which is neither Schedule Tribe, nor Scheduled Caste nor even any other Backward Class. The caste certificate obtained by the respondent was therefore cancelled. On the basis of the said order, the petitioner Authority passed the order on 18.5.1995, to the effect that the appointment order dated 28.5.1992 of the respondent stands

cancelled. It is this action of the petitioner Authorities which is interfered with by the Labour Court. In my view, in this fact situation, there was no occasion for the Labour Court to interfere with the action of the petitioner, much less finding any illegality in it. True it is that the petitioner had not conducted any regular departmental inquiry against the respondent and he was not heard. However, the law in this regard is settled. Hon"ble the Supreme Court of India in case of Bank of India and Another Vs. Avinash D. Mandivikar and Others, has held that if an employee had obtained appointment in the service on the basis that he belonged to a Scheduled Tribe and when it is found that he did not belong to the Scheduled Tribe, the very foundation of his appointment collapses and his appointment is no appointment in the eyes of law and there can be no justification for his claim in respect of the post he usurped, as the same was meant for a reserved candidate. These observations of Hon"ble the Supreme Court of India, in my view, will apply with full force in the facts of this case. The case in hand is the collapsing of the appointment and not the dismissal of an employee for the misconduct which needs regular departmental inquiry. The argument of learned advocate for the respondent that the action of the petitioner Authorities is without following due process of law, though factually is right, will not take the case of the respondent any further, since the very foundation of the appointment now does not exist. Reliance placed by learned advocate for the respondent on the decision of Hon"ble the Supreme Court of India in the case of Karnataka State Road Transport Corporation (supra) would not take the case of the respondent any further, in this fact situation.

5. There is one more dimension to this matter. Before the Director of Tribal Development, the case of the respondent was that he belongs to Scheduled Tribe which is negated by the said Authority and which has attained finality, but while leading evidence before the Labour Court, the assertion of the respondent was that he belongs to Leuva Patel community which is an unreserved category. His this assertion is recorded in his evidence Exh. 11 before the Labour Court. Further, this categorical assertion has come in his examination-in-chief as well as in his cross-examination, which is on record. I find that on the basis of the assertion of the respondent himself that he does not belong to Scheduled Tribe, his appointment could not have been continued by the petitioner Authorities. It is noted that this is the case of cancellation of appointment order and not the dismissal on the ground of misconduct committed by an employee during course of his employment.

6. In above factual and legal background, in my view, the action of the petitioner Authorities of cancelling the appointment of the respondent was legal and perfectly justified and there was no occasion for the Labour Court to interfere with the same, much less finding any illegality in it. The impugned award, therefore, cannot be sustained and the same needs to be quashed and set aside. For the reasons recorded above, this petition is allowed. The impugned award of the Labour Court, Ahmedabad passed in Reference (LCA) No. 2348 of 1995, dated 23.12.2004 is quashed and set aside. On setting aside of the said award,

the petitioner Authorities would not be under legal obligation to continue to pay the wages to the respondent in compliance of the provisions of section 17B of the Industrial Disputes Act, 1947. The order passed by the petitioner Authorities dated 18.5.1995 to the extent it orders cancellation of the appointment of the respondent, stands restored and is upheld. Rule is made absolute. No order as to costs.