

(2005) 04 GUJ CK 0030

In the Gujarat High Court

Case No : Special Civil Application No. 646 of 1996

Gujarat Sheep and Wool Dev. Corporation Ltd.

APPELLANT

Vs

Sanatkumar Hemshanker Jani

RESPONDENT

Date of Decision : 28-04-2005

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 10

Citation : (2005) 04 GUJ CK 0030

Hon'ble Judges : Sharad D. Dave, J

Bench : Single Bench

Advocate : P.V. Hathi, for the Appellant; D.T. Shah and Uday Bhatt, Learned A.G.P., for the Respondent

Judgement

Sharad D. Dave, J.—By this petition, the petitioner - Corporation challenges the award passed by the Labour Court, Rajkot in Reference LCD No. 6 of 1993 dated 21.09.1995 published on 28.11.1995 (received by the Corporation on 12th December, 1995), whereby the Labour Court ordered the Corporation to give all benefits of permanent employees as provided by Government Resolution dated 17th October, 1988 from 01.01.1994 and further directed not to transfer the respondent No. 1 from Jasdan to any other district and to comply with the said order within one month from its publication.

2. The brief facts giving rise to this petition are such that the respondent No. 1 was appointed as a Shepherd on daily wage basis on 01.11.1986 at Sayala under one of such schemes and on completion of the scheme, he was relieved on 31.10.1987, against which he approached the Labour Court, Surendranagar by filing application being Case No. 156 of 1990. On humanitarian grounds and on the respondent giving an undertaking to the effect that he shall serve anywhere in India, he was given daily wagger's appointment at Rangpur Taluka Chhotaudepur by the Corporation by its order dated 26.02.1990 and he reported to that place on 12.03.1990. However, the said reference is still pending in the

Court of Surendanagar for the purpose of back wages. Thereafter, the respondent was transferred to Jasdan and was relieved from Rangpur on 12.07.1990. He reported for duty at Jasdan on 18.07.1990, where he is working as daily wager Peon-cum-Chokidar and is paid the wages as prescribed by the Minimum Wages Act.

3. The respondent - workman through the Labour Association - respondent No. 2 herein solicited a Reference u/s 10 of the Industrial Disputes Act in the office of the Deputy Labour Commissioner, Rajkot raising three demands and consequently the said officer by his order dated 08.04.1993 referred the matter to the Labour Court, Rajkot for resolving the demands made by the workman through respondent No. 2. The Labour Court registered the case as LCD No. 6 of 1993. During the pendency of this reference, as the respondent was consistently remaining absent without permission and was irresponsible towards his duties, he was transferred to Bhuj by an order dated 23.03.1993, against which interim application dated 01.05.1993 for staying the order of transfer was preferred and it was granted by the Labour Court. Thereafter, after hearing both the parties, the Labour Court passed the aforesaid order, against which this petition is filed.

4. At the time of arguments, Mr. P.V. Hathi, learned advocate for the petitioner - Corporation submitted that the award in so far as it directs the Corporation not to transfer the workman Shri Jani anywhere from Jasdan is perverse because the Corporation was not required to call for leading evidence in a reference when the dispute raised is with regard to giving of benefits as per the Government resolution dated 17.10.1988. Though the Corporation has produced the necessary documents to show that the transfer of the workman was justified, they were not referred to by the Labour Court on the ground that he was lowly paid employee and there was no condition in the appointment order. It is submitted that the Labour Court has exceeded in its jurisdiction in passing such a mandatory order in a reference where the disputes raised are different and the Labour court assumed certain facts which are not averred by the respondent workman in his evidence at exh. 28. It is submitted that the Labour Court has no jurisdiction to issue a mandatory order of applying the Government Resolution dated 17.10.88 to the respondent workman and in view of the judgments reported in 30 GLR 380 and 30 GLR 1238, the Labour Court has no jurisdiction to confer the permanency benefits to the respondent - workman. It is submitted that the said resolution was issued by the Public Works Department for its employees and the same was not automatically applicable to the Corporation unless it was so adopted and applied to all the employees of the Corporation after taking sanction from the State Government which had to provide financial aid to the Corporation. There was no evidence led by the respondent workman to show that the benefit of resolution was extended to any other employee or that there was any binding order of the State Government. The Labour Court has applied the resolution without verifying the source the resolution and its contents and has proceeded on the assumption that the respondent workman and all other employees were similarly situated. Mr. Hathi, learned advocate for the

petitioner has relied on the binding decision in the case of Mukand Ltd. v. Mukand Staff & Officers" Association reported in Amreli Municipality Vs. Gujarat Pradesh Municipal Employees Union, and Karjan Municipality v. Shashikant Kamalakar Shukla reported in 2004 (3) GLH 23.

5. Against the aforesaid submissions, Ms. D.T. Shah, learned advocate for the respondent No. 1 submitted that the petitioner has retained many junior employees viz. R.V. Bhint, Gamal V Desai, Jitendra G Shrimali, Vihabhai K Palaria, Bachubhai D Parmar and others who were recruited ignoring the formalities of recruitment through Employment Exchange and they are absorbed by the petitioner Corporation and therefore the respondent No. 1 cannot be singled out on the ground that he has not entered the service through Employment Exchange. It is submitted that the respondent workman was not appointed under the scheme undertaken by the petitioner Corporation and that on completion of such scheme, he was relieved on 30.10.1987 and that he was appointed on a clear vacant post of Peon-cum-Watchman at Bamanbor, Taluka Chotila, District Surendranagar, but no appointment order was given. It is submitted that though the respondent workman was working since more than 8 years and was performing the similar work as the regular employees, the petitioner Corporation was paying him wages on the basis of daily wages only. It is submitted that the Government has issued a resolution dated 17.10.1988 for daily wagger employees working since years protected the interest of the daily wagger employees and as the corporation is a State Agency, it cannot say that the said resolution is not applicable to it. It is further submitted that the petitioner corporation has admitted that they are making the daily wagger employee permanent as per the seniority and it has already confirmed some of the employees. Therefore, the respondent workman is entitled for the benefits of regularization as per the procedure and custom adopted by the Corporation itself. Mrs. Shah has relied on the binding decisions in case of Krishi Utpadan Mandi Samiti through its Krishi Utpadan Mandi Samiti v. Arvind Chaubey, (2002) 9 SCC 549 and Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others,

6. Mr. Uday Bhatt, learned A.G.P. for respondent No. 3 has submitted that the Government Resolution dated 17.10.88 has been passed by the Road and Buildings Department to regulate the daily rated persons terms and conditions as an employer engaging the persons which may be termed as workmen within the meaning of Industrial Disputes Act. It is the for the employer to follow all the rules and regulations and statutory requirements made applicable and statutory requirements made applicable to the workmen and employer under the provisions of Industrial disputes and other labour legislations. The norms settled by the Road and Buildings Department as the employer may be guiding principle for other department but it cannot be said that the norms are settled for all the department and/or to all the body incorporated either under the statutory provisions of the Act and/or under the Indian Companies Act. It is submitted that the Labour and Employment department has not framed the rules and

regulations and/or Government Resolution dated 17.10.1988 to be made applicable to the petitioners and/or workmen employed by the petitioner and/or other body corporate. It is submitted that nothing any sort has been placed by the petitioner for making the Government Resolution applicable before the Government in Labour and Employment Department nor the motion has been moved by the workmen of the petitioner to frame any norms for and on behalf of the organization.

7. Further affidavit was filed on behalf of the petitioner Corporation to the effect that due to non-availability of sufficient grants and because of closure of some of the centres run by the Corporation due to paucity of work arising due to reduction in number of sheeps in the farm, 26 employees were ordered to be retrenched after complying with the provisions of the Industrial Disputes Act. The said employees had filed Special Civil Application No. 9552 of 1998 and the said petition was dismissed by the learned single Judge on 23.12.1998. The said employees had also filed Letters Patent Appeal No. 119 of 1999 against the said judgment which was partly allowed by ordering the employees to take appropriate remedy for deciding the controversy arising from their retrenchment. That the respondent Sanatkumar Jani was one of the petitioners and the appellants and Mr. Jani is not in service of the Corporation from 17.11.1998. It is submitted that all the 26 employees including Sanatkumar Jani have approached the Labour Court at Rajkot by seeking Reference u/s 10 of the Industrial Disputes Act. The said reference is numbered as LCD No. 13 of 1998 against the termination of their services and the same is still pending for adjudication before the Labour Court, Rajkot. Therefore, in view of the retrenchment of the respondent Shri Sanatkumar Jani, there is no question of giving him any benefit under the Government Resolution dated 17.10.1988 as directed by the Labour Court, Rajkot though as submitted both the petitioner Corporation in the petition and the State Government - respondent No. 3, in its reply stated that the said Government Resolution dated 17.10.1988 was not applicable to the employees of the Corporation and it was wrongly relied upon the Labour Court Judge in his award dated 21.9.1995.

8. Heard the learned advocates for the parties and perused the authorities cited by them.

9. The justification of demand dated 01.05.1993 filed by the respondent No. 1, however, is not as per the deposition Exh. 28 in Reference (LCD) No. 6 of 1993. In the same way, the written statement against justification of demand is filed by respondent No. 2 which is also in detail, however, the same is not stated in the deposition of Sharadkumar Dolatram Shukla at Exh. 31. The award passed by the Presiding Officer, Labour Court, Rajkot in Reference (LCD) No. 6 of 1993 is based more on the facts of the respondent No. 1 and their statement of demand than that of the petitioner. The following paras of the further affidavit of the petitioner dated 17.01.2004 is required to be referred :

"I say because of non-availability of sufficient grants and because of closure of

some of the centres run by the Corporation due to paucity of work arising due to reduction in number of sheeps in the farm, 26 employees were ordered to be retrenched after complying with the provisions of the Industrial Disputes Act. The said employees had filed Special Civil Application No. 9552 of 1998 and the said petition was dismissed by the learned single Judge on 23.12.1998. The said employees had also filed Letters Patent Appeal No. 119 of 1999 against the said judgment which was partly allowed by ordering the employees to take appropriate remedy for deciding the controversy arising from their retrenchment. That the respondent Sanatkumar Jani was one of the petitioners and the appellants and he is not in service of the Corporation from 17.11.1998.

2. I say that all these 26 employees including Sanatkumar Jani have approached the Labour Court at Rajkot by seeking Reference u/s 10 of the Industrial Disputes Act. The said reference is numbered as LCD No. 13 of 1998 against the termination of their services and the same is still pending for adjudication before the Labour Court, Rajkot. Therefore, in view of the retrenchment of the respondent Shri Sanatkumar Jani, there is no question of giving him any benefit under the Government Resolution dated 17.10.1988 as directed by the Labour Court, Rajkot though as submitted both the petitioner Corporation in the petition and the State Government, in its reply, the said Government Resolution dated 17.10.1988 was not applicable to the employees of the Corporation and it was wrongly relied upon the Labour Court Judge in his award dated 21.9.1995."

10. The aforesaid further affidavit was filed on 17.01.2004 but the respondent No. 1 remained silent till the matter is heard and no reaction was given to the facts stated in the said affidavit. The respondent No. 1 and other employees filed a Reference (LCD) No. 13 of 1998 and therefore in view of the retrenchment of the respondent No. 1 Shri Sanatkumar Jani there is no question of giving him any benefit under the Government Resolution dated 17.10.1988. When the respondent No. 1 agreed to undertake that he is prepared to serve anywhere in the State, he was transferred to Jasdan from Rangpur with effect from 18.07.1990. 11. At this stage, a reference deserves to be made to the reply affidavit filed by respondent No. 3 - State in which in clear terms it is stated that the Government Resolution dated 17.10.88 is applicable to Roads & Buildings Department and the same is not applicable to other departments. A reference deserves to be made to the circular dated 30.03.1995 issued by Finance department of the State of Gujarat regarding the guidelines for regularisation of daily wagers as regular employees of Government, subject to fulfillment of certain conditions laid down therein.

12. A point was raised by Mr. Hathi, learned advocate for the petitioner that the Labour Court has exceeded its jurisdiction while granting stay against the transfer of the respondent No. 1 from Jasdan to any other district. When the respondent No. 1 himself has agreed to serve in any district and he undertook to serve anywhere in the State, and now he cannot back out from the said undertaking. Hence, I am of the opinion that the Labour Court has exceeded his

jurisdiction in staying the transfer.

13. In view of the above, I am of the opinion that though this court has limited jurisdiction in Article 227 of the Constitution of India, when the order is perverse, then this court is required to interfere with the said order. Therefore, this petition is allowed and the order passed by the learned Labour Court in Reference LCD No. 6 of 1993 dated 21.09.1995 is hereby quashed and set aside. Rule is made absolute.