
(2012) 09 GUJ CK 0016

In the Gujarat High Court

Case No : Special Civil Application No. 405 of 2004

Gujarat Water Resources Development Corporation Ltd. and 1 **APPELLANT**
Vs
President **RESPONDENT**

Date of Decision : 18-09-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2012) 09 GUJ CK 0016

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : D.G. Chauhan for Petitioners 1-2, for the Appellant; P.J. Kanabar for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Jayant Patel

1. The present petition is preferred for challenging the legality and validity of the award passed by the Industrial Tribunal, dated 23.01.2002, in Reference (IT) No. 270/1999, whereby the Tribunal has directed for absorption of the employees, who have completed five years, as work-charge with the costs of Rs. 5,000/-. The short facts of the case are that the petitioner is a Corporation of the State Government, established for looking after the water resources in the State. As per the petitioner, when the Corporation was established, it has to look after the thousands of tube-wells, and therefore, it had engaged work-charge at the different tube-wells to look after the same. Those work-charge were employed purely on temporary and ad hoc basis. Thereafter, on 24.04.1980, a circular was issued by the Corporation, providing that those employees, who have worked as work-charge for a period of five years and meeting with the necessary eligibility and educational criteria, shall be entitled to be considered as a candidate in the temporary set-up. Thereafter, the petitioner issued subsequent circular, dated 11.08.1980, whereby the earlier circulars were canceled and vide Clause-B of the Circular, dated 11.08.1980, it was provided that those workmen, who are

working as work-charge, may be taken in temporary set-up upon completion of five years, if, the posts are vacant in temporary set-up. As per the said circular, 70 per cent of the posts may be converted into temporary set-up. It appears that the respondent-Union, made representation for absorption of work-charges in the temporary set-up, but, no action was taken, and therefore, a dispute was raised. Ultimately, the said dispute came to be referred to the Industrial Tribunal being Reference (IT) No. 270/1999. The tribunal, at the conclusion of the reference, passed the aforesaid judgment and the order. Under the circumstances, the present petition before this Court.

2. I have heard, learned Counsel, Mr. Chauhan, appearing for the petitioner and Mr. Kanabar, learned Counsel for the respondent.

3. The first contention raised by the learned Counsel for the petitioner is that the Industrial Tribunal has no jurisdiction to go beyond the Reference. In the submission of the learned Counsel for the petitioner, the Reference was based on the circular, dated 24.04.1980, for absorption of work-charge in temporary set-up and the said circular was subsequently canceled vide another circular dated 11.08.1980. Therefore, it was submitted that once the said circular was canceled and the subsequent circular, dated 11.08.1980, was in operation, the Industrial Tribunal ceased to have the jurisdiction to adjudicate the case, as if, based on circular dated 11.08.1980, and therefore, same is without jurisdiction.

4. It is true that the Reference, as stated in the impugned award, refers to the Circular dated 24.04.1980 and absorption of the work-charge in temporary set-up after every two years and the conversion of the set-up into temporary set-up. Therefore, the first impression one may get that the contention has substance, but, upon close scrutiny, it appears that nowhere before the Industrial Tribunal, the ground of non-availability of jurisdiction or cessation of the jurisdiction by the Industrial Tribunal on account of superseding of the circular dated 24.04.1980 by the circular dated 11.08.1980, is raised. On the contrary, the circular dated 11.08.1980 was produced, at Exhibit-28, and the said circular is not in contravention to the earlier circular dated 24.04.1980, but, rather is reiterating the same thing for consideration of work-charge in temporary set-up on completion of five years. Paragraph-6 of the judgment shows that it was conceded before the Industrial Tribunal that for consideration of work-charge in temporary set-up, on behalf of the petitioner, it was agreed and a Committee was constituted of Shri. M.R. Desai and Shri. R.M. Rohit for such a purpose and there was no grievance raised before the Industrial Tribunal on the ground that the industrial tribunal had ceased to have the jurisdiction. It is hardly required to be stated that in a petition under Article- 227 of the Constitution of India, if a party has not raised an issue of jurisdiction and rather succumbed to the jurisdiction, it cannot be heard to say, at a later stage, that the Industrial Tribunal had no jurisdiction. If, the Tribunal is led to believe that absorption in temporary set-up of the work-charge is continued even by subsequent Circular, dated 11.08.1980, and that part is not disputed by the petitioner before the

Tribunal, it cannot be heard from the petitioner, now, to contend that the tribunal had no jurisdiction to entertain the dispute on the aspects as to whether work-charge, who have completed five years, should be absorbed in the temporary set-up or not, and therefore, the said contention does not deserve to be entertained.

5. It was next contended by the learned Counsel for the petitioner that no oral evidence was led on behalf of the Union before the Tribunal, and therefore, it was a case of no evidence and the Tribunal could not have passed the award.

6. In my view, the said contention is also mis-conceived and on a non-existing premise, inasmuch as it is not that, if, one has not entered the witness box, it becomes a case of no evidence. If the documents are accepted by the agreement of the parties and such documents have come in the evidence, such evidence can always be considered by the Tribunal while examining the merits of the case. In Paragraph-4 of the judgment, the Tribunal has referred to a documentary evidence and accepting of such documentary evidence with the consent of the learned Advocate appearing for the respective parties. Under the circumstances, it cannot be said that it is a case of no evidence, as sought to be canvassed by the learned Counsel for the petitioner.

7. The contention of the learned Counsel for the petitioner that no direction could have been issued by the Tribunal for automatic absorption of the work-charge, upon completion of five years, de hors the rules or de hors the availability of the set-up, deserves consideration.

8. It is true that even if it is considered that the circular dated 11.08.1980 was in operation, it only provide for consideration of work-charge employees in the temporary set-up, as per the inter se seniority. But, the requirement was that the availability of the post. Therefore, the tribunal could not have ordered for absorption of work-charge in temporary setup, in absence of the availability of the sanctioned set-up or the sanctioned posts.

9. At this stage, reference may be made to the decision of the full bench of this Court, in the case of "AMRELI MUNICIPALITY VS. GUJARAT PRADESH MUNICIPAL EMPLOYEES UNION", reported in 2004 (2) GLH 692, wherein the full bench considered the decisions of the Apex Court and the scope and ambit of the power of the Labour Court/Industrial Tribunal, as the case may be, concluded at Para-12.1.15 and answered as under:

12.1.15 The Labour Court/Industrial Tribunal has no jurisdiction to issue direction or passing award for regularization of the services of the employee of the Municipality or local authority without there being any "Sanctioned Set-up" and no person can be regularized, if, such person had entered without following selection process under the title of daily rate employee. Therefore, the tribunal could not have directed for regularization of services in absence of its finding recorded for availability of sanctioned set-up. Secondly, de hors statutory rules for recruitment for the post on the temporary basis, the direction could not be issued by the tribunal for absorption of work-charge, who entered the services

without following the regular recruitment process.

10. However, the tribunal, at the most, could have issued direction for consideration of work-charge employees in the temporary set-up, subject to the availability of the post in the temporary set-up and subject to the fulfillment of undergoing regular selection process. Automatic absorption, as ordered by the Tribunal, cannot be maintained in the eye of law because, even if, a person has become eligible to be considered in the temporary set-up, the person concerned may be required to undergo the regular recruitment process for the post in question and he may also be required to met with the eligibility criteria for educational criteria and only to the extent of relaxation in the age, since, the persons concerned was working, the same may be considered. The said aspect is also reflected in the Circular dated 11.08.1980. Even otherwise, also, the relaxation in the age to the existing employees can be considered at the time when the regular selection process is to be undertaken, but, the person concerned, who is applying for appointment in the regular set-up is to undergo other selection process, as per the recruitment rules.

11. In view of the aforesaid observations and discussion, the judgment and the award of the tribunal is modified to the effect that the workmen concerned, who have completed five years as work-charge, shall be entitled to be considered for absorption in the temporary set-up, if, the post in question is available and it is provided further that he or she, will have to undergo the regular selection process for filling-up of the post concerned in the temporary set-up. The aforesaid exercise, as per the modified award, shall be completed within a period of six months, from today. The petition is partly allowed to the aforesaid extent. Considering the facts and circumstances, no order as to costs.