
(2014) 07 GUJ CK 0113
In the Gujarat High Court

Case No : Letters Patent Appeal No. 325 of 2013 in Special Civil Application No. 11280 of 2010 to Letters Patent Appeal No. 330 of 2013 in Special Civil Application No. 14761 of 2010 with Letters Patent Appeal No. 789 of 2013 in Special Civil Application No. 1563 o

Gujarat Water Supply	Vs	APPELLANT
PWD Employees Union		RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Citation : (2014) 143 FLR 535 : (2014) 3 LLJ 420 : (2014) 3 LLN 374

Hon'ble Judges : V.M. Sahai, J;R.P. Dholaria, J

Bench : Division Bench

Advocate : Kamal B. Trivedi, Senior Counsel Assisted by H.S. Munshaw and D.G. Chauhan, Advocate for the Appellant; Shalin Mehta, Senior Counsel Assisted by Vidhi J. Bhatt, Advocate and Harsheel Shukla, AGP, Advocate for the Respondent

Judgement

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R.P. Dholaria, J.—These Letters Patent Appeals under Clause 15 of the Letters Patent have been filed by the appellants challenging the common judgment and order dated 31.1.2013 passed by the learned Single Judge in Special Civil Application No. 11280 of 2013 and cognate matters allowing the writ petition and directing the appellants herein to grant benefits of Government Resolution dated 17.10.1988 to the respondents as well as other benefits as directed and clarified by this Court in the judgment and order dated 18.3.2011 recorded in Letters Patent Appeal No. 958 of 2011.

2. The brief facts which emerge from the case on hand could be summarized as under:-

2.1. The petitioners in Special Civil Application No. 1563 of 1992 were appointed as daily wagers with the respondent-Gujarat Water Supply and Sewerage Board (hereinafter referred to as "Board" for sake of convenience and brevity) upto the

year 1988 and all are given benefits flowing from the Government Resolution dated 17.10.1988 whereby on completion of five/ten/fifteen years, they are taken in the regular pay-scale and all other service conditions are extended like any other regularly appointed employee. However, benefits like Transport Allowance, Traveling Allowance, Transfer Traveling Allowance, Leave Encashment and Leave Travel Concessions are not extended to them. The said Government Resolution dated 17.10.1988 also inter-alia provided that no appointment as daily wager shall be made by any office thereafter.

2.2. As per scheme contained in Government Resolution dated 17.10.1988, all the daily wagers were not entitled for regularization or permanency in the services. As per the said Resolution the daily wagers are entitled to the following benefits:

(i) They are entitled to daily wages as per the prevailing Daily Wages. If there is presence of more than 240 days in first year, daily wagers are eligible for paid Sunday, medical allowance and national festival holidays.

(ii) Daily wagers and semi skilled workers who has service of more than five years and less than 10 years are entitled for fixed monthly salary along with dearness allowance as per prevailing standard, for his working days. Such daily wagers will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. Such daily wagers will also be eligible for getting medical allowance and deduction of provident fund.

(iii) Daily wagers and semi skilled workers who has service of more than ten years but less than 15 years are entitled to get minimum pay scale at par with skilled worker along with dearness allowance as per prevailing standard, for his working days. Moreover, such daily wagers will get two optional leave in addition to 14 misc. leave, Sunday leave and national festival holidays. He/she will be eligible for getting medical allowance and deduction of provident fund.

(iv) Daily wagers and semi skilled workers who has service of more than 15 years will be considered as permanent worker and such semi skilled workers will get current pay scale of skilled worker along with dearness allowance, local city allowance and house rent allowance. They will get benefit as per the prevailing rules of gratuity, retired salary, general provident fund. Moreover, they will get two optional leave in addition to 14 misc. leave, 30 days earned leave, 20 days half pay leave, Sunday leave and national festival holidays. The daily wage workers and semi skilled who have completed more than 15 years of their service will get one increment, two increments for 20 years service and three increments for 25 years in the current pay scale of skilled workers and their salary will be fixed accordingly.

2.3. It has come on record that this Court in Letters Patent Appeal No. 958 of 2001, reported in State of Gujarat and Another Vs. Mahendrakumar Bhagvandas and Another, held that the attempt by the State Authorities that employee employed on daily wage basis for 15 years had to be continued as daily wage

employees with limited benefits is contradictory and has no backing of any legal provision or precedent. It is also pointed out that the above judgment was challenged by the State Authorities before the Apex Court and the said challenge failed vide order dated 09.11.2002 recorded in SLP (Civil) Nos. 35043-35048 of 2012.

2.4. Whereas the petitioners in Special Civil Application No. 11280 of 2010 and cognate matters were appointed as daily wagers by the Board after 30.11.1994. Though they have put in more than five/ten/fifteen years of service, they are not given any benefit as per the Government Resolution dated 17.10.1988.

2.5. The Board had vide Circular dated 08.06.1989 adopted the policy of the Government as contained in Government Resolution dated 17.10.1988 and thereafter the Board again reiterated vide Circular dated 30.11.1994 that no more daily wagers would now be appointed. Still, hundreds of daily wagers were appointed after the issuance of above circulars.

2.6. As per policy of the Board, no daily wager was to be appointed after issuance of earlier circular dated 08.06.1989, then also such appointments were made and they were given benefits flowing from the Government Resolution dated 17.10.1988. Thereafter the Board again reiterated such policy vide circular dated 30.11.1994 and no daily wager was to be appointed but still the Board appointed hundreds of daily wagers and they are not given any benefit as per the Government Resolution dated 17.10.1988.

2.7. Considering the above facts and law of the case, the learned Single Judge has vide common judgment and order dated 31.1.2013 passed in Special Civil Application No. 11280 of 2013 and cognate matters held that the grouping of daily wagers on the basis of cut-off date of 30.11.1994 to deny benefits of Government Resolution dated 17.10.1988 is illegal and arbitrary and directed to grant benefits of said Government Resolution dated 17.10.1988 to the petitioners as directed and clarified by this Court in the judgment and order dated 18.03.2011 recorded in Letters Patent Appeal No. 958 of 2011 and cognate matters.

2.8. Being aggrieved with the aforesaid common judgment and order dated 31.1.2013 passed by the learned Single Judge, the present appellants has filed these Letters Patent Appeals.

3. Heard Mr. Kamal B. Trivedi, learned Senior Counsel assisted by Mr. H.S. Munshaw and Mr. D.G. Chauhan appearing for the appellants, Mr. Shalin Mehta, learned Senior Counsel assisted by Ms. Vidhi J. Bhatt appearing for respondent Nos. 1 to 50, Mr. M.J. Mehta, learned counsel appearing for the respondents in Letters Patent Appeal No. 789 of 2013 and Mr. Harsheel Shukla, learned Assistant Government Pleader appearing for the State.

4. Mr. Kamal B. Trivedi, learned Senior Counsel appearing on behalf of the appellants submitted that Gujarat Water Supply & Sewerage Board is a statutory

Board and it has its own policy and its administration is run on the policy decision taken by the Board. The Board had taken a policy decision on 30.11.1994 that no new daily wagers be appointed. The appointments were made at the lower level without prior permission or even intimation to the higher authorities, for which penalties are imposed on number of officers for breach of administrative instructions issued on 30.11.1994. Mr. Trivedi further submitted that the appointment as daily wagers at the grass root level are without following any regular procedure laid down for regular recruitment and therefore they do not have any right of regularization or the benefits flowing from the Government Resolution dated 17.10.1988.

5. In support of his above submissions, learned Senior Counsel relied on following decisions:-

- (1) State of Gujarat and Others Vs. PWD Employees Union and Others etc.,
- (2) State of Gujarat and Another Vs. Mahendrakumar Bhagvandas and Another,
- (3) Secretary, State of Karnataka and Others Vs. Umadevi and Others,
- (4) Punjab Water Supply and Sewerage Board, Hoshiarpur Vs. Ranjodh Singh and Others,
- (5) Bhartiya Seva Samaj Trust Tr. Pres. and Another Vs. Yogeshbhai Ambalal Patel and Another,
- (6) State of Orissa and Another Vs. Mamata Mohanty,
- (7) State of Madhya Pradesh & Anr. v. Mohd. Abraham, (2009) 15 SCC 214
- (8) State of Karnataka and Others Vs. M.L. Kesari and Others,
- (9) State of Rajasthan and Others Vs. Daya Lal and Others,
- (10) Mohd. Haroon and Others Vs. Union of India (UOI) and Another,

6. Mr. D.G. Chauhan, learned advocate appearing for the appellant in Letters Patent Appeal No. 789 of 2013 submitted that the respondents herein have never been granted the status of permanent employees. The service conditions of the respondents herein are governed under the Government Resolution, dated 17.10.1988 and all the respondents have been granted benefits of pay-scale under the said resolution on completion of 5/10/15 years. They are also drawing dearness allowance, house rent allowance, medical allowance, etc., but they are not entitled for any other benefits payable to permanent employees duly appointed after following due process of selection and recruitment, as they do not hold any post. Therefore. the impugned directions to grant the benefits of transport allowance, traveling allowance, transfer traveling allowance, leave encashment and leave travel concession to respondents herein are contrary to the Government Resolution dated 17.10.1988 and bad in law.

7. Per contra, Mr. Shalin Mehta, learned Senior Counsel appearing for respondent

Nos. 1 to 50 supported the judgment and order passed by the learned Single Judge. He contended that the plea of the appellants that the appointment as daily wagers after 30.11.1994 de hors the policy of the Board is not tenable now after keeping them in service for more than 15 years. Mr. Mehta further contended that there is hostile discrimination made by the Board on the applicability of the Government Resolution dated 17.10.1998 and in any case, the present respondents have not prayed for regularization or permanent absorption in service. Therefore, the judgment and order passed by the learned Single Judge deserves to be sustained and need no interference in these Letters Patent Appeals.

8. We have heard the learned Counsel for the respective parties and perused the papers produced before us. We have also considered the submissions advanced by the learned counsel for the rival parties and the decisions placed before us. We have gone through the impugned judgment and order passed by the learned Single Judge as well as the record produced before us.

9. All the aforesaid decisions cited by Mr. Trivedi, learned Senior Counsel for the appellants are in the nature of laying down principles and guidelines for regularization of services of employees who are irregularly appointed or working as daily wagers. We have gone through the said judgments and we have also taken into consideration various guidelines and principles laid down by the Apex Court.

9.1. In the case of *Bhartiya Seva Samaj Trust Tr. Pres. and Another Vs. Yogeshbhai Ambalal Patel and Another*, , it is held to the effect that after committing any illegality, the employer cannot agitate that the concerned employee is not entitled to consequential benefit. It is further held that it is a settled legal proposition that the court should not set aside the order which appears to be illegal, if its effect is to revive another illegal order. It is for the reason that in such an eventuality the illegality would perpetuate and it would put a premium to the undeserving party/person.

9.2. In the case of *State of Gujarat and Others Vs. PWD Employees Union and Others etc.*, , after considering all the case laws and the facts and circumstances of the case, the Supreme Court directed to grant benefit of the scheme as contained in the Government Resolution dated 17.10.1988 to all the daily wage workers of the Forest and Environment Department working for more than five years.

Incidentally, it is relevant to note here that the aforesaid case pertains to daily wagers of the Forest Department, who have been in service for about 5-30 years as on 29.10.2010, for more than 240 days for large number of years, doing full time work of a perennial nature.

9.3. In the case of *Mohd. Haroon and Others Vs. Union of India (UOI) and Another*, , it is held that the regularization/absorption is not a matter of course. It would depend upon the facts of the case following the rules and regulations

and cannot be de hors the rules for such regularizations/absorptions.

10. Admittedly, there is no dispute about the fact that the respondents in above Letters Patent Appeals are daily wagers. Before us, there are two sets of daily wagers. One set of daily wagers appointed upto the year 1988 are given all benefits flowing from the Government Resolution dated 17.10.1988. However, benefits like Transport Allowance, Traveling Allowance, Transfer Traveling Allowance, Leave Encashment and Leave Travel Concessions have not been extended to them. Whereas another set of daily wagers were appointed after 30.11.1994 and they are not given any benefits flowing from the Government Resolution dated 17.10.1988, though they have put in more than five/ten/fifteen years of service.

11. As regards daily wagers appointed upto the year 1988, it is the case of the appellants that the benefits accorded to the permanent employees could not be extended to them as they do not hold any post. It has come to our notice that similar issues were raised in Special Civil Application Nos. 5699 of 1987; 517 of 1988 and 6783 of 1988, decided on 02.05.2000. The petitions were allowed with a direction that all the workmen concerned be treated as permanent employees at par with other regular employees and that they shall be granted all the benefits as such. Being aggrieved with the said order, Letters Patent Appeal No. 958 of 2001 and cognate matters were filed which were decided on 18.03.2011. Notwithstanding the fact that earlier in Special Civil Application No. 26790 of 2007 and cognate matters, the learned Single Judge had vide Order dated 01.07.2009 rejected similar contention of the petitioner and the said Order was upheld in Letters Patent Appeal No. 2117 of 2010 decided on 11.10.2010; the Division Bench of this Court dismissed Letters Patent Appeal No. 958 of 2001 and cognate matters, reported in (2011) 2 GLR 1290. The said judgment and order was challenged before the Supreme Court which was rejected vide Order dated 09.11.2012 recorded in Special Leave to Petition (Civil) Nos. 35043-35048 of 2012. Thus, the decision of this Court in Letters Patent Appeal No. 958 of 2001 and cognate matters, decided on 18.03.2011 has attained finality and all issues are properly addressed. The learned Single Judge has rightly observed that the grievance raised by the respondents, i.e. original petitioners in Special Civil Application No. 1563 of 1992 is already answered by the Division Bench of this Court. We are in full agreement with the above decision rendered by the learned Single Judge. Independent of this, we are of the considered opinion that these benefits in nature of allowances and concessions are incidental to services and they should be normally granted to such employees when they are treated at par with other regular employees. In view of the above, Letter Patel Appeal No. 789 of 2013 fails and is accordingly, dismissed.

12. Now, we may proceed to examine the case of the daily wagers appointed after 30.11.1994. It is the contention of the appellants that the Board had taken a policy decision on 30.11.1994 that no new daily wagers be appointed. Still, they were appointed without prior permission or even intimation to the higher

authorities, for which penalties are imposed on number of officers for breach of administrative instructions issued on 30.11.1994. The appointment as daily wagers at the grass root level are without following any regular procedure laid down for regular recruitment and therefore they do not have any right of regularization or the benefits flowing from the Government Resolution dated 17.10.1988.

13. It is an admitted position that the appellant-Board adopted the Government Resolution dated 17.10.1988 as a policy vide its circular dated 08.06.1989. The said Resolution, inter-alia, provides that no appointment as daily wager shall be made by any office thereafter. Still, daily wagers continued to be appointed by the Board and they were given benefits flowing from the aforesaid Government Resolution. Thereafter the appellant Board reiterated its policy vide another Circular dated 30.11.1994 that no daily wager shall be appointed but still hundreds of daily wagers came to be appointed after 30.11.1994 and now the Board denies to extend the benefits flowing from the Government Resolution dated 17.10.1988 to such daily wagers appointed after 30.11.1994 terming their appointment as illegal, which cannot be accepted as it is arbitrary and bad in law. On one hand, the Board issues circular that no daily wagers shall be appointed from 30.11.1994 and still the very Board appoint hundreds of daily wagers in gross violation of their own policy and after passage of more than 15 years terming the action of appointing these daily wagers as illegal cannot be accepted and needs to be rejected. The Board cannot punish others for their own wrongdoings. It is a settled legal proposition that a person alleging his own infamy cannot be heard at any forum. If a person has committed a wrong, he cannot be permitted to take the benefit of his own wrong,

14. In view of the above discussion, we see no infirmity in the judgment and order passed by the learned Single Judge and we are in complete agreement with the reasons recorded by the learned Single Judge.

15. For the foregoing discussions and reasons, the common judgment and order dated 31.1.2013 passed by the learned Single Judge in Special Civil Application No. 11280 of 2013 and cognate matters requires no interference. Letters Patent Appeal Nos. 325 of 2013, 326 of 2013, 327 of 2013, 328 of 2013, 329 of 2013 and 330 of 2013, accordingly, stand dismissed.

In view of the dismissal of these Letters Patent Appeals, Civil Application No. 6022 of 2013 has become infructuous and the same is disposed of accordingly. Notice, if any, stands discharged. There will be, however, no order as to costs in all these matters.