

(2010) 11 GUJ CK 0010
In the Gujarat High Court

Case No : Special Civil Application No's. 9691 and 11000 of 2010

Hasmukhbhai Maganbhai Harijan

APPELLANT

Vs

Commissioner V.M.C.

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 11 GUJ CK 0010

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Mayank Desai, for the Appellant; Nilesh A. Pandya, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—The petitioners have filed these two petitions challenging the award passed by the Industrial Tribunal.

2. In Special Civil Application No. 9691 of 2010, Shri Hasumukhbhai Maganbhai Harijan has challenged the award dated 28.04.2010 passed by the learned Presiding Officer, Industrial Tribunal, Vadodara in Reference (IT) No. 29 of 2005 whereby the said reference was dismissed.

3. In Special Civil Application No. 11000 of 2010, Shri Rameshbhai Jethabhai Solanki has challenged the award dated 28.04.2010 passed by the learned Presiding Officer, Industrial Tribunal, Vadodara in Reference (IT) No. 29 of 2005 whereby the said reference was dismissed.

4. Special Civil Application No. 9691 of 2010 was admitted and rule was issued on 20.08.2010. Similarly, Special Civil Application No. 11000 of 2010 was admitted and rule was issued on 15.09.2010 and the Court has directed that both these Special Civil Applications are to be heard together.

5. On service of rule to the respondent Corporation, Mr. Nilesh Pandya, learned

advocate appeared on behalf of the respondent Corporation and filed affidavit-in-reply to which rejoinder is filed by the petitioners.

6. Since at the time of admission of these petitions, order regarding expeditious hearing of the petitions was passed by the Court, both these petitions are taken up for hearing.

7. Mr. Mayank Desai, learned advocate appearing for the petitioners has submitted that both the petitioners having aggrieved and dissatisfied by the award dated 28.04.2010 in Reference (IT) No. 29 of 2005, whereby reference by the petitioner's Union for grade and emoluments of the cadre of Supervisor for its two members i.e. the present petitioners from the date of their respective appointment in the Corporation and also for arrears that might consequently fall due, has been rejected, the petitioners moved this Court by way of these two petitions. He further submitted that the original reference was espoused for petitioners by the Union. However, the Union has ceased taking interest, the petitioners have filed the present petitions before this Court. He further submitted that the petitioner, namely, Hasmukhbhai Maganbhai Harijan has passed 7th standard and Rameshbhai Jethabhai Solanki has passed 4th standard. They have taken the employment in the Corporation as Safai Sevak. However, from them, the work of clerical supervisor was taken by the Corporation and hence, they were claiming the wages and emoluments which are to be paid to the supervisor. He further submitted that right from the date of their appointment, the petitioners have been doing the work of clerical supervisor (Likhanpatti Supervisor) such as to mark attendance from kachcha muster roll to pakka muster roll, to post the privilege leave reports of the employees in the Register, to process medical bills, to post the entries of the material issued in the Store Register of the office, to prepare license regarding PFA/BMB/Flour Mills/ Cold Drinks etc. Despite this work, the petitioners have not been given the supervisor grade and hence, they approached the Assistant Labour Commissioner through Union for reference of their claim to the competent Court. The Assistant Labour Commissioner thereafter granted reference. Initially, in the Reference No. 29 of 2005, the petitioners have filed Complaint No. 3 of 2005 praying for the interim relief which was not granted and hence, the petitioners have approached this Court by way of Special Civil Application No. 10161 of 2005 and 10162 of 2005 which came to be disposed of by this Court on 21.06.2005 directing the Tribunal to dispose of the said complaint within six months. Thereafter, the Industrial Tribunal has passed an order on 18.04.2006 disposed of the said complaint and granted partial relief to the petitioners by directing the Corporation to continue to allot the work of Likhanpatti Supervisor without making any change. This order was challenged by the Corporation before this Court in Special Civil Application No. 11349 of 2006 which was admitted and the order passed by the Tribunal was stayed. The said Special Civil Application is still pending before this Court.

8. Mr. Desai further submitted that though the petitioners were doing the work of

Likhanpatti Supervisor and since they have asked for wages and designation of Likhanpatti Supervisor, the Corporation has given a discriminatory treatment to the petitioners. In support of their claim, the petitioners have produced before the Industrial Tribunal a letter dated 10.02.2004 signed by the concerned Ward Officer which sufficiently establish that the petitioners have been working as Likhanpatti Supervisors and their names are very much there in the list of Likhanpatti Supervisors. He further submitted that the Industrial Tribunal has not considered this material of evidence and proceeded on the basis of surmises and conjectures.

9. Mr. Desai has further submitted that the Corporation has considered the basis for identically situated workmen Prabhudas Lallubhai Patel and Lalitbhai Ravjibhai Patel who were though employed as Safai Sevak were discharging the work of Likhanpatti Supervisors. In the case of Prabhudas Lallubhai Patel, the Industrial Tribunal itself has decided the reference in favour of the said workman and he was absorbed as Likhanpatti Supervisor. So far as the case of Lalitbhai Ravjibhai Patel is concerned, initially, reference was rejected by the Tribunal which was challenged before this Court and this Court has quashed and set aside the said reference and decided the petition in favour of the said workman. Even the Letters Patent Appeal filed there against was also dismissed. He has, therefore, submitted that the petitioners' case is identical to that of the two workmen and hence, the same treatment should have been given to the petitioners.

10. Mr. Desai further submitted that the Tribunal has proceeded on the footing that the petitioners are no more in service and hence, there is no question of giving any promotion of Supervisor to the petitioners. The Tribunal has materially erred in coming to this conclusion. He further submitted that the Tribunal has considered the contention raised by the Corporation that the documents manipulated by the petitioners. For this contention, there is no material available on record and the Tribunal has accepted the bare words of the Corporation and decided the reference against the petitioners. He has, therefore, submitted that the impugned orders deserve to be quashed and set aside and the prayers made by the petitioners in the present two Special Civil Applications are required to be granted.

11. Mr. Nilesh Pandya, learned advocate appearing for the respondent Corporation, on the other hand, has submitted that the petitioners have not come with clean hands and suppressed the material facts. He further submitted that the petitioners have filed review application before the Industrial Tribunal for reviewing the present reference on 23.08.2010. Subsequently, on 14.09.2010, the said review application was withdrawn by the petitioners. However, this fact is not disclosed by the petitioners before this Court. He further submitted that the petitioners were inducted in service of a Municipal Corporation without following any due process of law and without resorting to any process of recruitment. The petitioners have got back door entry in the service of the respondent Corporation and they were holding the post of Safai Sevak. The

petitioners were appointed as Safai Sevak and were drawing the wages on the post of Safai Sevak right from the date of their appointment which was in or about the year 1988 and 1993 respectively. He further submitted that the petitioners are having qualification of passing 4th and 7th standard. However, the qualification required for the post of Supervisor is SSC. Earlier, the petitioners have preferred writ petition before this Court seeking a writ of mandamus to quash and set aside the alleged action of the Corporation of exploiting the petitioners by making them work on the post of Likhanpatti Supervisor but not giving them designation and wages for the same. In the said petition, the respondent Corporation filed affidavit-in-reply raising various contentions, inter alia, submitting that the petitioners were back door entrants and they were not entitled to continue on the post, much less a post of Supervisor which is a higher post in view of the judgment of the Apex Court reported in 2004 (8) SCC 253. He further submitted that the petitioners are not entitled to be appointed on the post of Supervisor.

12. Mr. Pandya has further submitted that the documents produced by the petitioners in the form of work arrangement list dated 10.02.2004 was manipulated by the petitioners by interpolating their names unauthorizedly. He has, therefore, submitted that since the document was tampered by the petitioners by interpolating his name which is a serious matter and that would disentitle any litigant from seeking any equitable relief. The petitioners are not even entitled to continue in the post of Likhanpatti Supervisor much less seeking appointment on the higher post with pay scale attached to the same.

13. Mr. Pandya has further submitted that the petitioners have failed to prove the case before the Industrial Tribunal and, therefore, the reference is rightly rejected by the Tribunal. Even otherwise, on merits also, the petitioners are not entitled to for the post of Likhanpatti Supervisor and, therefore, the petitions under Article 227 of the Constitution of India deserves to be dismissed by the Court.

14. Having heard learned advocates appearing for the parties and having considered their rival submissions and having gone through the award passed by the Industrial Tribunal, the Court is of the view that the said award does not call for any interference by this Court while exercising its writ jurisdiction under Article 227 of the Constitution of India. The Industrial Tribunal has specifically recorded the finding that the petitioners have manipulated the documents and produced a letter dated 10.02.2004 with certain interpolations which disentitle them for claiming any equitable relief from this Court. The Court is also of the view that there is sufficient force in the argument of Mr. Nilesh Pandya that the petitioners are not qualified to be appointed as Supervisor. As the petitioners did not possess the minimum qualification required for the post of Supervisor, the Industrial Tribunal has specifically recorded the finding that there is no evidence pointing out that the petitioners were given the work of Likhanpatti Supervisor. Even otherwise, at some point of time, certain work might have been done and

that would not make them eligible for appointment of Supervisor. The Industrial Tribunal has also recorded the finding to the effect that they were not in service. However, in absence of any material to that effect, the Industrial Tribunal has recorded the finding only to the extent that there is no question of appointing them as Supervisors. The cases relied on by the petitioners of two other similarly situated persons would not render any assistance to the petitioners as in those cases, the ground regarding manipulation and qualification was not available and if the petitioners are not possessing the requisite qualification, no Court would direct the authority to appoint them as Supervisors.

15. Considering the entire facts and circumstances of the case, the Court is of the view that the finding recorded by the Industrial Tribunal is based on the evidence that was available before it and hence, it does not require any interference by this Court. Both these petitions are accordingly dismissed. Rule discharged without any order as to costs.