

(2007) 04 GUJ CK 0062
In the Gujarat High Court

Case No : Civil Application No. 2090 of 2007 in Special Civil Application No. 6568 of 2006 to Civil Application No. 1814 to 1848 and 2362 of 2007

J.A. Chauhan

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 11-04-2007

Acts Referred:

Bombay Shops and Establishments Act, 1948 — Section 2(4)
Constitution of India, 1950 — Article 14, 16, 21, 23, 39
Industrial Disputes Act, 1947 — Section 33, 33(2)

Citation : (2007) 04 GUJ CK 0062

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Shalin N. Mehta, for the Appellant; Sunit Shah, GP with AGPs Concerned for Respondents 1, 3 and 4 and Gunvant R. Thakar, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

H.K. Rathod, J.—Heard learned Advocate Mr. Shalin N. Mehta for the applicants original petitioners and Mr. Sunit Shah, learned GP with learned AGPs concerned for respondents No. 1, 3 and 4 as well as Mr. Gunvant R. Thakar, learned Advocate for respondent No. 2.

2. These civil applications have been filed by the petitioners for interim relief.

3. Rule. Service of notice of rule is waived by learned Government Pleader Mr. Shah as well as learned Assistant Government Pleaders concerned for respondents No. 1, 3 and 4 as well as learned Advocate Mr. GR Thakar for respondent No. 2.

4. Petitioners are praying for the following prayers in the main matters as per page 8:

(A) Your Lordships may be pleased to issue a writ of mandamus or any other

appropriate writ, direction or order, commanding the respondents herein to permanently absorb the petitioners in service on the posts currently occupied by them;

(B) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, direction or order commanding the respondents herein to treat the petitioners as State Government servants/employees and to ensure that the petitioners are treated at par in all respects with State Government servants/employees of equal rank by affording the petitioners pay scales, increments, dearness allowance, leave travel concession, earned leave, sick leave and retiral benefits like pension, provident fund, gratuity, etc. with effect from the respective dates of entry into service of the petitioners;

(C) Your Lordships may be pleased to pass a cease and desist order to permanently restrain the respondents herein from terminating the services of the petitioners from the posts currently occupied by them;

(D) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, direction or order commanding the respondents herein to apply the doctrine of equal pay for equal work to the petitioners by declaring them to be similar in all respects to the Kendra Sanlaks of the Gujarat Labour Welfare Board or the City of Ahmedabad and the Kendra Sanchalaks of the Gujarat Social Welfare Board and be further pleased to direct the respondents herein to provide to the petitioners salary/wages and other service benefits equal in sum and measure to that of the Kendra Sanchalaks of the Gujarat Labour Welfare Board for the City of Ahmedabad and the Kendra Sanchalaks of the Gujarat Social Welfare Board.

(E) Your Lordships be pleased to declare the action of the respondents herein of paying wages less than the minimum wages rate to the petitioners since inception as illegal, unconstitutional, violative of Articles 14, 16, 21, 23 and 39 of the Constitution of India;

(F) Your Lordships may be pleased to declare the action of the respondents of paying the petitioners a salary fixed sum of Rs. 900.00 per month (in case of Kendra Sanchalaks) and Rs. 1300/-per month (in case of Jilla Sanchalaks) as whimsical, capricious, arbitrary, illegal unconstitutional smacking of bonded labour null and void;

(G) Pending admission, and final hearing of the present petition, Your Lordships may be pleased to restrain the respondents herein from terminating the services of the petitioners from the posts currently occupied by them;

(H) Pending admission and final hearing of the present petition, Your Lordships may be pleased to direct the respondents herein to pay at least the basic minimum wages prevailing in the State of Gujarat to the petitioners and be further pleased to pay the arrears of difference of wages calculated on the basis of the minimum wage rate right from the date of entry into service in case of

each petitioner

5. Petitioners are praying for the following reliefs in these civil applications as per para 15(A), (B) and (C):

15(A) Pending admission and final hearing of Special Civil Application No. 6598/2006, Your Lordships may be pleased to direct the opponents herein to pay to the applicants at least the basic minimum wage prevailing in the State of Gujarat and be further pleased to pay the arrears of difference of wages calculated on the basis of the minimum wage rate from the date of entry into service till the present date;

(B) In the alternative, pending admission and final hearing of Special Civil Application No. 6568 of 2006, Your Lordships may be pleased to direct the opponents herein to pay to the applicants the pay scale that is payable to a Class IV Government Servant, and the arrears of difference of wages pursuant thereto; and

(C) Your Lordships may be pleased to pass any other appropriate order as deemed fit in the interest of justice

6. Details given or the basic features disclosed or narrated by the present applicants in para 6 at page 10, 11 and 12 are reproduced as under:

6. The applicants state that certain basic features about their service are required to be noted at the outset:

(a) The applicants are appointed pursuant to a properly coordinated regular selection process that includes a written test and an oral interview.

(b) The applicants are full time which means that they start work at 9.00 a.m. And work upto 1.00 p.m. And thereafter star work at 3.00 p.m. And work upto 8.00 p.m.

(c) The applicants are appointed under the service rules that are approved by Labour and Employment Department State of Gujarat (Please refer to page 491 of paper book of Special Civil Application No. 6568 of 2006)

(d) The applicants are fully qualified to be appointed to the posts that they are currently occupying. All the applicants have passed the SSC Examination. Some of them possess a Bachelor's degree also.

(e) The appointment of the applicants is neither ad hoc nor contractual nor back door nor casual.

(f) The applicants are appointed against posts of Kendra Sanchalaks and Jilla Sanchalaks created in the Gujarat Rural Labour Welfare Board.

(g) An Expert Committee constituted by the Gujarat Rural Welfare Board vide resolution dated 13.1.1991 has recommended way back in the year 1992 that those of the applicants who are Kendra Sanchalaks are entitled to be placed in

regular pay scale of Rs. 1350-2200 (pre-revised). When the said recommendation was made, the Kendra Sanchalaks were being paid a fixed sum of Rs. 500.00 per month only. The said Expert Committee has also observed that the Kendra Sanchalaks of the Gujarat Rural Welfare Board are required to be treated at par with the Kendra Sanchalaks of the Gujarat Labour Welfare Board for the City of Ahmedabad as there is more or less complete similarity between these two groups. In fact, the Committee has further observed that the duties and functions of the applicants were found to be taxing and arduous than the duties and functions of the Kendra Sanchalaks of the Gujarat Labour Welfare Board for the city of Ahmedabad.

7. Affidavit in reply has been filed on behalf of present opponent No. 2 by Bipin J. Bhatt, Member Secretary, Gujarat Rural Labour Welfare Board, Gandhinagar. Learned Advocate Mr.GR Thakar appearing for respondent No. 2 has relied upon para 7A to 7C, 10 and 11 of the said affidavit page 38, 39, 40 and 41. Same are therefore, reproduced as under:

7(A) It is submitted that what is stated and mentioned in para 4 of the application, particularly what is stated and prayed in para 4 (a), (b) and (c), cannot be granted as the Minimum Wages Act, 1948 is not applicable to honorary Sanchalaks and they are not covered under the Schedule Employment of the Minimum Wages Act, 1948 Part I Copy of the Schedule to the above Act is attached herewith and marked as Annexure R/1 to this affidavit. They are not workmen or employees as per the definition of "workmen" under the said Act. They are honorary and in a matter of honorary appointment, there is neither vested right nor they are employees and salarized persons of the Board. The payment made them is honorarium and it is not a salary against the work, but it is a service to the society and a voluntary payment for the professional services, which are offered without charges.

7(B) It is submitted that what is stated in paras 4 (D) and 4(E) of the application cannot be accepted, as the Kendra Sanchalaks and Jilla Sanchalaks have no right to claim the equal salary paid to the employees of the Gujarat Labour Welfare Board. The Gujarat Labour Welfare Board is collecting the cess from the workers and factory establishment owners and also that Board is getting grant in aid from the State Government. The Gujarat Rural Labour Welfare Board, the present opponent No. 2, totally depends upon the 100 % grant in aid released by the State Government and not collecting any type of cess from the agricultural rural labour or farmers. All the applicants are honourarium paid and rendering social services for the upliftment and welfare of agricultural/rural workers. They are not salarised persons and have no right to claim wages for their social services, like other State Government servants.

7(C) It is submitted that what is stated in para 4(f) and 4(g) is covered by the reply given in above mentioned paras 7(A) and 7(B). It is respectfully put u to the notice of the Hon"ble Court that the project for the welfare work is for a limited period and is not permanent in nature, for example: Opponent No. 2

Board was running -

- (1) Group Insurance Scheme for landless labour;
- (2) Group Insurance Scheme for forest workers;
- (3) Group Insurance Scheme for salt workers;
- (4) Group Insurance Scheme for fishermen;
- (5) Maternity benefit aid to agricultural labour; and
- (6) The Scheme of Pacca Quarters to Salt Pan Workers All these activities are stopped or diverted to other departments by State Government, such as Health & Family Welfare Department and Industries & Mines Department.

10. It is submitted that what is stated in para 7 of the application is the fact. It is further submitted that as per the Women and Child Development Department Resolution No. ICDS/102006/1907/C dated 28.9.2006, considering the Government of India sponsored Scheme, which is being implemented in 260 units and for proper implementation of the above scheme, total 41484 Anganwadi Centres were sanctioned by the Government of India. So, State Government has decided to take maximum benefit of the Central Government Scheme and, therefore, all the balwadis and anganwadis run through Education Department Tribal Development Department, Social Justice & Empowerment Department, Urban Development Department and Labour & Employment Department, including 403 Balwadis run through the present opponent No. 2 Board is also decided to be adjusted against the same scheme. Accordingly, for proper implementation of the State Government Resolution dated 28.9.2006, Opponent No. 2 has issued office order dated 31.1.2007. Accordingly, the anganwadis run through the Board is covered by the above resolution and only applicable for Tedagar and Part time teachers working in Anganwadis. It is very clear that in the scheme, ICDS, which is sponsored by Central Government, there is no provision/arrangement for honorary Kendra Sanchalak and Jilla (District) Sanchalak. So, the benefit given by the Board, while issuing letter dated 31.1.2007 in favour of the Anganwadi worker (Shikshikas) cannot be extended in favour of honorary Kendra Sanchalak and Jilla Sanchalak, as they are not covered by the Central Government Scheme. Copy of the Government Resolution dated 28.9.2006 and letter dated 31.1.2007 issued by the Board are attached herewith and marked as Annexure R/2 Colly. to this affidavit.

11. It is submitted that in para 8 of the application, it is stated that Tedagar and Shikshikas are not salaried employees of the Board. The amount is paid to them as honorarium for rendering social services. Now, their services are merged with ICDS Project, which is run as per the norms of the State Government Resolution dated 28.9.2006 issued by the Women and Child Development Department. It is very clear from the policy of the State Government that honorarium, which is paid to the Kendra Sanchalak and District Sanchalak continued to be the responsibility of the Board and it is totally dependent upon the grant released by

the State Government for that purpose. IN the above facts, the increase given by Board's letter dated 31.1.2007 in favour of Anganwadi workers/ Shikshikas cannot be automatically made applicable to the Kendra Sanchalaks/Jilla Sanchalaks, as they are covered under the scheme of the Board and not covered under the Central Government Scheme.

8. On behalf of the respondent No. 1, affidavit in reply has been filed by one Mr. AM Kadri Deputy Secretary, Labour and Employment Department. Paragraph 7, 8, 9, 12, 13 and 21 thereof are relevant, therefore, they are reproduced as under:

7. In reply to para 2 of the application, I say and submit that qualification is not only the criteria for honorary workers ability to perform the social services. It is true to say that the minimum qualification for honorary Kendra Sanchalak is SSC as decided by the Board.

It is true that the majority Sanchalaks belongs to SCST and SEBC. They are fully aware that they are honorary sanchalakappointed for social welfare activities to agriculture Labour on honorary basis. They have accepted the duties of social welfare and upliftment of agricultural workers.

8. In reply to para 3 of the application, I say and submit that the Honorary Sanchalaks and Jilla Sanchalaks are not salaried employees. They are paid as honorarium for their social welfare activities and social upliftment of agricultural and rural workers.

The applicants are recruited by Board for honorary social services. The amount paid to them as honorarium for rendering social services.

9. In reply to para (4)(a) (b) (c) of the application, I say and submit that The Minimum Wages Act, 1948 is not applicable to honorary sanchalaks. They are not covered under the scheduled employment of the Minimum Wages Act, 1948 Part-1. They are not workman or employees as per the definition of workman under the Act. They are honorary and in a matter of honorary appointment, there is no vested right, neither the applicants are employees nor salaried persons. The Honorarium paid to Kendra Sanchalak is not a salary against the work but it is a service to the society and a voluntary payment for the professional services which are offered without charges.

10 to 11 : xxx

12. In reply to para 4 (g) of the application, I say and submit that the Gujarat Rural Workers Welfare Board is registered under Public Trusts Act, 1950 and the Society Registration Act, 1860 is rendering the social services for the upliftment and welfare of agricultural labour and rural worker. The Board is getting 100 % Grand in aid from the State Government for running their activities through various projects.

The project for the welfare work is for limited period. It is not permanent in

nature, for example:

- Board was running Group Insurance Scheme for landless labour;
- Group Insurance Scheme for forest workers;
- Group Insurance Scheme for salt workers;
- Group Insurance Scheme for fishermen;
- Maternity benefit aid to agricultural labour; and
- The Scheme of Pacca Quarters to Salt Pan Workers

It is respectfully submitted that all these activities are stopped or diverted to other department such as Health Department Industries Department.

13. In reply to para 4(h) of the application, I say and submit that the Minimum Wages Act, 1948 is not applicable to honorary sanchalaks They are not covered under the scheduled employment of the Minimum Wages Act, 1948 Part I. They are not workman or employees as per the definition of workman under the Act. They are honorary and in a matter of honorary appointment, there is no vested right neither the applicants are employees nor salaried person. The honorarium paid to Kendra Sanchalak is not a salary against the work but it is a service to the society and a voluntary payment for the professional services which are offered which are offered without charges. 14 to 20 : xxx xxx xxx

21. In reply to para (7) of the application, it is submitted that the Gujarat Rural Workers Board is registered under Public Trusts Act, 1950 and the Society Registration Act, 1860, is rendering the Social Services for the upliftment and welfare of agricultural labour and rural worker. The Board is getting 100 % Grand in aid from the State Government for running their activities through various projects.

The project for the welfare work is for limited period, and it is not permanent in nature, for example:

- Board was running Group Insurance Scheme for landless labour;
- Board was running group Insurance Scheme for forest workers;
- Board was running Group Insurance Scheme for salt workers;
- Board was running Group Insurance Scheme for fishermen;
- Board was running Maternity benefit aid to agricultural labour; and
- Board was running The Scheme of Pacca Quarters to Salt Pan Workers.

All these activities are stopped or diverted to other department such as Health Department, Industries department.

As per women and Child Development Department Resolution No.

ICDS/102006/1907/B dated 28.9.2006. 403 Balwadis run by Gujarat Rural Workers Welfare Board, are converted into ICDS Anganwadis from Date 1.10.2006 as per ICDS Anganwadies norms ICDS Anganwadies will be run as per the norms of women & Child Development Department and as centrally sponsored scheme. (Annexure A). For these Anganwadies looking to the above fact it is clear that this resolution is applicable only for Tedagar & Part time teachers working in Anganwadis.

To follow the Government procedure, Board has issued letter No. GKK/Board/356 to 383, dated 31.1.2007. (Annexure B). IN centrally sponsored ICDS scheme there is no provision/arrangement for honorary Kendra Sanchalak and District.

9. It is submitted by the learned Advocate Mr. Shalin Mehta before this Court that the applicants herein are working as an employees of respondent No. 2 since more than 10 to 15 years. Initially, before 1997, salary for Kendra Sanchalak was Rs. 500.00 and salary for District Sanchalak was of Rs. 1000.00 and by GR dated 6.8.1997, same were revised to Rs. 900.00 and 1300.00 respectively. Said GR has been issued by the Labour & Employment Department of the State of Gujarat. Learned Advocate Mr. Mehta further submitted that thereafter, from 1997, more than ten years have passed but the said wages have thereafter not been revised by the respondents and till this date, respondents are paying wages only on the basis of the GR 6.8.1997. He further submitted that all the petitioners are qualified, having passed SSC Examination and it is not the case of the respondents that the petitioners have been appointed illegally or de hors the recruitment rules or irregularly and it is also not their case that they are having back door entry. He also submitted that the main petitions has to be examined by this Court at the time of final hearing and final hearing would require some time but since last ten years, petitioners are working in the fixed salary without increase of single pie therein and their salary has not been revised by the respondent No. 2 and the State Government and, therefore, prayer has been made in these civil applications that their wages may be revised to the extent during the pendency of the main matters for enabling the poor petitioners to live in the society with dignity of human being.

10. On the other hand, learned Advocate Mr. Gunvant R. Thakar appearing for respondent No. 2 Board has submitted that no salary has been paid by the respondent No. 2 to the petitioners but mere honorarium is being paid by respondent No. 2 to the petitioners for their rendering social and welfare activities of the State Authority. He also submitted that the Minimum Wages Act is also not applicable to the respondent No. 2 and respondent No. 2 is not covered by the Scheduled employment. He however admits two things that the respondent No. 2 is a Public Charitable Trust and a society registered under the Societies Registration Act, 1860 and, therefore, raising contention that the Minimum Wages Act is not applicable to respondent No. 2. He also submits that the grant is available from the State Government and this Public Charitable Trust is receiving Grant in Aid fully from the State Government. As per his submission,

Gujarat Welfare Labour Board is statutory board collecting collection from the Workers and employers and respondent No. 2 is receiving full grant in aid from the State Government, meaning thereby, according to him, respondent No. 2 is run by the State Government. It was also clarified by him that respondent No. 2 is not collecting any cess from the employees or employer and it is fully dependent upon 100 per cent grant in aid received by it from the State Government. He has admitted that except Rs. 900.00 in case of Kendra Sanchalaks and Rs. 1300.00 in case of District Sanchalak, there is no other service benefit available to the petitioners. He also admits that no regular scale is available to the petitioners and except this amounts as referred to above, no other benefit is available to the petitioners and the amount which is being paid by respondent No. 2 to the petitioners is not salary but honourarium. He has placed reliance upon the decision of the apex court in case of State of Karnataka and Others Vs. Ameerbi and Others, which is a case relating to Anganwadi Workers. Except the submissions recorded hereinabove and except the decision as aforesaid, no other submissions were made by learned Advocate Mr. Thakar before this Court and no other decision was cited by him before this Court.

11. Learned Advocate Mr. Mehta has placed reliance upon three decisions as under:

- (1) Sanjit Roy Vs. State of Rajasthan,
- (2) People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others,
- (3) Excel Wear and Others Vs. Union of India (UOI) and Others,

12. While replying the submissions made by the learned Advocate Mr. Thakar, learned Advocate Mr. Mehta submitted that the Minimum Wages Act, 1948 is applicable to Respondent No. 2. He relied upon the definition of "commercial establishment given under the Bombay Shops and Establishments Act. Same is, therefore, reproduced as under:

2(4) Commercial establishment means an establishment which carries on any business, trade or profession or any work in connection with or incidental or ancillary to, any business, trade or profession and includes a society registered under the Societies Registration Act, 1860 (XXI of 1860) and a charitable or any other trust, whether registered or not, which carries on (whether for the purposes of gain or not, any business, trade or profession or work in connection with or incidental or ancillary thereto but does not include a factory, shop, residential hotel, restaurant eating house, theater or other place of public amusement or entertainment.

13. Thereafter, he placed reliance upon the notification attached to the Minimum Wages Act, 1948, Schedule I Item No. 16. Same is, therefore, reproduced as under:

16. Employment in any shop or commercial establishment, other than that

covered under any of the other entries in this Schedule.

Explanation. - For the purposes of this entry, the expression "shop" and "commercial establishment" shall have the meaning respectively assigned to them in the Bombay Shops and Establishments Act, 1948 (Bom LXXIX of 1948).

14. Relying upon these provisions of the Bombay Shops and Establishments Act and Entry No. 16 in Part I of Schedule Employment, it is submitted by the learned Advocate Mr. Mehta that the Public Charitable Trust and the Societies registered under the Societies Registration Act, 1860 are covered by the definition of "Commercial Establishment" as per Section 2(4) of the Bombay Shops and Establishments Act and, therefore, as per his submission, Minimum Wages Act is applicable to respondent No. 2. He also submits that the decision in case of Ameerbi (supra) relied upon by learned Advocate Mr. Thakar on behalf of respondent No. 2 is not applicable to the facts of the present case. He relied upon para 17 of the affidavit in rejoinder filed by the petitioners. Para 17 of their rejoinder at page 17 is, therefore, reproduced as under:

17. With reference to para 13 of the affidavit in reply, I say that the decision of the Hon'ble Supreme Court of India in case of State of Karnataka and Others Vs. Ameerbi and Others, would not apply to the facts of the present case. Every decision/precedent is to be read in the light of its peculiar facts. The following comparison/contrast would show that the case of the applicants is clearly distinguishable from Ameerbi (Supra).

1) Ameerbi was concerning a Scheme of Anganwadi workers that is floated by the Central Government. The applicants' appointment is not pursuant to any scheme of the Central Government or of the State Government.

2) In Ameerbi, the Anganwadi workers were found not to be holding statutory posts. In the present case, the applicants are appointed on the posts of Sanchalaks.

3) Anganwadi workers in Ameerbi were found not to be governed by recruitment rules applicable to employees of the State. In the present case, the applicants are governed by recruitment rules made with the approval of the Labour and Employment Department of the State of Gujarat.

4) In Ameerbi, the Anganwadi Workers were claiming the status of Government servants. Though the applicants herein may not be termed as Government servants, this fact alone would not detract from their right to claim a fair and minimum wage under Articles 21 and 23 of the Constitution of India. The Constitution does not ordain that only Government servant can make such a claim under Articles 21 and 23 of the Constitution of India. The right to claim a fair and minimum wage under Articles 21 and 23 of the Constitution is available to any employee of the State.

5) In Ameerbi the Anganwadi Workers were found to be working under a project. In the present case, the petitioners cannot be said to be project employees. The

Board is not a project.

6) In the present case, it ill lies in the mouth of the Board to say that the applicants cannot invoke the parity doctrine. It was the Board itself that invoked the parity doctrine in the year 1992 when its own expert committee opined that the applicants were liable to be compared with the Sanchalaks of the Gujarat Labour Welfare Board, Ahmedabad.

Thus, for the reasons mentioned hereinabove, the ratio of Ameerbi (supra) cannot be said to apply to the present case of the applicants. The facts of Ameerbi are clearly distinguishable from the facts of the present case. S

15. Based upon the aforesaid submissions made by the deponent in his affidavit in rejoinder filed on behalf of the petitioners, it was submitted by the learned Advocate Mr. Mehta before this Court that the facts of Ameerbi are clearly distinguishable from the facts of the case before hand and therefore,said decision would not apply to this case.

16. I have considered the submissions made by the learned Advocates on behalf of the respective parties.

17. Recall the face of the poorest and the weakest man who you may have seen and ask yourself if the step you contemplate is going to be of use to him. Will he gain anything by it? Will it restore to him a control over his own life and destiny! In other words, will it lead to self reliance for the hungry and spiritually starving millions! Then you will find your doubts and yourself melting away:

...Moandas Karamchand Gandhi

[Extracted from The Supreme Court and New Labour Jurisprudence published in Labour and Industrial Cases, 2007 . 40, 1]

Judges must abide by Churchill's dictum : "Humanity, rather than legality must be our guide [Extracted from the Article written by Hon"ble Mr. Justice V.R. Krishna Iyer, former Supreme Court Judge, published in the English News Paper].

18. The Bombay High Court in case of Standard Chartered Grindlays Bank Ltd. Vs. Govind Phopale and Another, observed as under in para 17 and 18:

17. I need not stress the fact that wage is the real content of the Article 21. If we were to take out the wage content from this Article 21 it would be reduced to a dead letter not worth even for a decoration. In absence of the source of livelihood which is protected by Article 21, the other fundamental rights would sound hollow and empty words and would collapse in no time as a dilapidated house. The workman and his family should not be made to strave merely on the pretext that proceedings u/s 33(2)(b) for approval of the action taken by employer is pending though he is told by law that the jural relationship continues and he still carries the label that he is an employee of the applicant employer before the Tribunal. This jural sense of employment must put bread in his empty belly. He cannot be denied the wage content of his jural relationship by drawing a

fine distinction of law point that he has factually ceased to be in employment as the employer has already passed an order of dismissal/discharge though he still continues to be in the employment of the employer in law. In the case of Fakirbhai Fulabhai Solanki Vs. Presiding Officer and Another, the Supreme Court was very much conscious of the delay in disposal of discharge/dismissal matters where the workmen concerned needed relief very badly. The Supreme Court has therefore considering the crucial aspect of the delay has given a great solace to the working class whose fate is covered u/s 33 of the Act as a whole not to be subdivided by the sub sections.

18. The aforesaid discussion is the essence of the wisdom which I have drawn from the following a new recent judgments of the Supreme Court. I am not quoting the quotable quotes from the said judgments to state what is very well known and well established needing no elaboration.

C.E.S.E. Ltd. v. Subhash Chandra Bose in para 13 at pages 355 and 356 : 1992 (64) FLR 248 (SC)

...The right to social justice is a fundamental right. Right to livelihood springs from the right to life. Guaranteed under Article 21. The health and strength of a worker is an integral facet of right to life. The aim of fundamental rights is to create an egalitarian society to free all citizens from coercion or restrictions by society and to make liberty available for all. Right to human dignity, development of personality, social protection, right to rest and leisure as fundamental human rights to common man mean nothing more than the status without means. To the tillers of the soil, wage earners labourers, wood cutters, rickshaw pullers, scavengers, and hut dwellers the civil and political rights are "mere cosmetic" rights. Socio economic and cultural rights are their mean and relevant to them to realize the basic aspirations of meaningful right to life. He universal declaration of human rights international convention of economy social and cultural rights, recognize their needs which include right to food, clothing, housing, education , right to work, leisure, fair wages, descent working conditions, social security, right to physical or mental health, protection of their families as integral part of right to life. Our Constitution in the Preamble and Part IV reinforce them compendiously as socio economic justice. The bed rock to an egalitarian social order. The right to social and economic justice is thus fundamental right.

19. In para 19 and 20 of the said judgment, it has further been observed as under:

The Tribunal has rightly touched Article 21. I have merely tried to explain the idea briefly. Every legislation touching the question of livelihood or employment must yield to Article 21 of the Constitution of India. It gives freedom from starvation. The ratio of Fakirbhai (supra) read with Jaipur Jilla (vide supra) unequivocally declares that all such workmen concerned u/s 33 of the ID Act shall not starve but shall have to live to outlive the litigation.

20. It however needs to be clarified that this ratio is based on the firm

foundational fact that the jural relationship of employer employee subsists and not in other cases where the jural relationship comes to an end.

In the aforesaid circumstances, I do not find any fault with the reasoning of the tribunal and there is no illegality or impropriety in the impugned order passed by the Tribunal awarding remuneration equivalent to the suspension allowance or subsistence allowance under the Rules. The petition therefore stands dismissed with no order as to costs.

20. The Allahabad High Court in Gyan Prakash Singh v. State of UP and Ors. 2002 Lab IC 3598 has considered question of begar and forced labour in context of Article 23, 16 and 39. It was held that the appointment on a fixed wage less than minimum pay scale fixed for the post is unconstitutional. Petitioner therein was regularly selected Instructor in typing and handloom trade doing similar work as Instructor in other training centres established by Government Company. It was held that he is entitled to same scale as Instructor working in other training centres. Apex court decisions have been considered in the said decision by Allahabad High Court as under:

Cases referred to : Chronological aras

Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others,

Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others,

Dhirendra Chamoli and Another Vs. State of U.P.,

Sanjit Roy Vs. State of Rajasthan,

People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others,

21. Para 8, 9 of the said decision are reproduced as under: Section 8. The norms have already been set by the State Government vide GO dated 11.11.1986 providing for payment of regular salary to ALL INSTRUCTORS working on fixed pay. The petitioner could not have been given employment on fixed salary Rs. 800.00 per month debars the GO aforesaid and such payment on fixed wages was illegal in itself. Every employee working in any service, employment or job requires a bare minimum amount of salary much below the minimum wages fixed by the Government is illegal, unfair and amounts to Begar and is in violation of Article 23 of the Constitution of India. The appointment on a fixed wage less than the minimum pay scale fixed for the post being unconstitutional cannot be sustained.

9. The Government is to act as a Model employer and cannot be provided with a legal cover by the Court to enable it to appoint persons on fixed salaries much below the regular pay scale. This would be a bad precedent in the country. If this is permitted, it would be in gross violation of principle of equal pay for equal work. Article 23 read with the directives in Arts. 39(c), 41 and 42 protect a civil

right against exploitation by taking Begar and forced labour i.e. Which compels a person to accept employment for remuneration which is less than the statutory minimum wages.

In para 18, 19 and 20 of the said judgment, it has been observed by Allahabad High Court as under:

18. Rule of beneficial construction is not *res integra*. Wage or salary is no longer a contract between the employer and employee. The employee is entitled to at least the minimum pay scale as it fulfills in part at least the obligation of the State under Directive Principles of State policy. Taking same work as other instructors and payment of fixed wages less than the minimum pay scale is forced labour and is violative of Article 23 of the Constitution of India, In *Sanjit Roy Vs. State of Rajasthan*,

Article 23 mandates that no person shall be required or permitted to provide labour or service to another on payment of anything less than the minimum wage and if the Exemption Act by excluding the applicability of the Minimum Wages Act, 1948 provides that minimum wage may not be paid to a workman employed in any famine relief work, it would be clearly violative of Article 23. It cannot be contended that when the State undertakes famine relief work with a view to providing help to the persons affected by drought and scarcity conditions, it would be difficult for the State to comply with the labour laws, because of the State were required to observe the labour laws, the potential of the State to provide employment to the affected persons would be crippled and the State would not be able to render help to the maximum number of affected persons.... When the State undertakes famine relief work, it is no doubt true that it does so in order to provide relief to persons affected by draught and scarcity conditions but nonetheless, it is work which ensures for the benefit of the State representing the society and if labour or service is provided by the affected persons for carrying out such work, there is no reason why the State would pay anything less than the minimum wages to the affected persons. It is not as if a dole or bounty is given by the State to the affected persons in order to provide relief to them against drought and scarcity conditions....

19. It further held that:

The State cannot be permitted to take advantage of the helpless condition of the affected persons and exact labor or service from them on payment of less than the minimum wage.

20. A person who agrees to be employed on fixed wages less than minimum wages is not in a position to bargain, as he requires a job to live and live with dignity. His position is no less than a famine affected person. Even otherwise, the State Government had decided to pay the Instructors regular pay scale vide GO dated 11.11.1986.

22. Therefore, in view of the observations made by the Hon''ble apex court as

well as the Allahabad High Court and the Bombay High Court and considering the hard reality of the factual aspects involved in the matter which are not in much dispute between the parties, petitioners are working since more than ten to fifteen years with the second respondent. Petitioners are working as full time employees and receiving the salary or wages which according to the learned Advocate Mr. Thakar honorarium honorarium, which also amounts to wages. It makes no much difference as honourarium and wages. Before 1997, petitioners were receiving Rs. 500.00 as Kendra Sanchalak and Rs. 1000.00 as District Sanchalak which were, in 1997, were revised to Rs. 900.00 and Rs. 1300.00 respectively for Kendra Sanchalak and District Sanchalak and thereafter, same have not been revised till this date though about ten years have passed. Therefore, they have to work for full time in fixed salary as forced labour though styled as honourary doing social service and not receiving even minimum wages from the respondent State Authority. Schedule employment which is covered by the Minimum Wages Act, 1948, unskilled labour at least receives per day wage of Rs. 90.30 and if calculated per month, it would come to more than Rs. 3000.00. These petitioners are educated skilled persons, have passed Matric Examination and some of them are graduate and yet they are not able to get more than Rs. 30.00 per day from State Authority. Expert Committee had already submitted report with recommendation to the State Government to revise the fixed salary but no decision till this date has been taken by the State Government upon the recommendations made by the Expert Committee. Expert Committee's report was submitted in the year 1992 and yet, till this date, final decision from the State Government is awaited. Instead of acting upon the said recommendation of the Expert Committee submitted in the year 1992, some rise was given in the year 1997 as stated earlier as if it was throwing a piece of bread. Looking to the definition of Scommmercial establishments as per Section 2(4) as well as under the Bombay Shops and Commercial Establishments, it includes public charitable trust and the societies registered under the Societies Registration Act, 1860. It is admitted by the learned Advocate Mr. GR Thakar appearing for respondent No. 2 that respondent No. 2 is a society registered under the Societies Registration Act, 1860 and it is also a Public Charitable Trust. Therefore, Bombay Shops and Establishments Act is applicable to respondent No. 2 and considering the Entry No. 16 of Part I of the Minimum Wages Act, Schedule Employment, respondent No. 2 is covered by Scheduled Employment. Apart from that, this being a prima facie observations made by this Court, this Court is not examining merits and is also not examining the main issue which has been raised in the petition but these are merely observations made on prima facie consideration based on the pleadings and submissions made by all the learned advocates for the respective parties. The question as to whether the Minimum Wages Act is applicable or not to respondent No. 2 is to be kept open for final hearing but the statutory provisions have been incorporated in the order only for forming prima facie opinion in the matter and considering the question of interim relief which has been prayed for by the petitioner in the present civil applications. As regards the submission of the learned Government Pleader Mr. Shah that if the interim relief

is granted, then, it would amount to granting of final relief, considering the final relief sought by the petitioner as referred to above, it is clear that the petitioners are seeking the relief of regular scale and service benefits at par with the Government employees. In the present civil applications, the only relief which the petitioners are seeking as interim relief is that they may be granted some increase in their existing wages so that they may be able to live in the society with human dignity and they may be able to maintain their respective families and to provide better educational opportunities to their children.

23. I have considered this interim relief only for the limited purpose considering the fixed salary of Kendra Sanchalak and District Sanchalak and also looking to the increase in Dearness Allowance, it is very difficult for the petitioners to maintain their families in such a small fixed salary which too has remained without any revision whatsoever since last about ten years, therefore, according to my opinion, fixed salary of the petitioners is required to be revised to the extent so that they may meet with the requirement of their families to some extent during the pendency of the petitions. Therefore, in both the cases, namely Kendra Sanchalak and District Sanchalak, Rs. 600.00 is to be increased and to be given to each of the petitioner by the respondents with effect from 1st January, 2007, which would mean that District Sanchalak will get Rs. 1900.00 and Kendra Sanchalak will get Rs. 1500/- p.m. w.e.f. 1st January, 2007. Respondent No. 2 is receiving 100 per cent grant from the State Government, therefore, State Government should have to pay the same by increasing grant in favour of respondent No. 2 so that the respondent No. 2 can be able to pay such salary which has been revised by this Court under these orders.

24. Therefore, these civil applications are allowed. It is directed to Respondent No. 2 and State Government to pay to District Sanchalak Rs. 1900.00 and Rs. 1500.00 to Kendra Sanchalak per month continuously as fixed salary with effect from 1.1.2007 till the main matters are finally heard and decided by this Court.

25. This interim order has been passed by this Court on the basis of the prima facie consideration of the matter and facts which are not in much serious dispute between the parties by covering their pleading and not examining the merits of the matter and whatever observations made by this Court while deciding these interim relief applications will not come in the way while examining the matters finally and it is also clarified that such interim revision or increase in the existing fixed salary or honourarium of the petitioners shall be subject to final orders that may be passed by this Court. In case if the petitions are ultimately dismissed by this Court, then, this Court will consider as to whether the increase which has been given in their fixed salary under these orders may be refunded by the petitioner to the State Authority or not and the order that may be passed by this Court in these main matters at the time of final hearing will be binding to the respective parties to the present matters. Respondents are directed to pay the arrears from 1st January, 2007 to 30th March, 2007 within two months from the date of receipt of copy of this order and thereafter to pay increased wages as

reflected above regularly every month till the main matters are finally heard and decided by this Court. Rule is made absolute in terms indicated herein above with no order as to costs.

26. Considering the request made by the learned Government Pleader Mr. Sunit Shah on behalf of the State which is not objected by the learned Advocate Mr. Shalin Mehta on behalf of the petitioners, Registry is directed to fix the respective main matters for final hearing on 25.7.2007 and to notify the same accordingly for final hearing on 25.7.2007.