
(2012) 12 GUJ CK 0046

In the Gujarat High Court

Case No : Special Civil Application No. 6217 of 2004

Jetpur Navagadh Nagarpalika

APPELLANT

Vs

Rohit Bhagwanjibhai Hirani

RESPONDENT

Date of Decision : 27-12-2012

Acts Referred:

Citation : (2013) 137 FLR 186 : (2013) 2 LLJ 316

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : Bhavesh P. Trivedi and R.R. Trivedi, for the Appellant; Mukesh H. Rathod, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—By way of the present petition, the petitioner-Nagarpalika has challenged the judgment and award dated 31.12.2003, passed by the Industrial Tribunal, Rajkot, in Reference (I.T.) No. 130 of 1994, whereby the Tribunal has allowed the Reference partly and directed the petitioner-Nagarpalika to regularize the service of the respondent-workman with effect from 1.1.1995. The Tribunal further directed that the period from 1.1.1995 to 1.1.2001 shall be treated as notional period and also to pay difference of pay scale from 1.1.2001 till the date of publication of award within a period of nine days from the date of passing of the award.

Learned Counsel for the petitioner contended that the respondent was originally appointed in Octroi Department and since the Octroi Department was closed his services are not required but in view of the order passed by the Labour Court in Reference (L.C.R.) Nos. 389 of 1991, 390 of 1991 and 653 of 1991, the respondent was allowed to continue in service. The Labour Court, Rajkot, by its judgment and award held the action of the petitioner discharging the workman from service as illegal and set aside the discharging order passed against the respondent-workman and he was directed to be restored to the original post with continuity of service within one month from the date of the publication of the

award. Therefore, learned advocate Mr. Trivedi contended that the Tribunal has committed an error in regularising the respondent-workman in service. He also contended that the appointment of the respondent-workman was illegal/back door entry and they were not appointed on regular post. Apart from that, their recruitment was not approved by the Deputy Director of Municipalities. He also contended that the Tribunal lost sight of the fact that the respondent-workman was appointed as daily wager and he has not completed 240 days.

Learned Counsel for the petitioner further contended that the Tribunal has committed error in not considering the objections raised by the petitioner-Panchayat. He has relied on the decision of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and the Full Bench decision of this Court in the case of Amreli Municipality Vs. Gujarat Pradesh Municipal Employees Union, .

2. Learned advocate Mr. Rathod appearing for the respondent-workman submitted that the respondent was appointed as peon by the petitioner in pursuance of the advertisement placed on the notice board and he was entitled to continue on the same post but they were wrongly discharged by the petitioner from services without issuing notice to him. Therefore, he approached Labour Court by way of filing Reference. The Labour Court partly allowed their References and directed the petitioner to reinstate the respondent-workman to his original post with continuity of service. The said order was not challenged by the petitioner. Pursuant to the said order, the respondent workman was reinstated by the petitioner.

3. Learned Counsel for the respondent-workmen also submitted that the General Body of the petitioner-Panchayat accepted the judgment and award of the Tribunal by passing a Resolution dated 28.1.2004. However, pursuant to the request made by the Chief Officer, the Collector granted stay against the General Body Resolution by order dated 10.3.2004.

4. Learned Counsel Mr. Rathod for the respondent submitted that the services of the respondent workmen require to be regularised. He relied on the decision of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka v. Umadevi (supra), particularly, paragraph No. 53 which reads as under:

One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore and Another Vs. S.V. Narayanappa, . R.N. Nanjundappa Vs. T. Thimmiah and Another, . and B.N. Nagarajan and Others Vs. State of Karnataka and Others, . and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more without the intervention of orders of the Courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In that context,

the Union of India, the State Government and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the Courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not Sub-judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

5. Apart from the above, learned Counsel for the respondent submitted that the area of the Nagarpalika is increased and income is also increased. In that view of the matter, this Court may not disturb the order of the Tribunal.

6. I have heard learned advocate Mr. Trivedi for the petitioner and learned advocate Mr. Rathod for the respondent workman. From the facts which are emerging from the record, it is clear that the respondent-workman was appointed in the year 1990 and subsequently he was discharged from the service. However, in the year 2000, the respondent-workman was restored to his original position by the Labour Court judgment which is not subject matter of any petition or other proceedings. Pursuant to the order of the Labour Court, since the respondent-workman was not given benefit of regular employees, he approached the Industrial Tribunal for their regularisation on the basis of working for 240 days. They moved demand application before the Tribunal and pursuant to which, the Municipality filed their statement before the Tribunal. After considering the submissions of the parties, the Tribunal directed the petitioner to regularise the respondent-workman. The fact remains that the respondent-workman was working from 1990 and he was discharged from service in the year 1994 and he was restored to the original post by the Labour Court in the year 2000 with continuity of service. The said order of the Labour Court was not challenged by the Chief Officer or the Municipality before any competent Court and therefore, admittedly, he has worked for more than 10 years. The contention of the petitioner-Nagarpalika that the appointment of the respondent-workman was back door entry cannot be acceptable for the reason that the person who has committed wrong in appointing the workman in the Municipality is the Officer of the Municipality. Since the employee came before the Court, it will not be open for the petitioner to contend that the appointment of the workman is back door entry. It is not appropriate for the petitioner to raise the contention that the appointment of the respondent-workman was back door entry because he was appointed after selection. At the most, it can be said that this is an irregular appointment and it is not an illegal appointment. None of the employees were found not suitable by the petitioner for the post for which he was appointed. While considering the set up of the petitioner, no documents or sanction of post were produced before the Tribunal. From the documents which are produced at

Annexure-C to the petition, it is not in position to accept that the person who are working on the basis of the document, are senior to the respondent-workman. In that view of the matter, I am of the opinion that the documents which were not produced before the Tribunal are tried to be produced before this Court and those documents are not helpful to the petitioner.

7. Though the General Body of the petitioner has accepted the award of the Industrial Tribunal to regularise the workman, it is the in fight between the elected body and the executive, the petitioner filed the petition. It will not be in the fitness of things that the Chief Officer of the Municipality sits over the decision of the elected body and it is not in the interest of the petitioner Nagarpalika. Since the respondent-workman is working for more than 22 years, the view taken by the Tribunal is just and proper. The Full Bench decision relied on by learned Counsel for the petitioner is of no help to the petitioner. In view of above, it will not be appropriate for this Court to reverse the findings arrived at by the Tribunal. Hence the petition deserves to be dismissed and the same is dismissed. Rule discharged. Interim relief stands vacated.