

(2010) 04 GUJ CK 0104

In the Gujarat High Court

Case No : Special Civil Application No. 5618 of 1998

Kamlaben Chhedilal

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 04 GUJ CK 0104

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

Bench : Single Bench

Advocate : A.V. Prajapati, for Petitioners 1, 1.2.1, 1.2.2 and 1.2.3 and Rajesh K. Shah, for Petitioners 1.2.4 and 1.2.5, for the Appellant; Jaswant K. Shah, AGP for Respondents 1-2, for the Respondent

Judgement

K.S. Jhaveri, J.—By way of present petition, the petitioners have prayed for following reliefs:

(B) Be pleased to quash and set aside the actions on the part of the respondent to remove the petitioner from service as Part-time Mali, by way of suitable writ under Article 226 of the Constitution of India.

(C) Be pleased to direct the respondents to regularize the services of the petitioner on the post of Mali and give all the benefits of regular employee.

(D) By way of interim relief, direct the respondents to permit the petitioner to serve on his original post of Part-time Mali and further be pleased to restrain the respondents from taking any action for vacation of the ordi (accommodation) allotted to him and further be pleased to direct the respondents not to appoint any other person in place of petitioner, till this petition is finally heard and decided;

2. It is the case of the petitioner that the petitioner was serving as Part-time Mali under respondent No. 3 - House Master and he has served continuously for 23 years and has been allotted ordi (accommodation) in the premises of respondent

No. 3. The petitioner had made representation on 23.11.1994 for regularization of his service. On 26.05.1998, the petitioner has been removed from service by respondent by oral order. The petitioner was insisted upon to vacate the ordi allotted to the petitioner for residential purpose. Hence, the petitioner has preferred the present petition.

3. The matter was admitted by this Court (Coram: K.R. Vyas, J.) on 10.09.1998 and following order was passed:

Draft amendment is granted.

Rule.

Considering the facts and circumstances and in view of the fact that the petitioner, who is in services of the respondent No. 3 since more than 20 years is terminated orally, the respondent shall reinstate the petitioner on the same post and shall continue to provide the said work till the final decision of this petition. It is clarified that it will be open for the respondent to terminate the service of the petitioner after following the process of law and after obtaining permission of this Court. DS permitted.

4. In affidavit-in-reply filed by respondent No. 3 - House Master, Ahmedabad it is submitted that petition is misconceived because the petitioner has prayed for reinstatement and also prayed for restraining the respondents from making him vacate the ordi accommodation allotted to him. It is further submitted that the petitioner was working as a contingency paid daily wager for six hours as Mali in N.B. Chhatrayalaya, Paldi, Ahmedabad. He was paid according to the Government Resolution dated 05.04.1997 as monthly consolidated remuneration for part time employee. The petitioner has no right for being appointed as a regular employee since he was working as a daily wager and after office hours at 26.05.1998, he is relieved from his duties. There is no sanctioned post of Mali in N.B. Chhatralaya and, therefore, the petitioner was contingency paid daily wager. He has never worked on the holidays and vacation and he was paid after deducting wages of holidays.

5. It is further submitted that petitioner had been allotted ordi for his residential purpose as per the Government Rules and Regulations and, therefore, there is no requirement of following any procedure before relieving the petitioner.

6. Learned Assistant Government Pleader relied on decision in case of State of West Bengal and Others Vs. Banibrata Ghosh and Others, wherein in para 31 and 32 held as under:

31. Shri Ghosh, learned Senior Counsel, appearing for the respondents, at this stage, says that we should take a compassionate view of the matter, since as a result of this judgement, the respondent would be thrown in a state of unemployment. We are afraid, we cannot show any such misplaced sympathy, which was shown by the Division Bench. We are told at the Bar that this Court had issued directions to make the payment of salaries and some payments have

been made to the respondent. We direct that such payments shall not be recovered from the respondent.

32. Considering that the writ petition remained pending for 10 years and thereby, the respondent might now have become barred by age for fresh employment, we recommend that the Government may consider the condonation of the age bar, if any, on the part of the respondent. We accordingly set aside the judgment of the Division Bench and restore that of learned Single Judge and allow the appeal but without any order as to costs.

7. It is stated that the petitioner has expired. Therefore, this petition has become infructuous. Therefore, this petition stands disposed of accordingly. Rule is discharged with no order as to costs.

8. It will be open to the respondents to take the possession of the premises which is allotted to the petitioner without any authority of law.