
(2016) 04 GUJ CK 0040
In the Gujarat High Court
Case No : SCA No. 3193 of 2016.

Karamsad Nagarpalika

APPELLANT

Vs

Rekhaben Shaileshbhai

RESPONDENT

Date of Decision : 06-04-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 33

Citation : (2016) 149 FLR 1024 : (2016) LabLR 664

Hon'ble Judges : Paresh Upadhyay, J.

Bench : Single Bench

Advocate : Shirish Joshi, Advocate, for the Appellant; Ut Mishra, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Paresh Upadhyay, J (Oral) - Challenge in this petition is made by the employer to the award passed by the Industrial Tribunal, Nadiad in Complaint (IT) No.6 of 2014 in Reference (IT) No.17 of 2012, dated 19.12.2015. By the impugned award, the Tribunal has held that the action of the petitioner Municipality of discontinuing the service of the respondent No.1 with effect from 08.08.2014 was illegal, unreasonable, malafide and in breach of Section 33 of the Industrial Disputes Act, 1947. Consequently, the Tribunal has directed that the respondent workman be reinstated in service with continuity. However back wages is denied to her.

2. Mr. Shirish Joshi, learned advocate for the petitioner Municipality has submitted that, the respondent was not the workman, no procedure was followed at the time of her initial appointment and the scheme on which she was working, is discontinued resulting into discontinuance of her service and therefore the Tribunal ought not to have interfered with it. It is submitted that the petitioner Municipality did not commit any breach of the provision of Section 33 of the Industrial Disputes Act, 1947 and therefore the impugned award needs to be quashed and set aside. It is submitted that this petition be entertained.

3. On the other hand, Mr.Mishra, learned advocate for the respondent workman has submitted that, the respondent was initially appointed by the Municipality on 26.03.2002 and subsequently she was confirmed vide order dated 27.10.2005. Pay fixation order was also passed by the Municipality on 27.10.2005. The Audit Authorities of the Government i.e. the Local Fund Department had also verified and approved the said Pay Fixation. It is submitted that, all these documents are on record of this petition, the same was on record before the Tribunal also and the same is taken into consideration by it. It is submitted that, on the face of this material, the say of the Municipality that the service of the respondent workman was duly discontinued could not have been accepted by the Tribunal which it has not and therefore this Court may not interfere. Mr.Mishra, learned advocate has further drawn the attention of the Court to the order passed by this Court in Special Civil Application No.21457 of 2005 dated 24.10.2005, the order of the Government of Gujarat in Urban Development and Urban Housing Department dated 01.06.2010 sanctioning the set up of the posts for the petitioner Municipality, more particularly the entry at serial No.9 of the said order and the consequential order passed by the Director of Municipalities, Gujarat State dated 23.11.2011. On the basis of this material, it is contended that, the discontinuance of service of the workman was illegal and mala fide. It is submitted that, the respondent workman was so treated by the Municipality for the reason that, the respondent had earlier approached this Court on more than one occasion with regard to her grievance about pay revision and the sexual harassment faced by her, which is not the subject matter of this petition. It is submitted that the Tribunal has taken into consideration the material placed before it and has found that the impugned action was illegal and mala fide. It is further submitted that, the glaring aspect of the matter is that, the dispute was pending with the Tribunal and there was stay by the Tribunal about maintaining status quo qua the service condition of the workman as on 27.12.2012 and in spite of that the petitioner Municipality had passed the order of discontinuance of service of the workman, which was in breach of the interim order of the Tribunal. It is submitted that, no interference be made by this Court. It is submitted that, the finding recorded by the Tribunal that the impugned order was malafide be also not interfered with by this Court. In support of these submissions, Mr. Mishra, learned advocate for the respondent has relied on the following decisions. It is submitted that this petition be dismissed.

(i) 2002 (92) FLR 667 - Jaipur Zila Sahkari Bhoomi Vikas Bank Ltd., v. Shri Ram Gopal Sharma.

(ii) 1995-I-LLJ 874 - Calcutta Electric Supply Corporation Ltd., v. Calcutta Electric Supply Workers" Union.

(iii) 1972-II-LLJ 259 ? M/s. Tata Iron and Steel Co. Ltd., v. The Workmen.

4. Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds as under.

4.1 It is not in dispute that the respondent was initially appointed by the petitioner Municipality on 26.03.2002. There is entry in the service book to that effect, a copy of which is on record. She was confirmed on the post of Community Organizer vide order dated 27.10.2005. A copy of the said Office Order is also on record. The Pay Fixation order was also passed on 27.10.2005.

4.2 Since she had passed the Government recognised examination called "Local Self Government Diploma (LSGD)", she was granted two additional increments also by the Municipality. An Office Order dated 01.12.2010 in this regard is on record at page-129.

4.3 She was granted the first higher grade scale (4000 - 6000) w.e.f. 16.08.2012, as per the scheme of the Government, vide order dated 23.08.2013. There is approval endorsement of the Audit Authorities of the State Government (Local Fund Audit, Anand) in this regard, in the service book of the respondent workman, a copy of which is at Page-101 of this paper-book.

4.4 There is order of the Government of Gujarat in Urban Development and Urban Housing Department dated 01.06.2010 sanctioning the set up of the posts for the petitioner Municipality. In the said order, the entry at serial No.9 is the Community Organiser, the post on which the respondent was working since years. There is consequential order passed by the Director of Municipalities, Gujarat State dated 23.11.2011.

4.5 In above factual background, there was no occasion for the petitioner Municipality to convey to the respondent workman that since the scheme on which the respondent was working is discontinued, her service would be discontinued. The action of the Municipality was thus inconsistent with its own record and the record of the Government. The termination of the respondent was thus unsustainable on merits. The interference by the Tribunal needs to be confirmed on merits.

4.6 It is also required to be noted that, the Reference was pending with the Tribunal and there was stay and in spite of that, the Municipality had passed the order discontinuing the service of the workman. The impugned action was therefore in breach of the provision of Section 33 of the Industrial Disputes Act, 1947. It was also in breach of the injunction order. The impugned award therefore needs to be confirmed on these additional grounds as well.

4.7 It is noted that, both the learned advocates have taken this Court through the pleadings in detail, wherein there is a Reference to more than one litigation between these two contesting parties. It is evident that the petitioner Municipality has attempted to get rid of the respondent, in whatever manner, it was possible. The Tribunal has taken note of the material before it and has found that the discontinuance of service of the workman was not only illegal but lacked bona fide as well. Considering the totality, this Court finds that, even that finding of the Tribunal is also well founded and no interference is required in that regard also.

4.8 The argument of the Municipality that no procedure was followed at the time of initial appointment of the respondent needs to be rejected in view of the settled position of law that a litigant can not be permitted to agitate that it is he, who had committed some illegality and therefore the other side is not entitled to relief. In this regard, reference needs to be made to the decision of Hon''ble the Supreme Court of India in the case of Bhartiya Seva Samaj Trust v. Yogeshbhai Ambalal Patel reported in (2012) 9 SCC 310.

4.9 Considering the totality, this Court finds that, the impugned award need not be interfered with, at least at the hands of the petitioner Municipality. This petition therefore needs to be dismissed.

5. For the reasons recorded above this petition is dismissed.