

(2014) 10 GUJ CK 0010

In the Gujarat High Court

Case No : Special Civil Application No. 15670 of 2005

Kutchh District Panchayat

APPELLANT

Vs

Mangalbhai K. Rabari

RESPONDENT

Date of Decision : 08-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2014) 10 GUJ CK 0010

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : H.S. Munshaw, Advocate for the Appellant; Swapneshwar Goutam, LD. AGP and P.H. Pathak, Advocate for the Respondent

Judgement

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S.R. Brahmbhatt, J.—Heard learned counsels for the parties and perused the documents.

2. The petitioner-opponent employer in the Labour Court at Bhuj in Reference (LCD) No. 2 of 1999 has approached this Court by way of this petition, though filed under Article 226 and 227 of the Constitution of India, essentially it is under Article 227 of the Constitution of India challenging the award passed by the Labour Court dated 14/12/2004 where under the Court while allowing the reference issued direction that the workman would be entitled to receive benefits as prescribed under the Government Resolution (G.R.) dated 17/10/1988 and Rs. 2000/- towards cost.

3. Facts as could be seen from the proceedings appears to be in a narrow compass. The concerned workmen were constrained to raise industrial dispute as the benefits which should have been flown to them as prescribed under the GR dated 17/10/1988 were denied to them without there being any justification on the part of the employer. The dispute was referred to the concerned Court wherein it was marked as Reference (LCD) No. 2 of 1999 wherein the workmen

filed statement of claim inter alia contending that the GR which inures in favour of all similarly situated workmen should have been treated as governing their service conditions also. The concerned employer-petitioner herein filed written statement through Executive Engineer mainly taking up the contention that as said GR contained a condition that this was a measure which was favourable to the workmen who were employed prior to the date of GR and it was a policy not to engage such persons after passing of the GR, besides it was also contended that as State is not party it would not be proper or appropriate for the concerned to contend anything more than what is being contended.

4. The Court after taking into consideration all the facts and provisions of Industrial Disputes Act and the provisions of Unfair Labour Practices came to the conclusion that the workmen deserved treatment which was accorded to all the concerned flowing from the GR dated 17/10/1988 and based there upon issued directions allowing reference vide order dated 14/12/2004, which is subject matter of challenge before this Court as stated herein above.

5. Shri Munshaw, learned counsel appearing for the petitioner contended that he is aware of the recent ruling of the Supreme Court in case of State of Gujarat and Others Vs. PWD Employees Union and Others etc., . However in his opinion the facts of this case would not be governed by the ratio laid down by the Apex Court in the case of State of Gujarat And Others Vs. PWD Employers Union And Others (supra).

6. Shri Munshaw submitted that:-

a) the concerned workmen were appointed temporarily and on ad hoc basis and for seasonal work.

b) No permission was ever sought from any authority and they were provided work on temporary basis and there were no sanctioned post.

c) Shri Munshaw has further submitted that the wages were being paid out of the funds earmarked as "contingency funds". However he very fairly submitted that this has not been pointed out to the Labour Court nor he is in a position today to indicate that under which provision of law this type of contingency funds are required to be maintained where on the wages are to be charged.

7. Shri Pathak, learned counsel for the respondent workmen contended that the decision of the Supreme Court as cited herein above in case of State of Gujarat Vs. PWD Employees Union & Ors (supra) would have straightway applicability to the present case. The so called inapplicability of GR has been answered squarely by the Court as there are subsequent Government Resolutions clarifying such things. Besides this, in the affidavit in reply at page-47 Court's attention was drawn to indicate that G.R. Dated 17/10/1988 is clarified and given effect to all those who are subsequently appointed also and that has been accepted as policy governing such employment thereafter.

8. Shri Pathak pointed out that learned counsel for the petitioner is not correct in

contending that all were employed after GR dated 17/10/1988. In fact four were employed before that. Shri Munshaw at this stage submitted that he never meant all employees were employed after the GR and statement annexed to the employees" list would clarify the situation.

9. Shri Pathak has further submitted that now by way of affidavit/order dated 7/6/2014 the petitioner themselves have granted benefits to the employees named there under, who were appointed in 1995.

10. Learned AGP Mr. Swapneshwar for the State has submitted that he is not in a position to controvert what is canvassed on behalf of the workmen by Shri Pathak, nor is he in a position to controvert the fact that decision of the Supreme Court in case of State of Gujarat Vs. PWD Employees Union & Others, and its applicability to the present case. He submitted that the Court may pass appropriate order.

11. The Court is of the considered view that the GR dated 17/10/1988 was no doubt containing reference to the future employment but the subsequent course of action and developments as it indicate that the Government continued employing daily wagers, temporary hands irrespective of those conditions which gave rise to a situation where litigations came up and hence as Shri Pathak has pointed out clarificatory GR came to be issued and over all facts & circumstances of the case indicate that the benefits of GR dated 17/10/1988 were to be extended to all, else it would have meant to Government employing unfair labour practice which would have been highly depreciable.

12. The Court is also of the view that the decision cited at the bar in case of State of Gujarat And Others Vs. PWD Employees Union And Others will have applicability to the facts & circumstances of the case and counsel of the petitioner"s submission qua some of the workmen were employed after GR dated 17/10/1988 would be of no avail as the judgment itself has answered that contention squarely.

13. The matter is though termed to be filed under Article 226 of the Constitution also but the tenor of the contention and cause title and absence of Labour Court as party respondent would clearly indicate that all the concerned treated this petition to be filed one under Article 227 of the Constitution of India and therefore the self-imposed restriction for examining the controversy under Article 227 would dissuade this Court from interfering with the award as learned counsel for the petitioner has failed in establishing any illegality much less perversity in any manner whatsoever so as to call for any interference. In the result the petition deserves to be dismissed and is accordingly dismissed. Rule discharged. Interim relief granted earlier stands vacated. However there shall be no order as to costs.