

(2011) 07 GUJ CK 0138
In the Gujarat High Court

Case No : Letters Patent Appeal No. 2646 of 2010 in Special Civil Application No. 11576 of 2000

Ramaji Bhavanji Chauhan and Others APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Citation : (2011) 07 GUJ CK 0138

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : T.H. Sompura, for the Appellant; N.J. Shah, Asstt. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Shah, J.—We have heard learned Counsel Mr. T.H. Sompura, for the Appellants and learned Assistant Government Pleader Mr. N.J. Shah, for the Respondents.

2. Being aggrieved and dissatisfied with the order passed by the learned Single Judge dated 16.8.2010 in Special Civil Application No. 11576 of 2000, the Appellants have preferred this Letters Patent Appeal on the grounds stated in the memo of appeal.

3. Brief facts of the present Appeal are that the Appellants-Petitioners are daily wager workmen working under the Respondent No. 2. There were different associations of such workers and due to several demands raised by them, One man committee under the chairmanship of Shri Dolatbhai Parmar, the then Minister of Roads and Buildings Department, came to be appointed by the State Government. On 1st October 1988, a bi-parte agreement came to be entered into between the Government and different Associations whereby all the demands were accepted.

3.1. Pursuant to the agreement dated 1.10.1988, the Government issued

Resolution dated 17.10.1988 wherein the Scheme for regularization of the daily wagers according to their period of service came to be framed. Though it was agreed upon by and between the parties that those daily wagers who have passed SSC examination, should be taken on regular establishment of Class III posts, the Government issued Resolution dated 10.11.1997 wherein it was provided that such SSC pass daily wagers will be taken on work-charge establishment. A clarification to the above Government Resolution was issued, whereby the daily wagers who passed the SSC examination before 1.12.1990 were to be placed on work-charge establishment.

3.2. The Appellants who were working with the Respondents since more than several years have not been taken on work-charge establishment. Therefore, the Appellants preferred Special Civil Application No. 11576 of 2000 before this Court. The learned Single Judge vide judgment and order dated 16.8.2010, dismissed the said petition on the ground that the Appellants were appointed on daily wage basis and therefore, they cannot claim right of regularization.

4. The learned Counsel for the Appellants submitted that the learned Single Judge has failed to appreciate that the Petitioners were not praying for regularization on work-charge establishment but, as such, they have prayed to direct the Respondents to give certain benefits which are already conferred upon them on papers. He has further submitted that the benefits asked for by the Appellants were already given in a bi-parte settlement and hence, it should be given in reality instead of being on papers without any fruitfulness.

5. We have considered the above-referred submission made by the learned Counsel for the Appellants and the documentary evidence forthcoming on record. We have carefully perused order dated 10.4.1997 passed by the learned Single Judge in Special Civil Application No. 4316 of 1996, which is at page Nos. 61-A to 61-D. Referring the order dated 16.8.2010, in our view, the learned Single Judge has covered all the above-referred contentions raised by the learned Counsel for the Appellants/ original Petitioners, the same reads as under:

2.0 The Petitioners are daily wager workmen working under the Respondent No. 2 - Department since last more than 18 to 20 years. There are different associations of such workers and due to several demands raised by them, a committee came to be appointed by the State Government. On 01.10.1988, a bi-parte agreement came to be entered into between the Government and different Associations whereby all the demands were accepted. Pursuant to the agreement dated 01.10.1988, the Government issued Resolution dated 17.10.1988 wherein the scheme for regularization of the daily wagers according to their period of service came to be framed. Though it was agreed upon by and between the parties that those daily wagers who have passed SSC examination, should be taken on regular establishment of Class III posts, the Government issued Resolution dated 10.11.1997 wherein it was provided that such SSC pass daily wagers will be taken on workchage establishment. A clarification to the above Government Resolution was issued, whereby the daily wagers who passed the

SSC examination before 01.12.1990 were to be placed on workcharge establishment. The Petitioners who have been working with the Respondents since more than 18 to 20 years are not taken on work charge establishment. Hence, this petition.

3.0 Learned advocate for the Petitioners submitted that in view of agreement dated 01.10.1988 between the State Government and Petitioner-Union and in view of Clause 3 of the said agreement, the Petitioners are entitled to regularization. He further contended that the Petitioners being S.S.C pass are entitled to the pay scale on completion of seven years. Moreover, having completed 10 years of service, the Petitioners are entitled to the benefits of the biparte agreement.

5.0 Learned Assistant Government Pleader appearing for the Respondent-State that in view of decision in case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and submitted that Petitioners are not entitled for regularization. She further invited attention of the decision rendered in Special Civil Application No. 4316 of 1996 wherein similar issue is involved and the same is dismissed on 10.04.1997.

6.0 After hearing and perusal of the record, it is found that the Petitioners were appointed as daily wagers. It is also found that Government Resolution dated 10.11.1997 is applicable to the daily wagers who has passed the SSC examination working in the Roads and Building Department and no such work has been specified in the Resolution. The said Resolution is not applicable to the Agriculture and Co-operation Department in which the Petitioners are working.

7.0 In the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, it is held as under:

Merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right.

8.0 Admittedly, the Petitioners were appointed on daily wage basis and they cannot claim any right of regularization. In view of the above decision, the Petitioners are not entitled for any relief. The petition stands dismissed. Rule is discharged. Interim relief, if any, stands vacated.

6. We found ourselves in agreement with the above-referred findings of the learned Single Judge and there appears no infirmity or illegality committed by the learned Single Judge in the above-referred order. Accordingly, this Appeal fails and is dismissed with no order as to costs.