

(2001) 01 GUJ CK 0039
In the Gujarat High Court

Case No : Special Civil Application No's. 9915 to 9917 and 10132 of 2000

Rameshbhai Nagarbhai Parmar and Another	APPELLANT
Vs	
Halvad Nagarpalika and Others	RESPONDENT

Date of Decision : 25-01-2001

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 260, 87
Industrial Disputes Act, 1947 — Section 25F

Citation : (2001) 91 FLR 785 : (2001) 2 GLR 1516

Hon'ble Judges : Anil R. Dave, J

Bench : Single Bench

Advocate : D.T. Shah, for the Appellant; Government Pleader and B.D. Karia, for the Respondent

Final Decision : Allowed

Judgement

A.R. Dave, J.—As facts and legal issues involved in all these petitions are similar, at the request of the learned Advocates, all the petitions are heard together.

2. The petitioners are daily-wagers who were working as Class III and IV workmen under respondent No. 1- Nagarpalika. It is their case that they were appointed as daily-wagers during the period commencing from 1996 to 1999. Initially, at the time of filing of the petitions, it was an apprehension of the petitioners that their services might be terminated without following legal procedure, and therefore, they had prayed that the respondents should be directed not to terminate their services but during the pendency of the petitions, they were relieved, and therefore, the petitions were amended and by virtue of the amendment, it has now been prayed that they should be reinstated in service as daily-wagers.

3. Certain facts are not in dispute. The petitioners were working as daily-wagers in different departments of respondent No, 1-Nagarpalika. They were appointed or engaged as daily-wagers without following any legal procedure. Their names had not been received from any employment exchange or they were not

appointed after inviting applications in pursuance of public advertisement but because of the administrative exigencies at the relevant time, they were engaged as daily-wagers and they all had worked continuously and every one had worked for more than 240 days in a year. It is also not in dispute that without taking the services of the petitioners, it was not possible for respondent No. 1-Nagarpalika to perform its duties under the Gujarat Municipalities Act, 1963 (hereinafter referred as "the Act"). It is also not in dispute that the petitioners had been appointed on unsanctioned posts and they were in excess of the set-up of employees sanctioned by respondent No. 3. It is also not in dispute that the set-up was sanctioned by respondent No. 3 in 1961, and in 1961, there was Halvad Gram Panchyat which was subsequently, upon increase in population, converted into Halvad Nagar Panchyat and thereafter it was converted into Halvad Nagarpalika. One can take cognizance of the fact that the area and population of the erstwhile Halvad Gram Panchayat must have been substantially increased since 1961. In the circumstances, it was absolutely necessary to increase the sanctioned strength of each cadre, but it is not in dispute that there is no increase in the strength of the sanctioned set up after 1961 by respondent No. 3 or any other Government authority.

4. It was brought to the notice of respondent No. 3 that respondent No. 1-Nagarpalika had employed several daily-wagers without following the legal procedure, and therefore, a show-cause notice was given to respondent No. 1 by respondent No. 3 calling upon it to show-cause as to why appropriate action under the provisions of Sec. 260 of the Act should not be taken against respondent No. 1-Nagarpalika. The said show-cause notice dated 16-9-1999 was replied by respondent No. 1 vide its letter dated 24-9-1999. Respondent No. 1-Nagarpalika had submitted to respondent No. 3 that the set up of respondent No. 1 was sanctioned in 1961, and thereafter, there was much development in the area governed by the erstwhile Halvad Gram Panchyat and several additional facilities were being given to the residents of respondent No. 1 Nagarpalika which were not given by the erstwhile Halvad Gram Panchayat and, therefore, it had become necessary for respondent No. 1-Nagarpalika to appoint daily-wagers to do day-to-day work of the Nagarpalika. It was also absolutely necessary for respondent No. 1 to take services of certain more persons to perform its statutory duties u/s 87 of the Act.

5. Reply of respondent No. 1-Nagarpalika was duly considered by respondent No. 3 and ultimately respondent No. 3 directed respondent No. 1 under its order dated 8-9-2000 to terminate the services of 44 daily-wagers whose names were referred to in the letter dated 16-9-1999.

6. In pursuance of the said directions given by respondent No. 3 in its order dated 18-9-2000, the services of the petitioners have been discontinued, and therefore, the petitioners have approached this Court with a prayer that they should be reinstated in service as their services as daily-wagers have been terminated without following legal procedure.

7. As stated hereinabove, it is not in dispute that all the petitioners had worked for more than 240 days in each year, and therefore, they are entitled to notice u/s 25F of the Industrial Disputes Act before their services can be terminated. It is also an admitted fact that the provisions of Section 25F of the Industrial Disputes Act have not been followed by respondent No. 1-Nagarpalika before terminating the services of the present petitioners.

8. It has been submitted by learned Advocate Mrs. Shah appearing for the petitioners that the petitioners have been rendered jobless because of the order dated 18-9-2000 passed by respondent No. 3. She has also submitted that the provisions of Section 25F of the Industrial Disputes Act have not been followed before terminating the services of the petitioners, and therefore, the impugned termination is bad in law, and therefore, the petitioners should be reinstated in service. It has been fairly submitted by her that it is open to the petitioners to exhaust alternative remedy available to them under the provisions of the Industrial Disputes Act but as the petitioners have already approached this Court before termination, this Court should entertain the petitions as a special case. It has been further submitted by her under the instructions of the petitioners that if the petitioners are reinstated in service, the petitioners would not claim back-wages till the date of pronouncement of this judgment.

9. On the other hand, learned Advocate Mr. Karia, appearing for respondents Nos. 1 and 2 has submitted that as respondent No. 3 or 4 had not sanctioned any additional post, respondent No. 1-Nagarpalika was constrained to engage the petitioners as daily wagers from time to time. It has been submitted by him that as and when need of respondent No. 1-Nagarpalika increased and as the staff was not sufficient, it had become absolutely necessary for respondent No. 1-Nagarpalika to engage some daily wagers so as to perform the duties which are to be performed by regular staff. He has submitted by giving an instance that respondent No. 1-Nagarpalika is having sanctioned strength of 5 persons in the octroi department. Respondent No. 1-Nagarpalika is having 4 octroi collecting centers. According to him, it is humanly impossible to have effective supervision of those 4 octroi collecting centers, which are situated at different places, round the clock, with the help of 5 persons. In the circumstances, the respondent-Nagarpalika was constrained to engage 14 daily wagers in octroi department to see that the income of the Nagarpalika is not adversely affected. It has been submitted by him that 14 daily-wagers were engaged to work in octroi department so that all the octroi collecting centres can be effectively supervised. This is just one of the instances which has been given by the learned Advocate. As a matter of fact, he has submitted that for all the departments of the respondent-Nagarpalika, it was necessary to take more staff. On one hand, population and area covered by the Nagarpalika was increasing and on the other hand, request of the Nagarpalika to increase the cadre strength was not being accepted by respondent Nos. 3 and 4. In the circumstances, it has been submitted by the learned Advocate so as to see that the statutory duties to be performed by the Nagarpalika are performed properly and effectively, the

respondent-Nagarpalika was constrained to engage the daily-wagers.

10. The learned Advocate appearing for the Nagarpalika has also submitted that on account of the directions given to the Nagarpalika by respondent No. 3, it was absolutely necessary for the respondent-Nagarpalika to relieve all the petitioners though their services were very much required. He has further submitted that because of the termination of the services of the daily-wagers, it would be difficult for the Nagarpalika to perform its statutory duties but the Nagarpalika was helpless as there were directions from the higher authority that the petitioners daily-wagers should be relieved, and therefore, all the petitioners daily-wagers were relieved.

11. Learned A.G.P. Mr. Joshi has submitted that the Nagarpalika had indiscriminately and without following any procedure, engaged several daily-wagers. It was not open to the Nagarpalika to engage daily-wagers beyond a particular limit. According to him at the most, 10% of the sanctioned staff could have been engaged as daily-wagers but in fact the number of daily-wagers engaged by the Nagarpalika was much more than the sanctioned strength. For an instance, he has drawn attention of the Court to the details furnished by the Nagarpalika. In the octroi department of the Nagarpalika, there is a sanctioned strength of 5 class III employees, and therefore, at the most one daily-wager could have been engaged by the Nagarpalika as per the norms fixed. He has further submitted that the respondent-Nagarpalika had engaged 14 daily-wagers though it could have engaged only one daily-wager in the said department. Learned A.G.P. Mr. Joshi has thus submitted that the Nagarpalika was acting beyond its legal powers while engaging daily-wagers, and therefore, respondent No. 3 was justified in giving direction to the Nagarpalika for terminating the services of the daily-wagers.

12. I have heard the learned Advocates at length and have perused the relevant documents placed before the Court. It is not in dispute that the services of the petitioners have been brought to an end without following legal procedure. It has been very fairly submitted by learned advocate Mr. Karia appearing for the respondent-Nagarpalika that as the petitioners had worked for more than 240 days in several years, they had a right to receive not only notice or notice pay, but also retrenchment compensation under the provisions of the Industrial Disputes Act. It has been submitted by him that the respondent-Nagarpalika was conscious of the fact that if the said daily-wagers approach the Labour Court or any appropriate forum for redressal of their grievances, the Nagarpalika would be saddled with exorbitant amount of costs and back-wages, but as the Nagarpalika was helpless, the Nagarpalika had to terminate the services of the daily-wagers immediately without any delay or without following the legal procedure so as to follow the directions of respondent No. 3.

13. Upon considering the relevant facts and the legal position, it is very clear that as the petitioners had worked for more than 240 days in several years, they had the right to get notice or notice pay and retrenchment compensation under

the provisions of the Industrial Disputes Act. It is not in dispute that without following any procedure or any provision of law, the services of the petitioners were terminated. I have noted the fact that the learned Advocate Mrs. Shah appearing for the petitioners has submitted under the instructions of the petitioners that the petitioners are ready to forego their rights to receive back wages from the date of termination till the date of this judgment if they are reinstated as daily-wagers. Looking to the fact that the termination is bad in law and improper, it would be just and proper to direct the Nagarpalika to reinstate the daily-wagers. Needless to say that it would be open to the respondent-Nagarpalika to terminate services of the petitioners in accordance with the law.

14. Submission on the part of the respondents that the petitioners could have availed the alternative remedy by approaching the Labour Court is correct in law but looking to the facts of the case, it would not be just to ask the petitioners to exhaust the alternative remedy for the reason that they had already approached this Court before termination of their services. Moreover, if the petitioners are not continued even as a stop-gap arrangement, work of the Nagarpalika would be adversely affected and by reinstating the petitioners for time-being, so as to give an opportunity to the respondents to retrench them in accordance with law, no harm would be caused to the respondent-authority. It is a known fact that if the petitioners are constrained to approach the authorities under the provisions of the Industrial Disputes Act for redressal of their grievances, a few years would pass in getting the cases finally decided by the Labour Court and that would result into a burden of backwages upon the respondent-Nagarpalika. In the circumstances, as a special case, it is directed that the petitioners should be reinstated as daily-wagers forthwith and it would be open to the Nagarpalika to retrench the petitioners in accordance with law. The reinstatement will also give breathing time to the Nagarpalika so as to make some alternative arrangement in accordance with law. In the meantime respondent Nos. 3 and 4 should also look into the proposal of the Nagarpalika with regard to increase in the cadre strength and the concerned respondent should take a final decision on the proposal. Moreover, the concerned respondent should also provide a guideline to the Nagarpalika and other bodies suggesting a mode in which daily-wagers should be appointed so that there may not be favouritism in the matter of appointment of daily-wagers.

15. In the circumstances, the petitions are allowed. It is directed that the petitioners shall be reinstated forthwith as daily-wagers and it would be open to the respondent-Nagarpalika to take necessary steps for retrenchment of the petitioners in accordance with law. As stated above by the learned Advocate for the petitioners, the petitioners waive their right to receive monetary benefits for the period commencing from their termination till the date of this judgment. Rule is made absolute in each of the petitions. No order as to costs.

Direct service is permitted.

16. Petitions allowed.