

(2016) 08 GUJ CK 0089

In the Gujarat High Court

Case No : Special Civil Application No. 23607 of 2007

Saurashtra Shramik Sangh

APPELLANT

Vs

Amreli Municipality

RESPONDENT

Date of Decision : 29-08-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2017) 1 CLR 132

Hon'ble Judges : Mr. K.M. Thaker, J.

Bench : Single Bench

Advocate : Mr. Y.V. Shah, Advocate, for the Respondent No. 1; Mr. G.M. Joshi, Advocate, for the Petitioner No. 1; Rule Served, for the Respondent Nos. 1-2

Final Decision : Dismissed

Judgement

Mr. K.M. Thaker, J. (Oral) - Heard Mr. Joshi, learned advocate for the petitioner - union, and Mr. Shah, learned advocate for the respondent - municipality.

2. In present petition, the petitioner - union has challenged the legality and propriety of the award dated 29.5.2007 passed by the learned Industrial Tribunal, Bhavnagar in Reference (IT) No.130 of 2003 whereby the learned Tribunal rejected the reference for the reasons recorded in the award.

3. So far as factual backdrop is concerned, it has emerged that the appropriate Government vide order of reference dated 7.4.1992 referred the dispute sponsored by the union whereby the union claimed that the service of Mr. B.T. Gorasiya should be regularised and status of permanent employee should be conferred to the said employee from the date when he completed service of 240 days.

3.1 The union, on behalf of the workman, alleged that the concerned workman was working as clerk in the octroi department of the municipality since 5 years. It was also alleged that the nature of duty performed by him is of regular and permanent work and that the concerned workman has served for more than 240

days in every year. It was alleged that the municipality is indulging into unfair labour practise by not regularising the service of the concerned workman. It was also claimed that though the concerned workman has worked for more than 5 years, his service is continued on daily wage basis which is illegal and unjustified.

3.2 The reference was opposed by the municipality who filed written statement and claimed that the concerned workman was engaged without following procedure prescribed by rules. The municipality also claimed that the concerned workman was engaged as daily wagger on purely temporary and ad-hoc basis and that he had no right in law to seek status of permanency. It was also claimed that the concerned workman is engaged only on need basis and that therefore also, the demand is not justified. The municipality also claimed that there is no vacancy on the regular and permanent set up of the municipality when the workman was engaged for the first time there was no vacancy on the permanent set up of the municipality.

3.3 During the proceedings, deposition of the workman and the municipality's witness were examined. The respondent municipality examined Sanitary Inspector as its witness. The witness of the municipality deposed on almost similar line stated in the written statement. He also asserted that there was no vacancy on the permanent set up of the municipality and that the concerned workman was engaged on need basis for casual and temporary work.

3.4 The learned Tribunal thereafter heard the reference afresh and after considering the dispute and after examining the material on record, the learned Tribunal reached to the conclusion that the demand was not justified and cannot be granted. Therefore, in light of the material available on record, learned Tribunal passed the impugned award and rejected the reference.

3.5 Before proceeding further, it is relevant to note that the subject reference was earlier decided by the learned Tribunal vide award dated 29.6.2001 whereby the learned Tribunal had directed the municipality to regularise the service of the concerned claimant from the date when the concerned workman completed service of 240 days in a year. The learned Tribunal also clarified that first five years of service after regularising will be considered as notional period and the workman would not be entitled for any monetary benefit and that on completion of five years of service, he would be entitled for benefit at par with regular and permanent employees.

3.6 Feeling aggrieved by the said award, the Municipality had filed writ petition i.e. Special Civil Application No.2779 of 2002. While admitting the petition, operation of the award was conditionally stayed by this Court. Subsequently, the petition came to be decided vide judgment dated 19.1.2006 whereby this Court, relying on the decision in case of Amreli Municipality v. Gujarat Pradesh Municipal Employees Union [2004 (2) GLH 692] remanded the case for fresh decision in accordance with the said judgment.

4. Mr. Joshi, learned advocate for the petitioner union, vehemently assailed the

judgment. He submitted that the learned Tribunal changed its earlier decision after the case was remanded. He submitted that the concerned workman is continuously employed by the municipality as clerk and though he has worked for many years, his service is not regularised and the concerned workman is illegally and arbitrarily treated as casual employee. He claimed that the municipality is indulging in unfair labour practise inasmuch as though the concerned workman has worked for more than 240 days in every year and he is employed continuously, his service is not regularised and the workman is suffering injustice. Mr. Joshi, learned advocate for the petitioner union, further submitted that the concerned workman is working with the municipality since August 1985 and by the time, the award came to be passed, the workman had worked for almost 12 years in the municipality, however, the municipality continues to treat the concerned workman as temporary or casual employee and benefits available to permanent workmen are not granted to the petitioner. He also submitted that this is not a case where the concerned workman is continued in service on account of any interim orders passed by the Court. He also submitted that in view of the subsequent decision in case of Hari Nandan Prasad & Anr. v. Employer I/R to Management of FCI & Anr [AIR 2014 SC 1848], the reliance placed by the learned Tribunal on the decision of Amreli Municipality (supra) is not justified.

5. Mr. Shah, learned advocate for the respondent municipality, opposed the submissions. He reiterated the same contentions which were raised before the learned Tribunal and he submitted that the learned Tribunal has decided the case on the basis of the evidence available on record and the impugned award does not suffer from any injustice.

6. I have heard learned advocates for the petitioner union and respondent municipality. I have also considered the material available on record and the impugned award.

7. On reading the impugned award, it emerges that in paragraph No.12 of the award, the learned Tribunal has recorded cogent, sufficient and satisfactory reasons in support of its final conclusion. The learned Tribunal has examined evidence, including the deposition of the concerned workman and the documents on record. The learned Tribunal has also taken into account the decision of Amreli Municipality (supra) as well as the decision in case of Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. [(2006) 4 SCC 1] and after considering the observations by Hon"ble Apex Court and Full Bench of this Court, the learned Tribunal reached to the conclusion that the demand raised by the petitioner union for and on behalf of the workman is not justified. The findings and conclusions recorded by the learned Tribunal are based on evidence available on record. The learned Tribunal has recorded findings that the concerned workman has made inconsistent statement in his deposition and that the concerned workman, during cross examination, admitted that he was not appointed after following prescribed procedure. The learned Tribunal has also recorded that the concerned workman

admitted that he had not submitted any application in response to any advertisement and any order appointing him in the service of the municipality is not issued by the municipality and he is continued in service without any appointment order.

7.1 Besides the fact that the learned Tribunal took into account the evidence / admission by the concerned workman, the learned Tribunal also took into account the fact that permanent and sanctioned set up of the municipality is only of 34 workmen as against that there are 88 workmen who are working as junior clerk and that therefore, even otherwise, there is no vacancy on permanent and sanctioned set up of the municipality. Consequently, the demand by the union for the concerned workman cannot be granted.

7.2 The said reasons and justification by the learned Tribunal do not warrant any interference.

7.3 The fact that there is no vacancy on the permanent and sanctioned set up of the municipality is not in dispute.

7.4 Further, there is no evidence on record to establish that the concerned workman possesses prescribed qualification to hold post of junior clerk as permanent and regular employee.

7.5 In this view of the matter, this Court does not find any justification to interfere with the findings of fact recorded by the learned Tribunal, more particularly because the findings of fact recorded by the learned Tribunal are based on clear and distinctive evidence available on record.

8. The learned advocate for the petitioner placed reliance on the decision in case of Hari Nandan Prasad & Anr. v. Employer I/R to Management of FCI & Anr. [AIR 2014 SC 1848].

8.1 It is true that in the said decision, Hon"ble Apex Court has observed that, in given case, depending on the facts and evidence, the learned Labour Court may direct regularisation of service. However, in the said judgment, Hon"ble Apex Court has also observed, inter alia, that:-

"34. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practise the Labour Court would not give direction for regularisation only because a worker has continued as daily wage worker/ad hoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularisation would be impermissible. In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the concerned worker does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated

workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the Industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision."

8.2 From the said observations, it comes out that Hon''ble Apex Court has emphasised the fact that if there is no vacancy on permanent and sanctioned set up of the establishment, then, the learned Labour Court or the learned Tribunal would refrain from passing direction for regularisation.

9. In present case, there was clear evidence on record before the learned Tribunal that there is no vacancy on the permanent and sanctioned set up of the municipality.

9.1 Besides the fact that merely on the ground that the concerned workman has worked for long time, would not be good and strong justification for granting such benefit and that therefore, the learned Tribunal has rightly rejected the demand.

9.2 In view of the evidence available on record and specific findings of fact, the decision by the learned Tribunal does not warrant any interference.

In the result, the petition fails and deserves to be rejected and is accordingly rejected. Rule is discharged.