

(2013) 10 GUJ CK 0082
In the Gujarat High Court

Case No : Special Civil Application No. 16810 of 2011

Shardaben Ganpatbhai Gohil

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2013) 10 GUJ CK 0082

Hon'ble Judges : Vijay Manohar Sahai, J;A.G. Uraizee, J

Bench : Division Bench

Advocate : Dhawan M. Jayswal and Ms. Vidita D. Jayswal, for the Appellant;
Shakeel A. Qureshi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Vijay Manohar Sahai, J.—We have heard Ms. Vidita Jayswal, learned advocate appearing for the petitioner and Mr. Shakil Qureshi, learned advocate appearing for the respondents. By way of present petition, the petitioner has challenged the order dated 14.09.2011 passed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (hereinafter referred to as "the Tribunal") in Original Application No. 291 of 2010 as well as order dated 4.6.2010 passed by the respondents, whereby the claim of the petitioner for conversion to full time casual labour and for regularization in Group-D post was rejected.

2. The petitioner was appointed as a part time Water Woman with effect from 15.01.1990 in Postal Civil Circle, Department of Posts (Civil Wing). Thereafter, the petitioner filed OA No. 589 of 1994 requesting to consider her case as Group-D employee. Thereafter, the said OA was withdrawn. Thereafter, the petitioner sought permission from the respondents on 18.06.2004 for further studies. The petitioner passed her standard VIII examination in the month of May, 2005. After passing her examination, the petitioner submitted a representation for conferment of temporary status/absorption on 07.12.2005. A legal notice was also issued by the petitioner on 10.3.2008, which was replied by the respondents on 17.3.2008, by which the claim of the petitioner for temporary status/

absorption was negated by the respondents.

3. Being aggrieved by the same, the respondents preferred OA No. 177 of 2008 before the tribunal. The tribunal by order dated 15.05.2009 disposed of the said Original Application directing the respondents to consider the case of the petitioner and pass a speaking order within two months. Against the said order, the respondents preferred Special Civil Application No. 12632 of 2009 before this Court, which was dismissed by this Court on 26.04.2010. Thereafter, the respondents passed order dated 4.6.2010, whereby the claim of the petitioner was rejected.

4. Being aggrieved by the said order, the petitioner preferred Original Application No. 291 of 2010, which was dismissed by the tribunal.

5. The tribunal has gone into the questions that the petitioner was never appointed on the post of peon or work of peon was taken from her. This was not the case. The case to be considered by the respondents was whether part time workman could be converted into full time casual labour or not, and therefore, neither the respondents have considered the claim of the petitioner in the proper perspective as directed by Central Administrative Tribunal in OA No. 177 of 2008 nor the tribunal has considered legality of the order passed by the respondents on 4.6.2010. The tribunal was influenced by the fact that the petitioner has not worked as full time casual labour. Therefore, the petitioner is not entitled to the benefits of the scheme of 1989. The claim of the petitioner was that she is entitled to conversion into full time casual labour. Therefore, the tribunal committed serious error of law and order cannot be maintained. Further the order dated 4.6.2010 of respondents is a non-speaking order without considering the facts from 2005 till date as to whether any casual labour has been regularized or granted conversion into full time casual labour since 1990 when the petitioner was appointed. All these facts were required to be considered and thereafter only decision can be taken by the respondents as to whether the petitioner is entitled for conversion of part time casual labour into full time casual labour and thereafter, looking to the long work of the petitioner, she could be considered for regularization.

6. The order of the Central Administrative Tribunal passed in OA No. 177 of 2008, which has become final between the parties, has been taken very lightly by the respondents-authorities and they have not applied their mind to the facts of the case and they should also consider that when the peons were required and recruited, why the petitioner was not recruited. This question was also considered by the tribunal while deciding the claim of the petitioner for conversion into full time casual labour. However, by order dated 4.6.2010 passed by the respondents (Annexure-B to the writ petition), the request of the petitioner for conversion to full time casual labour and for regularization in Group-D post was rejected.

7. In view of the observations made in the case of Secretary, State of Karnataka

and Others Vs. Umadevi and Others, in paragraph-52, as the petitioner had worked for more than 20 years under the legal order of appointment as part time worker, her claim is required to be considered.

8. For the aforesaid reasons, the order dated 14.09.2011 passed by the Central Administrative Tribunal in OA No. 291 of 2010 as well as the order dated 4.6.2010 passed by respondent No. 2 cannot be maintained.

9. Keeping part time workers, who have put in about 20 years service and are qualified to be appointed as peon or eligible for absorption and regularization in service either as casual labour/daily-wage labour or peon is nothing but exploitation. This Court cannot permit such exploitation under the Constitution of India as it will be violating Article 21 of the Constitution of India.

10. In the result, this writ petition succeeds and is allowed. The judgment of Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad dated 14.09.2011 passed in OA No. 291 of 2010 (Annexure-A to the writ petition) and order dated 4.6.2010 passed by respondent No. 2. (Annexure-B to the writ petition) are quashed. Rule is made absolute. There shall be no order as to costs.

11. Respondent Nos. 1 and 2 are directed to consider the claim of the petitioner in the light of the case of other part time workers, who have worked for more than 20 years and whose services are converted into full time casual labour. If any part time worker has been regularized or granted conversion into full time casual labour, the same benefit should be awarded to the petitioner.

12. It is needless to say that the respondents shall pass a reasoned speaking order after considering the entire facts since 1990 and if they find that petitioner's case has merits, then they may pass appropriate orders expeditiously. The entire exercise shall be completed by the respondents and the order shall be passed within four months from today. A certified copy of this order be given to the learned counsel for the parties within three days.