

(2010) 08 GUJ CK 0096

In the Gujarat High Court

Case No : Special Civil Application No. 670 of 2002

Vadodara Municipal

APPELLANT

Vs

Mohmad Ismail Usmania Shaikh

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2010) 08 GUJ CK 0096

Hon'ble Judges : K.S. Jhaveri, J

Bench : Single Bench

Advocate : Pranav G. Desai, for the Appellant; Rule Served for Respondent 1, for the Respondent

Judgement

K.S. Jhaveri, J.—This petition is directed against the judgment and award dated 29th September 2001 passed by Labour Court, Vadodara in Reference (LCV) No. 1113 of 1995 whereby the petitioner was directed to treat the respondent as permanent driver and to grant him all consequential benefits.

2. The respondent was working with petitioner Corporation as driver. His appointment was for fixed time period and for fixed work. He approached the Labour Court, Vadodara contending that he had completed 307 days and respondent had terminated his services illegally and violated the provisions of Section 25F, G and H of the Act. The Labour Court passed the award granting permanency.

3. Though served, none appears for the respondent. Heard the learned Advocate for the petitioner and perused the relevant documents on record. Having considered the submissions and perused the record of the case, it transpires that the issue involved in the present case is squarely covered by a Full Bench decision of this Court in the case of Amreli Municipality Vs. Gujarat Pradesh Municipal Employees Union, The ratio laid down in the said decision reads as under:

12.1 After considering the decisions cited before us, the following principles emerge:

[A] No regularization or permanency can be effected de hors the statutory provisions or the guidelines.

[B] Long service put in by the workmen itself may not be a ground to regularize services of ad hoc/temporary workmen against the sanctioned set-up without following statutory procedure of recruitment. At the most, Labour Court/Industrial Tribunal can issue direction for consideration of absorption subject to availability of posts on the establishment.

[C] To avoid nepotism and corruption, no back-door entry in service;

[D] Financial capacity of the local body to have additional burden is a relevant consideration to be kept in mind while ordering regularization or absorption.

4. This Court further observed therein that the Apex Court, in no uncertain terms, ruled that the Labour Court/Industrial Tribunal can neither regularize services of a workman nor grant permanency when his initial appointment itself de hors the rules or not on the sanctioned post and has deprecated orders of the High Court/Labour Courts/Tribunals directing to regularize services of not legally recruited persons and has given guidelines.

5. The Labour Court has not considered the ratio laid down in the aforesaid decision. Therefore the matter is required to be remanded to the Labour Court.

6. Accordingly the judgment and award impugned in the present petition is quashed and set aside. Matter is remanded to the Labour Court for consideration afresh in light of the decision in the case of Amreli Municipality (supra). Such decision shall be taken within a period of two years from the date of receipt of writ of this Court. It is clarified that this Court has not expressed any opinion on merits of the matter. Rule is made absolute accordingly with no order as to costs.