
(2012) 02 GUJ CK 0127

In the Gujarat High Court

Case No : Special Civil Application No. 2333 of 2012

Vankaner Municipality

APPELLANT

Vs

Saurashtra Safai Kamdar Sangh and 1

RESPONDENT

Date of Decision : 27-02-2012

Acts Referred:

Citation : (2012) 02 GUJ CK 0127

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

Bench : Single Bench

Advocate : Deepak P. Sanchela for Petitioner 1, for the Appellant; Murali N. Devnani for Respondent 1 and None for Respondent 2, for the Respondent

Judgement

Honourable Mr. Justice K.M. Thaker

1. Heard Mr. Sanchela, learned advocate for the petitioner, and Mr. Devnani, learned advocate for the respondent. Rule. Mr. Devnani, learned advocate, waives service of notice of rule on behalf of the respondent. The learned tribunal has, under the impugned order dated 17.11.2011 passed in Reference (IT) No. 62/96, directed the petitioner - Municipality to grant status of permanent employee to the concerned workmen, as and when the vacancy arises on the concerned permanent posts. The learned tribunal has also directed the petitioner - Municipality to pay the benefits of difference in salary and other benefits, upon granting status of permanent workmen to the concerned person.

2. The direction to the petitioner - Municipality to grant status of permanent workmen immediately on occurrence of vacancy, as per the seniority of the concerned workmen, is not completely in consonance with the directions issued by this Court (Full Bench) in the decision in case of Amreli Municipality v. Gujarat Pradesh Municipal Employees Union (2004 (2) GLH 692) more particularly in para 12.1.13 to 12.1.16 of the said decision.

3. Therefore, at this stage, the petition is partly allowed and the award and the Reference (IT) No. 62/96 are remitted to the learned Tribunal with direction that

within 4 weeks from receipt of certified copy of present order, the tribunal shall, after hearing the petitioner - Municipality and the concerned workmen / union representing the concerned workmen and after considering the observations and directions passed by this Court (Full Bench) in the decision in case of Amreli Municipality v. Gujarat Pradesh Municipal Employees (supra), appropriately correct and modify the award in Reference (IT) No. 62/96 so as to bring it in consonance with the direction in said judgment of this Court in so far as the final directions contained in the operative part of the award, particularly para-3 of the operative portion of the award is concerned.

4. It is clarified that any other observations or any other part of the award in question is not interfered with and the Court does not find it necessary to interfere with any other observation or direction and any directions or observations with regard to other aspects or conclusions in the tribunal's award does not call for and are not interfered with.

5. The only part in respect of which the tribunal is directed to make necessary modification is para-3 of the operative part of the award and it is directed that such directions may be brought in consonance with para 12.1.13 to 12.1.16 of the decision, hereinabove referred to, which read thus:-

12.1.13 Even if it is held that the Labour Court/Industrial Tribunal has wide jurisdiction to alter service conditions, it can exercise such powers subject to the recruitment rules, availability of sanctioned posts and subject to the grant and limits of budgetary provisions. When there is no permanent post, no direction can be given to the authorities to absorb daily wage employees by creating new posts. It is the common phenomenon in the case of Nagarpalikas/ Municipalities/ Government Corporations where such appointments are made on political considerations. The parties in power may recruit their own persons as daily rated employees and thereafter by seeking orders from the Court, they want to absorb such employees on permanent establishment. Time and again, such practice is deprecated in so many words in the judgments referred by us. The Panchayats, Municipalities, Municipal Corporations or Government Corporations as well as Government establishments are facing severe financial crisis only because of such staff which may be required for the time being, but to make them permanent would definitely adversely affect the financial substratum of respective organisations and the Courts should not be party to such illegal and irregular appointments by allowing them to be continued at the cost of public exchequer. We are conscious of the fact that by not approving the appointments of such daily wagers, it will be very difficult for them to survive and the question of their livelihood would arise. Keeping this aspect in mind, we do feel that in appropriate cases, their interests are required to be protected. We accordingly give following guidelines.

(1) If casual workers or daily rated workers are not required by the Local bodies and whose services are likely to be terminated, they should be relieved on the principle of "last come, first go". In the event of filling up the posts in future,

those who are eligible and qualified from and amongst the relieved workmen shall be preferred by waiving the age limit.

(2) If the workmen who have continued for years as temporary employees, in the event of their termination, the authorities will see that no unqualified person is appointed in their place.

(3) The question of regularisation can also be considered by the authorities before terminating services provided the workers are eligible on the sanctioned posts.

(4) If the posts are not sanctioned, the authorities may take such steps which are necessary in accordance with the provisions of law/rules/circulars within the budgetary provisions.

12.1.14 Thus, in view of the above, even if it is held that keeping daily rated/casual employees for a long duration amounts to unfair labour practice, that fact by itself, will not make them permanent and/or regularise service. While deciding such preferences for regularisation or permanency, the Labour Court/Industrial Tribunal, at the most, can pass order directing the authorities to consider their claim in the light of factors/ observations stated above instead of straight away passing the orders of regularisation or granting permanency.

12.1.15 In view of the above discussion, we answer the question referred to us as under:

(i) The Labour Court/Industrial Tribunal has no jurisdiction to issue direction or pass an award regularising services of employees of a Municipality or local authority without there being any "sanctioned set up" and no person can be regularised if such a person had entered service without following selection process under the title of daily rated employee.

(ii) In view of our answer to the above question, the judgment rendered by Division Bench in the case of Kalol Municipality and Another Vs. Shantaben Kalidas and Others, is now no longer a good law in view of subsequent decisions rendered by the Apex Court and more particularly the decision in the case of N.S. Giri Vs. The Corporation of City of Mangalore and Others, . The subsequent decision rendered by the Division Bench of this Court in the case of Halvad Nagarpalika and ors. Vs. Jani Dipakbhai Chandravadanbhai and ors., reported in (2003) 2 GHCJ 397 is held to be a good law. All the matters shall be placed before the concerned Courts taking up such matters for passing appropriate orders.

12.1.16 Before parting, we may like to observe that the unfortunate workmen who have continued for years as temporary employees and have succeeded before the Labour Court/ Industrial Tribunal, in view of our decision, in the event of their termination, the authorities may see to it that no unqualified person is appointed in their place and their claim for regularisation be considered provided they are eligible on the sanctioned posts. If the posts are not sanctioned, the

authorities may take such steps which are necessary in accordance with the provisions of law/rules/ circulars within the budgetary provisions. So as to see that no irregularities are committed in the matter of appointment by Panchayats, Municipalities and Corporations, in our opinion, it would be advisable if the State Government issues an appropriate circular giving details with regard to the aforestated guidelines to all the local authorities.

It will be open to the respondent workmen to place a certified copy of this order before the learned tribunal so as to expedite the proceedings. With the aforesaid clarifications, observations and direction, present petition stands disposed of. Rule is made absolute to the extent above.