

Date of decision:29-9-95

&

corrected 6-10-95

Special Civil Application Nos.5852, 5857, 5858 and 5859 of 1995.

For Approval and Signature

The Hon'ble Mr.Justice M.R.Calla

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of Judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?No

Special Civil Application Nos.5852, 5857, 5858 and 5859 of 1995.

Mr.V.B.Patel,senior counsel for the petitioners.  
Mr.T.R.Mishra,learned counsel for the rspondents.

Coram: (M.R.Calla,J)

Date: 29-9-95 & 6-10-95

Common Oral Judgment :

1. Rule. Mr.T.R.Mishra,learned counsel, waives service of rule for the respondents.
2. On the request of the parties the matters are taken up for final disposal.
3. These four Special Civil Applications have been filed raising common questions of law based on identical facts with

reference to the field labourers and daily rated workers of different categories in more than one departments of Gujarat Agricultural University. These petitions are directed against the impugned orders dated 13-2-95 passed by Industrial Tribunal as a common order deciding the interim applications filed by the Union of the employees, namely, All Gujarat Kamdar Karmachari Union in Reference (I.T.) No.216 of 1992, Reference (I.T.) No.217 of 1992, Reference (I.T.) No.218 of 1992 and Reference (I.T.) No.219 of 1992. While main References are yet pending before the Tribunal, the Tribunal has passed the interim orders in all the four References in relation to all the workmen that is from 1992 all the workmen be paid a sum of Rs.500/- P.M. as interim relief in addition to wages which are already being paid to them by the University and alongwith the salary packets of March, 1995, the arrears from September 1992 to February 1995 are to be paid in 3 equal instalments after every 2 months i.e first instalment on 1-4-95, second instalment on 1-6-95 and third instalment on 1-8-95.

4. On 29-7-91 certain demands were raised by the All Gujarat Kamdar Karmachari Union and on 30-5-92 the disputes were referred to the Labour Court being Dispute Nos.216, 217, 218 and 219 of 1992. The respondent-Union filed statement of claim before the Industrial Tribunal on 7-7-92 and on 25-8-92 an application was moved for interim relief claiming Rs.1000/P.M. by way of interim relief for each and every workman of the All Gujarat Kamdar Karmachari Union, who were covered by the terms of the References. The Gujarat Agricultural University also filed its written statement of claim and reply to the application for interim relief on 12-10-92. The Industrial Tribunal passed an order on 13-2-95 making interim award directing the Gujarat Agricultural University to pay Rs.500/- P.M. to each concerned employee and against such order dated 13-2-95 passed in each of the four References on the interim applications filed by the Union, the present Special Civil Applications were filed on 15-4-95.

5. The learned counsel for the petitioners Mr.Vithalbhai B. Patel, senior counsel, submitted that when the facts in the main case are in dispute and the main issue is yet to be considered and decided, the interim relief could not be granted by deciding the main issue at interlocutory stage. It has also been submitted that when the various controversies were to be examined by the Tribunal, the principle of 'equal pay for equal work' could not be invoked at the interlocutory stage. His contention is that when the Reference itself is a Reference seeking the regularisation of these employees on the respective posts, the regularisation could not be sought on the premises of the principle of 'equal pay for equal work'. Nor the relief, in the nature of grant of certain amounts per month, to all the workmen could be granted as an interim measure while

the Tribunal has yet to consider the merits of the case for the purpose of regularisation. It was also argued by Mr. Patel on behalf of Gujarat Agricultural University that the practice of granting interim reliefs, in the nature of main or the principal relief, has been deprecated by the Supreme Court and the Tribunal has proceeded to pass orders of granting interim relief of Rs.500/- without any basis or material and without deciding the main controversy on which the reference has been made and thus, the relief, which may or may not be available at final stage of the proceedings, has been granted at an interlocutory stage and it has been lastly contended that the interim relief can be granted only in aid of the main relief, which may be available to the party on final determination of his right. In support of his aforesaid submissions, the learned counsel for the petitioner has placed reliance upon the following decisions :

(a) 1995 (1)GLH 345 (M/s.Anup Engineering Ltd. v. Shreenarayan Kanaiyal).

(b) 1992 SC 1425 (NPTC Ltd. V. Corporative Executive Association of NTPC)

(c) 1995 SC 1368 (Bank of Maharashtra v. Race Shipping and Transport Co.Pvt.Ltd.

(d) 1992 Supp(1)SCC 680 (UP Junior Doctors Action Committee v. B.Shittal Nandvani)

(e) 1952 SCR 28 (State of Orissal v.Madan Gopal)

6. As against this Mr.Mishra appearing for the respondent-Union contended that the main references may be for regularisation, but it is the case of the respondent-Union that the services of the members of the respondent-Union are being utilised at par with the other employees, who are regular and yet there is a pay difference, which is violative of the principle of 'equal pay for equal work'. Since the pendency of the References in the Industrial Tribunal is very high, the References take number of years in the process of decision and the employees can not be left high and dry for such a long period, more particularly when all that is being paid to them is the minimum wages and they are being discriminated against the other similarly situated employees, who are doing the same nature of work.

7. The Industrial Tribunal has considered in detail with reference to the posts held by the workmen and the daily wages, which were being paid. The charts, which have been enclosed with the petitions under the signatures of the Administrative Officer of the Gujarat Agricultural University, show

designations as well as the amount of daily wages against the names of the different workman and it appears that the amount of daily wages vary from Rs.20/- to Rs.45/- and in two or three cases it is Rs.47.25 Ps. It is informed by the learned counsel for the petitioners that from 1-4-95 wages of the field labourers have been increased from Rs.20/- per day to Rs.25/per day and, therefore, there is no field worker at present who may be getting less than Rs.25/- per day. There is no dispute that there is not a single employee of less than five years service i.e. all the concerned workmen have atleast more than five years service to their credit and, therefore, the complaint is that they are being continued on daily wages, are not being regularised and coupled with the grievance that there were other employees in the University, who are discharging same duties and they are being paid in the regular pay scale prescribed for that post whereas the workmen concerned in these litigations are not being paid even the minimum of the prescribed pay scale since they are being paid on daily wages basis. The learned counsel for the Gujarat Agricultural University Mr.Patel, senior counsel, submitted that the workmen are not the regular employees of the University, their services are needed only when there is a field work in the agricultural university on account of the two crops in an year as and when there is 'RABI' and 'KHARIF' and thus it can not be said that they are on regular establishment of the University so as to claim regularisation or to press for the wages at par with other employees on the principle of 'equal pay for equal work' and in the facts and circumstances of the case on an application for interim relief being made by the Union, the Industrial Tribunal ought not to have passed the orders granting a sum of Rs.500/- P.M. to each and every employee in addition to the payment, which is already being paid to them. It was further submitted that the Tribunal has not only granted this sum of Rs.500/- P.M. to each and every employee concerned in this litigation from the date of the order but it has been directed to be paid from 1-9-92 i.e. while passing an interlocutory order on an application for interim relief, the amount has been granted with retrospective date i.e. 1-9-92. It has also been submitted that admittedly as per the case of the Union itself there are 352 workmen concerned in these four References and thus, it would entail a heavy financial burden on the University, if such a large amount is paid regularly till the matters are over and it was also argued that in case the Union fails before the Industrial Tribunal in the References, it will be impossible for the University to recover the amount, which has already been paid. On the premises as aforesaid, the orders passed by the Industrial Tribunal as interim orders, are sought to be quashed and set aside.

8. Having heard both the sides at length, I find that no doubt in the instant case the References are for regularisation and by the impugned order, the relief has been granted to the extent of Rs.500/- P.M. to the employees and in doing so the aid of the principle of 'equal pay for equal work' has also been taken. I am alive to the legal position that the relief of regularisation can be granted even if the ground of 'equal pay for equal work' is not available and holding of a particular post in certain cases may not have a direct nexus with the premises of principle of 'equal pay for equal work' and the learned counsel appearing for the Gujarat Agricultural University has also cited certain decisions on this proposition of law but on that basis it can not be said that in a Reference, which is essentially directed for regularisation, while considering the question of grant of interim relief, the Labour Court can not pass an interim order entailing financial implications. At one stage, during the course of the hearing, the matter was adjourned and time was granted to consider the suggestion that the University may accept to give relief to the extent that no workman gets any amount less than Rs.1000/- in a month and for that purpose time was also granted, but the learned counsel for the University expressed his inability to agree to the same and submitted that the order may be passed on merits, although Mr.Patel appearing for the University submitted that the University may be agreeable to pay the minimum of the regular pay scale i.e. Rs.750/- without paying the corresponding allowances and other benefits pertaining to that pay scale. The matter was, therefore, heard and arguments were addressed on behalf of both the sides at length.

9. Since the main dispute is pending with the Industrial Tribunal, it will not be appropriate to go into the niceties of the question and to analyse the decisions, which have been relied upon, because any observations made by this Court may prejudice the case of either of the parties, but in my considered opinion, while deciding the question of interim relief, the following principles are to be kept in view :

i. Should a party be able to establish a prima facie case, an order may be passed to strike a balance between the parties during the pendency of the dispute so that a party, which has a fair question for trial, is not left absolutely dry and high during the pendency of the dispute, but the relief, to be given as a part of interim relief, may not be such, which may be granted only at the final stage and further that in the name of granting interim relief, the relief involving financial implications can not be granted for the period in past.

10. If the impugned order passed in the instant case is

put to the test on aforesaid principle, it will be straightway seen that while passing the interim order, the Labour Court could not have granted the interim relief retrospectively from 1992 and it should have kept it confined to only from the date of the order and, therefore, the grant of a sum of Rs.500/- P.M. to each and every workman right from 1-9-92 can not be sustained in the eye of law and that part of the order passed by the Industrial Tribunal, Gujarat can not be sustained and deserves to be struck down.

11. Coming to the grant of relief from the date of the impugned order to the extent of Rs.500/- P.M. to each and every employee, I find that the relief, which has been granted by the Industrial Tribunal, is not beyond the scope of the Reference inasmuch as it is not the case of the University that in case these employees are granted the regularisation, they will not be able to get a minimum of a sum of Rs.1000/- P.M. at least. Therefore, by the addition of Rs.500/- at this stage, the ultimate relief is not exceeded. The Tribunal has applied a uniform principle after taking into consideration the entire facts and circumstances i.e. length of the period for which the members of the petitioner Union had worked, what are the minimum wages prescribed for the purpose, what amount the employees may get in case of ultimate regularisation and what amount they will get if they are granted the minimum pay scale with the addition of Dearness Allowance and other allowances and having come to the conclusion that in all the contingencies the employees shall be getting much more than a sum of Rs.1000/- P.M. and further that the relief of Rs.500/- P.M. to all the employees stands on a uniform principle and would give justice to the employees during the pendency of the dispute. It has been taken notice of that the employees have been working for a long period and in certain cases upto 17 years. In such circumstances, if the employees have been given the relief of Rs.500/- P.M. pending the question of their regularisation and the payment in the minimum pay scale and the corresponding allowances, it can not be said that the Industrial Tribunal exceeded the scope of Reference and in my opinion, the order passed by the Industrial Tribunal seeks to strike a balance between the claims of the parties and renders substantial justice between the parties so far as the period from the date of the impugned interim order is concerned.

12. While it will be open for both the sides to raise all possible objections, factual as well as legal, in the main dispute, which is pending, and it is expected that the Tribunal would decide the main dispute as early as possible and preferably within a period of six months from the date the certified copy of this order is served upon the Industrial Tribunal, the rights and obligations of the parties for the period from the date of the passing of the interim order shall

be governed in terms of the directions in the impugned interim order by the Industrial Tribunal, but for any period prior to the date of the interim award the same shall be subject to the directions, which may be given by the Industrial Tribunal at the time of the final decision and to that extent, the impugned order passed by the Industrial Tribunal can not be sustained and the same is set aside.

13. The upshot of the aforesaid discussion is that these Special Civil Applications filed by the Gujarat Agricultural University succeed to the extent that part of the impugned order granting the relief from 1-9-92 is quashed and set aside and the rest of the directions contained in the impugned order, i.e. from the date of the impugned order, remain intact and to that extent these Special Civil Applications are rejected. The Industrial Tribunal would decide the main References as early as possible and preferrably within a period of six months from the date the certified copy of this order is served upon it. These Special Civil Applications are accordingly allowed in part and the Rule is also made absolute in terms as aforesaid in all the Special Civil Applications. No order as to costs.