

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO 5129 OF 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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

Jitendra Muljibhai and Otrs.
VERSUS
State of Gujarat and Otrs.

Appearance:

MS SUBHADRA ALMOLA for the petitioners
None present for the Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision : 31/07/2000

C.A.V. JUDGEMENT

1. Heard the learned counsel for the petitioners.
2. Prayers are made by the petitioner in this
Special Civil Application for grant of the following
reliefs :

"(a) That this Hon'ble High Court under Art.226 of the Constitution of India, be pleased to issue an appropriate writ, order or direction and direct the opponents no.1 and 2 to treat the petitioners equally as Regular Drivers and direct the opponents to pay the same salary and allowances and benefits which the Regular Drivers are getting and also further to direct the opponents no.1 and 2 to pay the difference of salary for all these years which the petitioners have put in services on the basis of difference of pay between the salary of Regular Drivers and Daily Drivers who are paid Rs.25/- per day.

(b) Pending admission and final disposal of this Special Civil Application, direct the opponents no.1 and 2, their agents, and servants be directed not to terminate the services of the petitioners as Drivers and direct them to keep the status quo and continue them in service.

(c) The Hon'ble High Court under Art.226 of the Constitution of India, be pleased to issue appropriate writ, order or direction and direct the opponents no.1 and 2 to treat the petitioners as Regular Drivers of the Panchayat, Junagadh and pay the salary, allowances and benefits regular Drivers.

(d) Such order and further relief that may be deemed fit and proper be granted. "

3. Rule in the matter was issued on 30th September, 1987. Ad interim relief in terms of paragraph No.8B has also been granted by this Court on 19th November, 1988.

4. The learned counsel for the petitioners, on being asked by the Court, is unable to state whether the petitioners are still continuing in service or not.

5. It is unfortunate that the respondents have not filed reply to the Special Civil Application as well as nobody has cared to remain present also.

6. From the statement made in paragraph no.1 of the Special Civil Application, I find that the petitioners were appointed as daily wager drivers. The petitioners in all are 11 in number and it is difficult to accept that this much number of drivers in addition to the permanent drivers were needed by the District Panchayat as and when, some temporary increase in the work load was there. It is understandable that daily wager drivers would have been engaged, but it is very very difficult to

accept that the petitioners are continuously working for all these years. The petitioners have not produced any document to show that they are continuously working since alleged date of joining. The petitioners in paragraph no.1 have admitted that they are Daily Paid Drivers and are given wages @ Rs.20/- per day for the days they work in a month. So, from this fact also, it is clear that they are continuously working as Daily Wager as Drivers.

7. A daily wager does not acquire rights of taking benefits which are being given to the permanent drivers. The daily wagers cannot be given the benefits which are being given to the permanent employees. They cannot be treated at par with the permanent employees. Principle of equal pay for equal work cannot be made applicable to a daily wager leaving apart whether the petitioners still continues in service or not. The prayer made for giving them benefits which are given to the permanent drivers as well as the prayer for regularisation cannot be granted. For regularisation, it is to be mentioned that there must be some provision in the rules and the learned counsel for the petitioners has failed to show any such rule. The daily wages appointments in the country are sought to be made a conduit pipe for regular appointment. The daily wages appointments may be made by the authorities due to temporary increase of the work and even if it continues for some years, they do not acquire any right of permanency. If it is permitted then, it will de hors the recruitment rules. The provisions made under Articles 14 and 16 of the Constitution will render nugatory. It will open a flood gate for corruption and nepotism. It is not the case of the petitioners that the petitioners were appointed as daily wage Drivers after selection.

8. Taking into consideration totality of the facts of the case, this petition is wholly misconceived and the same is dismissed. Rule discharged. Interim relief, if any, granted earlier stands vacated. However, looking to the facts of this case, no order as to costs.

(S.K. Keshote, J.)
(kamlesh)