IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4842 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K. RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JUNAGADH NAGARPALIKA

Versus

JETHVA DILIPBHAI HIRABHAI

Appearance:

MR JAYANT PATEL for Petitioner

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/05/2000

ORAL JUDGEMENT

In the present petition, the Award passed by the Industrial Tribunal, Rajkot in Reference (ITR) No. 118 of 1991 dated 4th February, 1999 is under challenge. In the said Award, 14 workmen are made permanent with effect from 1st January, 1995. The Industrial Tribunal has further directed that the period from 1st January, 1995

till the date of Award ie., 4th February, 1999 has to be treated as notional as these 14 workmen are entitled to relevant pay scale from the date of the Award.

Mr. Jayant Patel, learned advocate for the petitioner-Junagadh Nagarpalika [hereinafter referred to as, `petitioner-Nagarpalika'] submitted that the financial condition of the petitioner-Nagarpalika is week and petitioner-Nagarpalika is unable to pay even the regular salary to its existing employees. He further submitted that such a direction of the Tribunal runs contrary to the set-up of Nagarpalika because such a set up is sanctioned by the Director of Municipality and if these fourteen workmen are made permanent then set up to that extent is required to be increased and that cannot be done without the permission and sanction of the Director of Municipalities. He also submitted that petitioner is receiving grant from the State Government in respect to the wages of only permanent workmen whose posts are sanctioned by the Director of Municipalities, and therefore, if these fourteen workmen are made permanent and if they are included in the set-up then the petitioner will not get the grant for wages of these fourteen workmen. He further submitted that the District Collector, Junagadh has also issued directions against the petitioner to control the administrative expenses and not to confirm or make permanent any employee who is working on daily wages. Therefore, Mr. Patel submitted that the said direction of the Industrial Tribunal is having financial burden upon the petitioner-Nagarpalika and the State Government will not take responsibility of the wages of such workmen because they are not included in the set-up of the Nagarpalika.

An industrial dispute was raised by the Union in respect to 23 workmen by an order dated 23th April, 1995. The Union submitted statement of claim in support of their demand. The case of Union before the Tribunal was that these workmen were continuously in service since many years in different branches of the petitioner and they are performing the work of permanent nature and inspite of that fact, the benefit of permanency has not been granted by the petitioner-Nagarpalika. It was also submitted by the Union that in similar and identical cases wherein employees those who have completed 240 days continuous service they all are made permanent and some of the juniors are also made permanent and senior employees have remained without the benefit of permanency. The statement of claim was filed vide Exh. 6 by the Union and the written statement was submitted by the petitioner-Nagarpalika vide Exh. 9. Thereafter, on

behalf of the Union one Madhubhai Mansukhbhai was examined vide Exh. 32 and another witness Shri Gulmohamed Lal Mohammed was examined vide Exh. 38. In the evidence, it comes on record that many juniors were made permanent and these concerned workmen were working since 1985 as Safai Kamdars. It has also come on record that these all workmen were continuously in service from the date of their joining and there was no break in their service. It is also proved in evidence that they are performing permanent nature of work. The petitioner-Nagarpalika has examined its Chief Officer Shri Dhiraj Kanjibhai Parikh vide Exh. 48. He had deposed before the Tribunal that out of 23 workmen, in all 9 workmen were made permanent by the petitioner. He also admitted in his evidence that the date of joining in service which has been mentioned by the concerned workmen is correct and from the date of joining service, they are performing their duties continuously. He also admitted that there is no difference in respect to the nature of work between permanent employee and daily rated employees. He also admitted that there are many more persons working in the Nagarpalika beyond the set-up and for that petitioner is not receiving any grant from the State Government and because of non-receipt of grant, such workmen are not made permanent by the petitioner Nagarpalika. He also admitted that petitioner is having muster pay register in respect to these concerned workmen. Before the Industrial Tribunal vide Exh. 15, the petitioner has made an application to the effect that out of 23 workmen, 9 have already been made permanent, and therefore, in case of such 9 workmen, their appointment orders were produced on record vide Exh. 18 to 24, and thereafter, the Union has also produced appointment orders in respect to their workmen vide Exh. 25 to 30. The names of said workmen were given by the Union before the Tribunal, and therefore, the present dispute has been limited to only 14 workmen. Thereafter, the Industrial Tribunal has considered the evidence on record and relied upon one decision of the Apex Court in the matter of State of Haryana v. Pyaresingh, reported in 1992 (4) SCC 118. Considering the decision of the Apex Court, the Industrial Tribunal has observed that these workmen are working continuously since more than 12 to 15 years without any break and in respect to their work, no objection is ever raised by the petitioner and even there is no objection about the educational qualification, and therefore, considering these fact, the Industrial Tribunal has come to the conclusion that looking to the observations made by the Apex Court in case of Re : Pyaresingh, these workmen are entitled to permanency. The contention of the petitioner in respect

to limited set-up has been examined by the Tribunal and come to the conclusion that such limitation of set-up as per the Corporation Act cannot come in the way of the Tribunal while passing the Award of permanency. The Tribunal has also examined the financial situation of the petitioner and the petitioner has produced before the Tribunal the balance-sheet and pointed out that the financial position is weak. Considering all these aspects, the Industrial Tribunal has come to the conclusion that these 14 workmen are entitle to the benefit of permanency with effect from 1st January, 1995. However, considering the weak financial position of the petitioner-Nagarpalika, the Industrial Tribunal has rightly not granted any benefit from 1.1.1995 to 4.2.1999 and this period has been treated and considered to be a notional period and the actual benefit of regular salary as a permenent employee has been granted only with effect from 4th February, 1999.

I have perused the entire award passed by the Industrial Tribunal. The Tribunal has considered each and every aspect of the matter and also considered the contentions raised by the petitioner-Nagarpalika and thereafter relied upon the decision of the Apex Court in the case of Re : Pyaresingh and also considered the weak financial position of the Nagarpalika, and therefore, the Tribunal has rightly not granted the actual benefit from the restrospective effect ie., from 1.1.1995 but had granted the actual benefit of permanency from the date of its Award i.e., 4th February, 1999.

Before the Tribunal, there was an undisputed position between the parties in respect to the date of joining of fourteen workmen, nature of work performed by them and continuous service of about 12 - 15 years. It is also an undisputed fact that there is no difference in respect to nature of work, responsibility and liability between permanent employee and daily rated employees performing the same type of work.

In the matter between Chief Conservator of Forests & Another v. Jagannath Maruti Kondhare, reported in AIR (1996) SC 2898, the Apex Court has observed that the benefit of permanency to the status of causal employees those who are working in employment for more than 5 to 6 years and worked for a period ranging from 100 days to 300 days continuously and if such employee continuous on causal status for a long years then in such circumstances it can be inferred that it was with an object to deprive them from the status of permanent employees. Burden does not lie upon the workman to

establish that object of employer. The relief of regularization with all benefits of permanent worker cannot be refused on the grounds of financial strains of State Exchequer. The Apex Court has further observed that the justification for paying even minimum wages could wither away, leaving any employer, not to speak of model employer like the State, to exploit unemployed person.. If a pay scale has been provided for permanent workmen that has been done by the State Government keeping in view its legal obligations and must be one which had been recommended by the State Pay Commission and accepted by the Government, and to deny this relief of permanency to the workmen only because in that case they would be required to be paid wages meant for permanent workers. This right flows automatically from the relief of regularization to which no objection can reasonably be taken. Therefore, considering the decisions of the Apex Court, according to my opinion, the view taken by the Tribunal cannot be considered to be arbitrary or unreasonable.

The next contention raised by the petitioner Nagarpalika is with respect to set-up provided by the Director of Municipalities. Now, the very contention has been considered and decided by the Division Bench of this Court in the matter of Kalol Municipality v. Shantaben Kalidas & Ors., 1993 (2) GLR 997 wherein the Bench has observed that, `on behalf of the petitioners it is contended that the award passed by the Tribunal is binding to the State Government because it is held by the Tribunal that the work performed by the concerned workmen was of a permanent nature and that the services rendered by them were necessary for running the primary schools. The contention cannot be accepted. .. The direction that may be given by the Labour Court or the Tribunal while deciding an industrial dispute may enable the Municipality to amend the Rules framed by it under Sec. 271 of the Gujarat Municipalities Act. But if there is no provision in the Rules or that the permanent set up fixed by the Municipality is already determined and the same is limited it cannot be set up as a defence by the Municipality that the Labour Court or the Industrial Tribunal cannot give direction which is not in confirmity with the Rules framed by it. The Rules framed by the Municipality are unilaterally framed without involving the workmen employed by it. Thus, unilateral determination of the number of staff by the municipality cannot bind the workmen engaged by it. Such unilateral decision about the number of staff cannot truncate the powers of the Labour Court or that of the Industrial Tribunal to adjudicate the dispute referred to it in

accordance with the provisions of the Act. .. Because the Municipality cannot receive the amount of matching grant from the State Government, it cannot be said that the Tribunal has no jurisdiction to give direction that the workmen concerned be treated as permanent employees and be given all the benefits payable to Class IV employees. The Municipality Act does not deal with the sphere of industrial dispute which is occupied by the I.D Act. Initially when the first contract of employment was made or the initial Rules were made the matter would be governed by the Municipal Act. After the workmen raised industrial dispute for changing their existing conditions of employment, the matter would be entirely governed by the I.D Act which provides for settlement of industrial disputes by changing, modifying or altering the existing conditions of service whether under a contract or under a Rule. Once the dispute is raised the matter would be governed by the Industrial Law. In the said decision, the Division Bench has considered earlier decisions in the matter of Savarkundla Municipality [Special Civil Application No. 351 of 1976 decided on 26.4.1976]. Therefore, considering the observations made by the Division Bench of this Court, the contention with respect to the set-up of the Nagarpalika raised by the learned advocate Shri Patel cannot be accepted.

Therefore, according to my opinion, the Industrial Tribunal has not committed any error either in law or on facts and there is no error of jurisdiction. The findings are based upon the oral and documentary evidence available on record and these findings are based upon certain undisputed facts. Learned advocate Shri Patel is not able to point out any error committed by the Tribunal which is apparent on the face of the record and even there is no infirmity which requires interference at the hands of this Court in exercise of the powers under Arts. 226 & 227 of the Constitution of India. Therefore, the present writ petition is required to be dismissed and the same is hereby dismissed at the admission stage.

The petitioner-Nagarpalika is directed to approach the Director of Municipalities to consider their weak financial position and thereby grant additional 14 posts in its set-up, in light of the impugned Award which is now confirmed by this Court in this judgment. Such a representation to the Director of Municipalities shall be made within a period of two months from today. Further, as and when such a detailed representation is received, the Director of Municipalities will sympathetically consider the same in light of the decision rendered by the Division Bench of this Court and pass appropriate

orders in accordance with law. The Director of Municipalities is directed to decide such a representation within a period of three months from the date of its receipt.

In view of the aforesaid observations and direction, this writ petition is dismissed. There shall be no order as to costs.

[H.K Rathod, J.]

Prakash*