

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1313 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 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
- @

KATRODIYA GANGARAM ZAVERBHAI

Versus

LIMBDI MUNICIPALITY

Appearance:

1. Special Civil Application No. 1313 of 1993
MR MINESH C DAVE for Petitioner No. 1
MR PJ YAGNIK for Petitioner No. 1
Mr. Hasit H. Joshi for MR VH DESAI for Respondent No. 1
-

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 29/06/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Yagnik for the petitioner and Mr. Hasit H. Joshi for Mr. V.H. Desai for respondent Municipality.

By way of this petition, the petitioner Shri KATRODIYA GANGARAM ZAVERBHAI has challenged the award made by the Industrial Tribunal, Rajkot in Reference (IT) No. 81 of 1986 dated 16.10.1992 wherein the prayer made by the petitioner in respect of Demand No.1 for granting benefit of permanency and regular benefits has been rejected by the tribunal. This petition was admitted by this court by issuing rule thereon by order dated 22nd February, 1993.

Learned advocate Mr.Yagnik appearing for the petitioner has submitted that the petitioner is working as compounder with the respondent municipality since 19th February, 1984 on daily wage basis. Initially, the respondent has appointed the petitioner for three months' period from 19.2.1984 to 18.5.1984 as training period and, thereafter, he was continued in service till the date. He has submitted that the industrial dispute was raised on behalf of the petitioner by the Surendranagar Jilla Sudhrai Kamdar Sangh demanding the permanency benefit to the petitioner which was referred for adjudication by the State Government on 3rd March, 1986 to the Industrial Tribunal at Rajkot. He has submitted that since the year 1984, the petitioner is working with the respondents as a compounder and his demand has been rejected by the tribunal only on the ground that according to the recruitment rules, compounder is required to pass pharmacy examination or certificate thereof and the petitioner has not been possessing the same and, therefore, on that ground alone that the petitioner is not having requisite qualification for the post in question, his demand for permanency benefit has been rejected by the tribunal. According to him, the tribunal has committed an error in doing so and in not relying upon the evidence of Dr. Chandrakant Parikh on behalf of the respondents. He has submitted that if the workman is working as a compounder since 1984 and after three months' training, he was allowed to continue to work as compounder and if there was no complaint about his performance or work, then, in such circumstances, the tribunal ought to have appreciated that during the intervening period, the petitioner has worked on the said post and has thereby obtained experience and therefore, he is entitled to have such permanency benefits. He has relied upon the decision of the apex court in case of Gujarat Agricultural University versus Rathod Labhu Bechar reported in AIR 2001 SC 706, para 26 of the said judgment and has submitted that if the workman is in service for more than ten years and if there is no complaint against his work by the employer,

then, in such circumstances, technical approach must have to be relaxed and the workman is entitled for the benefit of permanency.

I have also considered the submissions made by Mr.H.H.Joshi for Mr.V.H. Desai on behalf of the respondent Nagarpalika.

Considering the submissions made by the learned advocates for the parties and also upon perusal of the award in question, it would appear that before the tribunal, purshis was filed by the union to the effect that demand no.2 and 3 were satisfied and, therefore, they are not pressing those demands and demand NO.1 was adjudicated by the tribunal and as regards demand NO.1, claim of the petitioner namely Gangaram Zaverbhai was negatived by the tribunal. Before the tribunal, statement of claim was filed by the union and reply thereto was filed by the first party Nagarpalika. On behalf of the workmen, one Gatorbhai Savjibhai was examined and on behalf of the first party Nagarpalika, Chief Officer and Dr. Chandrakant Parikh both were examined before the tribunal. The tribunal, after considering the evidence on record, has come to the conclusion that the workman Gatorbhai Savjibhai is entitled for the benefit of regularization and permanency with effect from 3rd March, 1986 and the claim of the present petitioner workman was rejected on the aforesaid ground and in respect of the third workman namely Naranbhai Jesangbhai, since he was made permanent by order dated 29th May, 1986, therefore, his claim for permanency has not been adjudicated by the tribunal. Before the tribunal, on behalf of the first party Nagarpalika, Dr. Chandrakant Parikh, Medical Officer was examined wherein he has deposed that the petitioner Gangaram Zaverbhai is not qualified compounder and that earlier in the dispensary, there were three posts of Pharmacist and they having retired, Gangaram was doing the work of compounder though he was neither holding degree or any certificate in Pharmacy from the Government. Before the tribunal, it was further deposed by Dr.Chandrakant Parikh that as per the Government Resolution, only Pharmacist is now entitled to be compounder and has further submitted that the petitioner was continued in view of the order of the Court. After considering the deposition of Dr.Chandrakant Parikh, Medical Officer on behalf of the first party Nagarpalika, the tribunal considered the merits of the matter and has come to the conclusion that merely because the petitioner was allowed to work for a long period, he is not becoming entitled for the benefit of permanency because the

petitioner is not qualified as per the recruitment rules and also because of the Government Resolution. The tribunal has also come to the conclusion that there is no reason to disbelieve the evidence of Dr.Chandrakant Parikh that the Government has issued instructions that those who have passed pharmacy or certificate thereof should be appointed as a compounder. The tribunal has observed that the compounder in dispensary does the job of dressing as also works as druggists and he prepares drugs as prescribed by the doctor.However, the tribunal has also observed that it is not the case of the respondent that in past, while working as compounder, the petitioner has committed any mistake or error or anything wrong or that he has given any wrong medicine to any patient in the dispensary. Thus, the claim of the petitioner for permanency and regularization has been rejected only on the ground that he is not qualified for the post in question and, therefore, he cannot claim such benefits.

I have considered the observations made by the tribunal. I have also considered the submissions made by the learned advocates for the parties. It is undisputed that the petitioner was working as compounder initially as daily wager with effect from 19th February, 1984 and after completion of three months, he was allowed to continue till the date. Thus, the fact remains that the petitioner has continuously worked and has remained in service from 1984 till this date and it has not been pointed out that there has been any complaint as regards his work as a compounder during these 17 years. This would mean that the work of the petitioner was satisfactory. The petitioner has worked for about 17 years from 1984 and this much experience itself is sufficient and enough though he is not possessing requisite qualifications. Further, it has also to be considered that at the time of employing or engaging the petitioner, it was within the knowledge of the respondent municipality that the petitioner is not possessing the requisite qualification for the post in question. With this knowledge, he was employed and was continued. The contention that he is not having the requisite qualification has been taken only at the time when the petitioner raised demand for regularization and permanency benefits. Thus, if such demand would not have been raised by the petitioner, then, the respondents would not have taken such plea and would have continued him without raising such objection for his continuance. Therefore, the question which this court is required to consider is whether the petitioner is entitled for the benefit of regularization and permanency after completion

of 17 years of service without any complaint though he is not possessing requisite qualification for the post of compounder. This aspect has been examined by the apex court in case of Gujarat Agricultural University versus Rathod Labhu Bechar and Others reported in AIR 2001 SC 706. In para 26 of the said judgment, it has been observed by the apex court as under:

"26. In the light of the aforesaid decisions we now proceed to examine the proposed scheme. Under Clause 1 it is proposed that all daily wage workers, whether skilled, semi skilled or unskilled who have completed 10 years or more of continuous service with a minimum of 240 days in each calender year as on 31st December, 1999 is to be regularized and be put in the time scale of pay applicable to the corresponding lowest grade in the university. However, the said regularization is subject to some conditions. Under Clause 1[a] such employee is eligible only if he possess the prescribed qualifications for the post at the time of their appointment. The strong objection has been raised to this eligibility clause. The submission is, those working for a period of 10 or more years without any complaint is by itself a sufficient requisite qualification and any other rider on the facts of this case would prejudice these workers. We find merit in this submission. We have perused the qualifications referred in the aforesaid recruitment rules according to which, qualification for Peon is that he should study upto 8th Std., for Operator cum Mechanic, should have Diploma in Mechanic having sufficient knowledge of vehicle repairing experience automobiles or tractors Dealers workshop for two years, for Chowkidar, he must be literate and have good physique. Literate is not defined. For Plumber to have I.T.I. Certificate.

We feel that daily rate workers who have been working on the aforesaid posts for such a long number of years without compliant on these posts is a ground by itself for the relaxation of the aforesaid eligibility conditions. It would not be appropriate to disqualify them on this ground for their absorption, hence Clause 1[a], need modification to this effect."

Therefore, considering the observations made by the apex court in aforesaid decisions, para 26 in

particular wherein the benefit of regularization has been given to such employee who has completed more than ten years service as daily rated employee though they may not be possessing requisite qualification and it has been held that part is required to be relaxed by the employer and the apex court has specifically observed that it would not be appropriate to disqualify such employees on this ground from the benefits of regularization and permanent absorption.

Therefore, considering the facts of the present case in light of the observations made by the apex court in aforesaid decision, in this case also, admittedly, the petitioner workman had worked continuously from 1984 till this date as a compounder and the demand of the workman has been rejected only on the ground that he is not having requisite qualification as per the Government Resolution. According to my opinion, in view of the observations made by the apex court in case of Gujarat Agri. University v. Rathod Labhu Bechar reported in AIR 2001 SC 706, the tribunal has committed an error in rejecting the demand of the petitioner. Thus, the petitioner is entitled for similar benefit of regularization and permanency as has been granted by the tribunal in favour of other workman Gatorbhai Savjibhai.

In the result, this petition is allowed. The award made by the Industrial Tribunal, Rajkot in Reference No. 81 of 1986 dated 16th October, 1992 is hereby quashed and set aside in so far as it relates to the present petitioner KATRODIYA GANGARAM ZAVERBHAI. Said reference is hereby allowed. The respondents are hereby directed to regularize the services of the petitioner on permanent basis from the date of the reference i.e. 3rd March, 1986 and to pay all the benefits including basic salary, D.A. and other benefits permissible and available as per law with effect from 3rd March, 1986 and total length of the services of the petitioner is required to be considered continued for all purposes by the respondents. It is further directed to the respondents to pay all difference of wages or arrears of wages payable to the petitioner in view of these directions are required to be paid to the petitioner within three months from the date of receipt of copy of this order. It is further directed to the respondents to fix the petitioner's salary w.e.f. 3rd March, 1986 as a permanent employee of the respondents. Service of the petitioner is ordered to be treated and considered as continuous one from the date of joining, for all purposes, including retirement benefits.

Rule is made absolute in aforesaid terms with no order as to costs.

Direct Service is Permitted.

Dt. 29.6.2002. (H.K. Rathod,J.)

Vyas