

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8014 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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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 concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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ARUNBHAI J JHAVERI

Versus

AHMEDABAD MUNICIPAL CORPORATION

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Appearance:

1. Special Civil Application No. 8014 of 1991  
MR MB GANDHI for Petitioner No. 1  
MR BP TANNA for Respondent No. 1

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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 30/09/2002

ORAL JUDGEMENT

By filing this petition under Articles 226 & 227

of the Constitution, the petitioner has challenged legality of order and award dated August 14, 1991, rendered by the Industrial Tribunal, State of Gujarat, Ahmedabad, in Reference (IT) No.814/1983, by which the prayer of the petitioner to direct the respondent-Corporation to grant the grade of Rs. 330-560 available to a Timekeeper, to him, is rejected.

2. The petitioner is non-matriculate and was appointed as workman on daily wage basis with effect from May 7, 1962. On July 29, 1966, he was appointed as workman in the pay-scale of Rs. 91-150. As per Shri Thakore Award, which was accepted by the Corporation, the petitioner was placed in the grade of Rs. 260-400 with effect from January 1, 1976, and his designation was changed from workman to that of a Supervisor. Since May 1, 1979, the petitioner was asked to discharge duties in the Timekeeping Office of Central Workshop, where two employees were already working. The case of the petitioner was that as he was discharging duties of a Timekeeper, he was entitled to the grade of Rs. 330-560 admissible to a Timekeeper. Therefore, through the Trade Union he raised a dispute before the Deputy Labour Commissioner demanding the grade of Rs. 330-560. On failure of conciliation proceedings, the dispute was referred to the Industrial Tribunal, State of Gujarat, Ahmedabad, for its adjudication, where it was numbered as Reference (IT) No. 814/1983. The Trade Union had filed statement of claim at Exh.6, to which the respondent had filed reply at Exh.9. The workman had examined himself at Exh.13; whereas on behalf of the respondent-Corporation, Mr. Mahendrabhai Jagjivandas was examined at Exh.17. On appreciation of evidence adduced by the parties, the Industrial Tribunal noticed that the petitioner, who was non-matriculate, was not entitled to be appointed as a Timekeeper. It was concluded by the Tribunal that the petitioner was merely assisting the two regularly selected Timekeepers, but was not discharging duties as a Timekeeper. In view of the aforesaid conclusions, the Tribunal dismissed the Reference by order and award dated August 14, 1991, giving rise to the present petition.

3. Mr.M.B.Gandhi, learned counsel for the petitioner, submitted that the finding recorded by the Tribunal that the petitioner was assisting two regularly selected Timekeepers in performance of their duties and that the petitioner was not discharging duties as a Timekeeper, being contrary to the evidence on record deserves to be set aside. It was claimed that the petitioner had submitted an application Exh.14 requesting

the Tribunal to direct the respondent-Corporation to produce certain documents mentioned therein, which indicated that the petitioner was performing duties as a Timekeeper and was not assisting the two regularly selected Timekeepers and as the respondent-Corporation failed to produce those documents, the Tribunal should have drawn an adverse inference against the respondent-Corporation and should have held that it was proved by the petitioner that he was discharging duties as a Timekeeper and was, therefore, entitled to the grade of Rs. 330-560. The learned counsel for the petitioner contended that dismissal of the Reference is based on inference and, therefore, the petition should be accepted.

4. Mr. B.P.Tanna, learned Senior Advocate, pleaded that the finding of facts recorded by the Tribunal on the basis of appreciation of evidence should not be interfered with by the Court while hearing this petition, which is basically filed under Article 227 of the Constitution and the petition should be dismissed. What was claimed was that as the petitioner was not qualified to be appointed as a Timekeeper, his claim for grant of grade of Rs. 330-560 based on the principle of "Equal pay for equal work" should not be entertained by the Court. The learned counsel for the respondent emphasised that the petitioner is not entitled to the grade claimed before the Tribunal and the petition should be dismissed.

5. I have heard the learned counsel for the parties and taken into consideration the documents forming part of the petition. From the record of the case it is evident that at the relevant time two regularly selected Timekeepers were discharging duties as such in the Central Workshop and that there was no third post of Timekeeper in the Department. On appreciation of evidence, the Tribunal has held that the petitioner was merely assisting the two regularly selected Timekeepers and was not discharging the functions of the Timekeeper. This is a pure finding of fact, which is not liable to be interfered with in a petition filed under Article 227 of the Constitution. The claim that the Tribunal should have drawn an adverse inference against the respondent-Corporation for not producing the documents demanded in the application Exh.14, has no merits because the Tribunal had directed the Corporation to produce the documents if the same were in its possession. Better evidence could not be produced by the petitioner to substantiate his claim that he was discharging duties as a Timekeeper. The Supreme Court, time and again, has ruled that the scope of interference by the High Court in

a petition under Article 227 of the Constitution is very limited. In *Ouseph Mathai & Ors. V. M. Abdul Khadir*, (2002)1 SCC 319, the Supreme Court has ruled that a mere wrong decision is not a ground for exercise of jurisdiction under Article 227. What is explained by the Supreme Court is that the High Court may interfere under Article 227 only where it is established that the Lower Court or Tribunal has been guilty of grave dereliction of duty and flagrant abuse of power, which has resulted into grave injustice to any party. In my view, the petitioner has failed to point out that the Industrial Tribunal has been guilty of dereliction of duty or that it has flagrantly abused power, which has resulted into grave injustice. Thus, the finding that the petitioner was merely assisting the two regularly selected Timekeepers and was not discharging duties as a Timekeeper, being eminently just, is hereby upheld.

6. Further, admittedly, the petitioner is non-matriculate; whereas the minimum qualification for the post of Timekeeper is that one must have passed the matriculation examination. As the petitioner is not qualified to hold the post of Timekeeper, he would not be entitled to the grade payable to a Timekeeper. In *Gabriel Saver Fernandes and others v. State of Karnataka and others*, 1995 Supp (1) SCC 149, it is ruled that different pay-scales, on the basis of qualifications, are permissible, and one who does not possess qualification for higher grade, is not entitled to claim higher grade as a matter of right. The same principle has been reiterated by the Supreme Court in *Central Hospital v. Savita S. Bodke and others*, 1995 Supp (3) SCC 439. In the said case, it was found that the duties of Auxiliary Nurse Midwife and the Staff Nurse were overlapping and in the absence of the latter, the former were required to carry out some of the latter's functions. However, it was noticed that the Auxiliary Nurse Midwife was not entitled to be appointed as a Staff Nurse of requisite qualification. The Supreme Court has held that in view of lack of qualification, an Auxiliary Nurse Midwife would not be entitled to the grade of Staff Nurse. Applying the principles laid down by the Supreme Court in the above-referred to two decisions to the facts of the present case, I find that the petitioner was/is not qualified to be appointed as a Timekeeper and, therefore, would not be entitled to the grade admissible to a Timekeeper. On overall view of the matter, I am satisfied that no error is committed by the Tribunal in dismissing the Reference, and the petition is liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged with no order as to costs.

(J.M.Panchal,J.)

(patel)