

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4565 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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

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NAZIRMOHMAD I PATHAN

Versus

CHIEF OFFICER

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Appearance:

1. Special Civil Application No. 4565 of 2003  
MR PH PATHAK for Petitioner No. 1  
MR SANJAY M AMIN for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 29/11/2003

ORAL JUDGEMENT

Heard learned advocate Mr.Maganbhai Parmar for  
learned advocate Mr.P.H.Pathak on behalf of the  
petitioner and learned advocate Mr.Sanjay Amin for the

Chief Officer of the respondent Nagarpalika.

The brief facts giving rise to the present petition reveal that according to the petitioner, he was exploited under the guise of Badli Employee. It is case of the petitioner that he was working on the vacant post of peon and the respondent Nagarpalika maintained the list of Badali Employees and on availability of vacancies the posts are filled up from the list of Badli employees. It is also case of the petitioner that a detailed list was also produced before the Industrial Tribunal. It is also case of the petitioner that vacancies were available due to retirement of employees and therefore, claim of the petitioner was required to be considered as per the policy adopted by the respondent but ignoring the claim of the petitioner, one junior to the petitioner has been absorbed permanently and therefore, the petitioner has approached the industrial tribunal by Reference No.291 / 1989. The Industrial Tribunal has found the right of the petitioner for absorption on the vacancy as per the seniority and practice followed by the respondent, and therefore, passed award granting benefit of regularisation to the petitioner on the post of Peon and to award him salary in the pay scale of Group D employee as per the award dated 29th January, 2002.

Thus, award came to be passed by the Industrial Tribunal, Ahmedabad in Reference No.291/ 1999 with direction to the respondent Kalol Nagarpalika to confirm or make permanent the petitioner on the post of peon and also the pay scale in Class - IV category. But the difficulty arose that on which date the award is required to be implemented as this aspect has not been made it clear by the industrial tribunal while passing the award. Therefore, the petitioner has approached the industrial tribunal by way of review application being Application No.2 / 2002. However that review application has also been disposed while rejecting the request made by the petitioner that in review, award cannot be modified by the tribunal and an award shall become enforceable on the expiry of thirty days from the date of its publication and accordingly the workman is entitled to get benefit of permanency on the post of Class-IV cadre and the pay scale thereof. Therefore, observing this portion on 16th November, 2002, the Industrial Tribunal has rejected the review application. In light of this fact, now the question arises that from which date the petitioner is entitled to the benefit of permanency and salary. When the date of implementation is not made clear by the tribunal, in that case, provisions made under the law, will apply in the facts of the case accordingly.

According to Section 17 of the I.D.Act, 1947, the award of a Labour Court shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit subject to the provisions of Section 17-A the award published under sub-section [1] shall be final and not be called in question by any Court in any manner whatsoever. Naturally, in this award also, the legal effect of implementation and same shall be enforceable on the expiry of thirty days from the date of its publication under Section 17 of the Act and therefore, the petitioner is entitled to benefit of permanency and scale in Class-IV category from the date of its publication and the petitioner is entitled to said benefits accordingly.

However, learned advocate Mr.Parmar submits that since benefits of award in question from the date of its publication, have not been extended to the petitioner, some suitable directions may be issued on the respondent Nagarpalika to implement the award passed by the industrial tribunal in Reference No.291 / 1989 within some reasonable time. Considering the request and the facts and circumstances of the case, the respondent Nagarpalika is directed to implement the award passed by the industrial tribunal in Reference No.291 / 1989 and shall extend the benefits of permanency of service to the petitioner on the post of Peon in class - IV cadre and the salary and the different of salary for the period in question, within two months from the date of receiving the copy of this order. However, it is made clear that the grievance of the petitioner, if at all, is still survived, in that case, petitioner can raise his claim for regularisation from the date on which his junior came to be absorbed and granted benefit of permanency, and it would be open for the petitioner to approach the appropriate authority by way of appropriate proceedings in accordance with law.

In view of above observations and directions, present petition stands disposed of accordingly.

Rule is made absolute to the extent indicate above with no order as to costs.

Date : 29.11.2003 [ H.K.Rathod, J.]

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