

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8003 of 1997

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?

PRAVIN J GORIYA

Versus

A'BAD MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 8003 of 1997
MR VB GHARANIYA for Petitioner No. 1
M/S ANAND ADVOCATES for Respondent No. 1-2
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CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 29/11/2003

ORAL JUDGEMENT

Heard learned advocate Mr.V.B.Garaniya on behalf
of the petitioner. M/s Anand Advocates appears for the
respondent Municipal Corporation. However, no appearance

is filed on behalf of the petitioner by any other Advocate and nobody has mentioned this matter on behalf of M/s Anand Advocates and considering the fact that the matter is of the year 1997, this Court is inclined to take up the matter even in absence of the respondent.

The facts of the present petition reflects that the petitioner is working as Safai Worker since 1989 at Nagri Hospital. But the grievance of the petitioner is that the respondent Corporation is having policy that on completion of 900 days continues service within a span of five years continuous service and more and though the petitioner has completed such requirement, service of the petitioner has not been regularised by the Corporation. According to the petitioner, he was selected in interview in the year 1991 and his name was figured at Sr.No.4 in the select list and despite of the fact that though thirteen vacancies are available, benefit of regularisation has not been given to the petitioner.

It may be appreciated that affidavit in reply has been filed on behalf of the respondent Corporation. Along with the reply, one statement dated 10th November, 1997 showing working days of the workman, has been placed on record by the Corporation, wherefrom, it transpires that for the period from 1992-97, the workman has completed more than 845 days continuous service. In the said written reply, contention has also been raised by the respondent Corporation that the petitioner had not completed 900 days continuous service within a span of five years period and more and therefore, he is not entitled to claim benefits of regularisation. It is also contended that the interviews dated 12th January, 1995 and 13th January, 1995 were cancelled and seniority list of the year 1991 is still operating and the petitioner has been given the work as daily wager as per the seniority list and as such, no person junior to the petitioner has been regularised.

However, learned advocate Mr.Garania has submitted that the Division Bench of this Court has passed the order in Letters Patent Application No.765 / 2003 dated 27th August, 2003. Learned advocate Mr.Garaniya relied upon the observations made by the Division Bench of this Court in para-4 and 5, which are referred to as under :

"4. Shri Nanavati submitted that no work has been assigned to the daily wagers. This submission cannot be accepted. From the statement to the Court on 21.12.2001, it is clear

that work is available. If it is not available, why daily wagers from Engineering Department have been shifted to Octroi Department in which the petitioners are working. Therefore, it is found that the petitioners are working with the Corporation and entitled to payment of wages and the contention that no work is available is liable to be rejected.

5. Accordingly, appeals are allowed. The order of the single Judge dated 25.2.2003 is set aside. The services of the petitioners will not be terminated and they shall be assigned work and paid wages they are entitled to for the past within fifteen days and for the future regularly in the first week of the month. We make it clear that none of the observations and conclusions drawn by us on issues not directly involved for consideration will influence the learned single Judge in the disposal of the case since these appeals are limited to payment of daily wages to the petitioners."

Learned advocate Mr.Garaniya also submits that against the order passed by the Division Bench of this Court, Special Leave Petition was filed by the Corporation, but, the Hon'ble Apex Court has also dismissed the said SLP. Relying on the observations made by the Apex Court of this Court and the decision of the Apex Court dismissing the SLP, learned advocate Mr.Garaniya submits that considering the policy of the respondent corporation that on completion of 900 days within a span of five years and more and looking to the statement dated 10th November, 1997, wherein during the period of more than five years, it is clear that 845 days continues service has been completed by the workman and thereafter also, the workman remained in service and must have completed 900 days continues service. Therefore, he submitted that some suitable directions may be issued on the Corporation that a moment the petitioner completed 900 days continues service, benefit of such policy of regularisation, may be given to the petitioner from the date on which the petitioner workman has completed 900 days continues service.

In light of the facts stated above, according to my opinion, taking into consideration the statement dated 10th November, 1997 wherein it is disclosed that the petitioner has completed service of 845 days continues service and by now, it is presumed that petitioner workman must have completed 900 days continues service

and therefore, some suitable directions require to be issued on the respondent Corporation. The respondent Corporation is therefore directed to grant benefit of regularisation of service from the date on which the petitioner workman has completed continues service of 900 days as per the policy of the Corporation and shall also grant service benefits being regular employee including the salary and the difference thereof, within two months from the date of receipt of copy of this order.

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

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

Direct Service permitted.

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

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