IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1015 of 2007

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE SONIA GOKANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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SURENDRANAGAR DIST. PANCHAYAT THRO'
Versus
POPATBHAI KACHRABHAI TRETIYA

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Appearance:
MR HS MUNSHAW for the Petitioner(s) No. 1
MR DA SURANI(1957) for the Respondent(s) No. 1
MR KALPESH N SHASTRI for the Respondent(s) No. 1

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CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI

Date : 04/04/2017

ORAL JUDGMENT

1. The petitioner herein is the Surendranagar District Panchayat, which is a body constituted under the provisions of the Gujarat Panchayat Act, 1993, which has assailed the judgment and award dated August 22, 2006 rendered by the Labour Court, Surendranagar in Reference (LCS) No.9 of 1995, whereby the Labour Court directed the petitioner to reinstate the

respondent in service on completion of 10 years in service and provide all consequential benefits, and thereby, questioning the direction of regularization on the part of the Tribunal.

2. Admittedly, the respondent was working on temporary, ad-hoc and work-charge basis with effect from February 01, 1980 on 29 days' basis as Work Charge Clerk. However, he continued to draw pay-scale of Rs.270-400 and he was also paid the dearness allowance. The respondent continued to work as work-charge upto March 29, 1982. Thereafter, since he was not continued, he approached the Labour Court, Surendranagar, by way of Referecen (LCS) No.962 of 1989 and vide judgment and award dated June 24, 1993, the Labour Court ordered to reinstate the respondent in service with 40% back wages, which came to be challenged by the petitioner by way of a petition before this Court, which ultimately came to be rejected. The respondent worked as a work-charge clerk from June 25, 1993, from 2% contingency fund of the project undertaken by the Minor Irrigation Sub-

Division.

3. It is the case of the petitioner that the respondent was not the regularly selected employee and he was only a work-charge clerk, who had approached the Labour Court, Surendranagar, by way of filing Reference (LCS) No.9 of 1995, praying for the benefit of regularization. The Labour Court awarded regularization and permanency since he had completed 10 years of service with all consequential benefits.

4. Being extremely aggrieved by the impugned judgment and award passed by the Labour Court, Surendranagar, the petitioner is before this Court urging inter alia that the respondent worked purely on temporary, ad-hoc and work-charge basis for a period of 29 days initially and thereafter, by virtue of the award of the Labour Court, Surendranagar, in Reference (LCS) No.962 of 1989, rendered on June 24, 1993, he was reinstated in service. The respondent since was not appointed on regular basis and was working on a project, he cannot be regularized. In absence of any sufficient work to be provided to him,

he was not continued and it was only by virtue of Reference of the Labour Court dated June 24, 1993, that the respondent was once again taken back in service. Thus, he has not worked continuously for 27 years as averred. Moreover, his is a backdoor entry and, therefore also, he is going to be an additional burden on the exchequer. The petitioner has prayed for the following reliefs :

> *"7(b) allow this Special Civil Application by way of issuing appropriate writ of mandamus or any other writ, direction or order quashing and setting aside the order dated 22.08.2006 passed by the Hon'ble Labour Court at Surendranagar in reference (LCS) No.9 of 1995 annexed as ANNEXURE-B by way of holding that the same is illegal, unjust, arbitrary, erroneous and contrary to the facts and evidence on record and contrary to the provisions of Industrial Disputes Act, 1947 and well-settled legal position."*

5. This Court has heard learned counsel for the petitioner who has strenuously argued before this Court that the respondent being a work-charge employee, no order of regularization could be passed in his case. Any person

who has rendered temporary, ad-hoc employment cannot claim regularization as of right. There is difference between the work-charge employee vis-à-vis the regular employee and they cannot be treated at par with the regular employees. He has further urged that 41 work-charge employees who were regularized by the Panchayat was on account of the directions issued by this Court and, moreover, the facts in their case are also not before this Court and, therefore, it cannot be said that the case of the present respondent could be equated with those 41 employees. Reliance is placed on the decision of the Apex Court rendered in the case of ***Punjab State Electricity Board and others v. Jagjivan Ram and others, reported in (2009) 3 SCC 661***. It is also the say of the learned counsel that there is neither any policy of the Government nor any scheme which could permit regularization of the respondent. At the most, this Court may direct the State Government to permit the Panchayat to absorb and regular the persons.

6. Shri Kalpesh Shastri, learned counsel appearing for

the respondent, has urged that the Coordinate Bench of this Court (Coram :Paresh Upadhyay, J) has delivered a decision on October 08, 2014, while dealing with Special Civil Application No.25338 of 2016 in the case of ***Dy.Executive Engineer, Panchayat Sub-Division, Chotila v. Surendranagar District Panchayat- Mazdoor Sangh and another***, whereby the similarly situated employees who too worked as work-charge clerks have been granted regularization in their cases by the Tribunal and, therefore also, this Court may follow the same. He has further relied upon the decision of the Apex Court in the case of ***Bhartiya Seva Samaj Trust Tr. Pres. And another v. Yogeshbhai Ambalal Patel and another, reported in AIR 2012 SC 3285***, wherein the Apex Court has held that the issue of backdoor entry cannot be raised by the employer who has continued with such wrong for such a long time.

7. On careful examination of rival contentions of the parties and also detailed submissions made, this Court notices that the question that arises for consideration

is whether the regularization can be permitted in the case of the work-charge employees! Admittedly, the respondent has continued to work as work-charge employee for the past 24 years. Noticing the fact that initially for a period of two years, he worked as a work-charge employee and his service was not continued. However, by virtue of the judgment and award of the Labour Court in Reference (LCS) No.962 of 1989 on June 24, 1993, the order of reinstatement with 40% back wages had been granted by the Labour Court. His services were thereafter continued from June 25, 1993, till he moved the Labour Court for regularization by virtue of preferring Reference (LCS) No.9 of 1995.

8. The question that arises is whether the work-charge employee would be entitled to regularization and permanency on completion of period of 10 years of service.

9. According to the petitioner-Panchayat, the services of the respondent after a period of two years were not required as there was no work with the petitioner. By virtue of the direction of the Labour Court, the

respondent was reinstated in service and continued to discharge his duty. Thus, two years after his reinstatement in service, he had moved a Reference for regularization and permanency and the Labour Court found substance in his say and directed regularization of the respondent in service. The Reference is also made in the order qua the fact that his nature of work is that of the permanent employee. He continued to work in individual year for 240 days and his work had continued for more than 24 years.

10. A reference is also needed of Special Civil Application No.25338 of 2006 wherein the Coordinate Bench vide decision dated May 11, 2005, directed the concerned authority to consider the case, whereas in the case of work-charge employee, the regularization was ordered. It would be profitable to reproduce the relevant paragraphs, which read as under :

> *"5. Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds as under.*
> *5.1 The concerned workman had initially joined the service as Work Charge*

Clerk with the petitioner employer prior to the year 1980, since for the first time, his service was discontinued in the year 1980. The same was the subject matter of Reference No.1938 of 1987. The labour Court had then interfered in the said termination and ordered reinstatement which has attained finality. In the present case, the labour Court has treated the year 1987 as the date of joining and to that extent, equities are already balanced, by discounting the period against the workman. The labour Court has found that, atleast counting from the year 1987, the workman was entitled to benefits as per the policy of the Government. labour Court has only granted that on completion of ten years of service, counting from the year 1987, I.e. with effect from 01.10.1997, the concerned workman shall be treated to be in the regular pay-scale. This Court finds that, the labour Court has not committed any error, since even otherwise the same is on the line of the policy of the Government as contained in the Government Resolution dated 17.10.1988. Independent of that also, the labour Court has recorded cogent reasons, inter alia holding that, continuing the workman for years and decades as a daily wager, more particularly when the similarly situated persons are already granted similar benefits, creates a situation which is defined as unfair labour practice, as defined under Section 2(ra) of the Industrial Disputes Act, 1947, read with the Fifth Schedule, Part-I, more particularly Entry No.10 thereof. Further, if the earlier round of litigation as recorded above is taken into consideration, it further tilts the balance against the petitioner employer. This Court finds that, the labour Court has not committed any error while granting relief to the workman. The impugned award

therefore does not call for any interference by this Court.

5.2 It also needs to be recorded that, the labour Court has

treated the period from 01.10.1997 till 06.06.2006 I.e. the date of award, to be notional, and no arrears is to be paid for the said period.

5.3 So far the contentions raised on behalf of the petitioner

employer to the effect that, at the time of initial appointment of the workman no procedure was followed etc. are concerned, the same would not take the case of the employer any further in view of the settled position of law that, no Authority can be permitted to agitate that, it is he, who had to follow certain procedure, which it had not followed, and therefore the workman is not entitled to any relief. Reference in this regard can be made to the observations of Hon'ble'ble the Supreme Court of India in the case of Bhartiya Seva Samaj Trust versus Yogeshbhai Ambalal Patel reported in (2012) 9 SCC 310.

5.4 So far the authorities cited by learned advocate for the employer are concerned, there cannot be any dispute with regard to the proposition of law enunciated therein, however, on the face of the findings of fact recorded by the labour Court as noted above, the same shall not take the case of the employer any further. This Court finds that, on conjoint reading of the findings of fact recorded by the labour Court as noted above, and the observations of Hon'ble the Supreme Court of India in the case of Hari Nandan Prasad vs. Employer I/R to Management of FCI reported in AIR 2014 SC 1848, more particularly para:34 thereof, no interference is called for in the

award passed by the labour Court. This Court further finds that, any interference by this Court in the impugned award, in the facts of this case, would ultimately result in restoration of a situation of unfair labour practice, as defined under Section 2(ra) of the Industrial Disputes Act, 1947, read with the Fifth Schedule, Part-I, more particularly Entry No.10 thereof. This petition is therefore required to be dismissed."

11. Based on above quoted decision and the other decisions discussed in this judgement, noticing the grant of regularization to those 41 employees after completion of 10 years of service as work-charge clerks, the Court has granted the prayer partly. While directing regularization for the purpose of arrears and difference in pay, the benefit was directed to be treated notional, till the implementation of the order. It is also urged that in the case of the Apex Court in the case of ***Jagjivanram (supra***), the Court has, of course, treated the source and mode of engagement/ recruitment of two categories of employees is different. Work-charge employees cannot be treated at par with regular employees. The work-charged

employees cannot also claim regularization as a right. His service in the work-charged establishment cannot be clubbed with service in a regular establishment unless a specific provision to that effect is made. The relevant paragraphs of the said decision read as under :

> *"9. We have considered the respective submissions. Generally speaking, a work charged establishment is an establishment of which the expenses are chargeable to works. The pay and allowances of the employees who are engaged on a work charged establishment are usually shown under a specified sub-head of the estimated cost of works. The work charged employees are engaged for execution of a specified work or project and their engagement comes to an end on completion of the work or project. The source and mode of engagement/recruitment of work charged employees, their pay and conditions of employment are altogether different from the persons appointed in the regular establishment against sanctioned posts after following the procedure prescribed under the relevant Act or rules and their duties and responsibilities are also substantially different than those of regular employees.*
> *10. The work charged employees can claim protection under the Industrial Disputes Act or the rights flowing from any particular statute but they cannot be treated at par with the employees of regular establishment. They can neither claim regularization of service as of right nor they can claim pay scales and other*

financial benefits at par with regular employees. If the service of a work charged employee is regularized under any statute or a scheme framed by the employer, then he becomes member of regular establishment from the date of regularization. His service in the work charged establishment cannot be clubbed with service in a regular establishment unless a specific provision to that effect is made either in the relevant statute or the scheme of regularization. In other words, if the statute or scheme under which service of work charged employee is regularized does not provide for counting of past service, the work charged employee cannot claim benefit of such service for the purpose of fixation of seniority in the regular cadre, promotion to the higher posts, fixation of pay in the higher scales, grant of increments etc.

11. In Jaswant Singh and others vs. Union of India and others [(1979) 4 SCC 440], this Court considered the issue relating to nature of work charged establishment, status of work charged employees and held that the employees appointed on work charged establishment are not entitled to service benefits available to regular employees.

12. In State of Rajasthan v. Kunji Raman [(1997) 2 SCC 517], the Court considered the questions whether principle of equal pay for equal work can be invoked for granting parity to the work charged employees with regular employees and whether the provisions of the Rajasthan Service (Concessions on Project) Rules, 1962 and Rajasthan Service Rules, 1951 are violative of Articles 14 and 16 of the Constitution of India inasmuch as the same do not treat employees of the work charged establishment at par with regular employees.

13. After noticing the earlier judgment in Jaswant Singh's case, the Court held: "A work-charged establishment thus differs from a regular establishment which is permanent in nature. Setting up and continuance of a work-charged establishment is dependent upon the Government undertaking a project or a scheme or a "work" and availability of funds for executing it. So far as employees engaged in work-charged establishments are concerned, not only their recruitment and service conditions, but, the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment. A regular establishment and a work-charged establishment are two separate types of establishments and the persons employed on those establishments thus form two separate and distinct classes. For that reason, if a separate set of rules are framed for the persons engaged in the work-charged establishment and the general rules applicable to persons working on the regular establishment are not made applicable to them, it cannot be said that they are treated in an arbitrary and discriminatory manner by the Government. It is well settled that the Government has the power to frame different rules for different classes of employees. We, therefore, reject the contention raised on behalf of the appellant in Civil Appeal No. 653 of 1993 that clauses (g), (h) and (i) of Rule 2 of RSR are violative of Articles 14 and 16 of the Constitution and uphold the view taken by the High Court.

The Project Rules have been framed by the Government in exercise of the power available to it under Rule 42 of the RSR. They are subsidiary rules made for the

purpose of granting special concessions and allowances to government servants working on projects. When non-application of the main rules, namely, RSR to work-charged employees is not found to be violative of Articles 14 and 16 by the High Court, it is difficult to appreciate how the subsidiary rules for that reason only can be held to be violative of those articles. The High Court failed to consider this aspect and in our opinion, erroneously struck down Rules 2(b) and (d) of the 1962 Project Rules and Rules 4(2) and (4) of the 1975 Project Rules.

It was also contended on behalf of the State that the High Court having held that the workmen working on the regular establishment and the employees working on a work-charged establishment belong to two separate categories and, therefore, separate classification made by the Government in that behalf is reasonable, committed a grave error in striking down Rules 2(b) and (d) of the 1962 Project Rules and Rules 4(2) and (4) of the 1975 Project Rules by invoking the principle of equal pay for equal work. The reason given by the High Court for taking that view is that the project allowance is compensatory in nature and, therefore, the classification made between the work-charged employees and the employees of the regular establishment has no rational nexus with the object sought to be achieved by those Rules. What the High Court failed to appreciate is that when an employee working in the regular establishment is transferred to a project he has to leave his ordinary place of residence and service and go and reside within the project area. That is not the position in the case of an employee who is engaged in the work-charged establishment for executing that work.

Respondent Kunji Raman and other employees on whose behalf he had filed the petition were all engaged for execution of the Mahi Project and thus they became a part of the work-charged establishment of Mahi Project. They were not required to shift from their regular place of service. The High Court also failed to consider that for such employees the pay scales under the Pay Scale Rules are also different. The material produced by the State goes to show that while fixing the pay scales of employees of the work-charged establishment of Mahi Project the element of project allowance was also included therein and for that reason their pay scales were higher than the pay scales of general category work-charged employees, some of whom were transferred and posted on the Mahi Project. Except a general denial in the rejoinder-affidavit by Kunji Raman no other material has been produced to point out that the said claim of the Government is not correct. The order dated 30-4-1981 annexed with the rejoinder-affidavit of Kunji Raman is with respect to those work-charged employees who were absorbed on 43 regular posts were newly created. They thus ceased to be work-charged employees employed on a project and became general category work-charged employees whose pay scales were different and were, therefore, paid the project allowance. Thus the claim made by respondent Kunji Raman and other similarly situated employees for granting them project allowance was really misconceived. From what is now stated by them in the counter-affidavit, it appears that what they really want is parity in all respects with the employees of the regular establishment. In other words, what they want is that they should be treated as regular employees of the Public Works Department of the Rajasthan

> *Government and should be given all benefits which are made available under the RSR and the Project Rules. Such a claim is not justified and, therefore, the contention raised in that behalf cannot be accepted.""*

12. So far as the principle of "equal pay, equal work" is concerned, both the decisions of Apex Court in the case of ***Jagjiwan Ram (supra***) and ***Umrala Gram Panchayat (supra***), the Apex Court has held that the said principle is applicable even to the temporary employees and it also includes the work-charged employees. At this stage, it would be apt to reproduce the relevant paragraphs from the decision of the Apex Court in the case of ***State of Punjab and others v. Jagjit Singh and others, reported in AIR 2016 SC 5176***, which read as under :

> *"54. There is no room for any doubt, that the principle of 'equal pay for equal work' has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India, under Article 141 of the Constitution of India. The parameters of the principle, have been summarized by us in*

> *paragraph 42 hereinabove. The principle of 'equal pay for equal work' has also been extended to temporary employees (differently described as work-charge, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarized by us, in paragraph 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us, yet again.*
>
> *55. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation."*

13. One of the contentions raised by the petitioner is that the respondent was initially appointed with the petitioner in accordance with law. The Apex Court in the case of ***Bharatiya Seva Samaj***

Trust (supra) has turned down such contention on the ground that it was an act of discrimination and victimization. The party which has committed a wrong cannot be permitted to take its benefit. Thus, what is culled out from the above quoted decisions is that the trial court shall be slow in directing the regularization in the case of those who have continued to work for number of years unless, of course, the policy or the rules otherwise provide for the same. Mere continuity of service of a number of years cannot entitle him regularization. At the same time, it would amount to discrimination if the employer has permitted such regularization or permanency in the case of others and denied the same to the rest. In the opinion of this Court, having made 41 employees permanent by way of such rules or the same scheme, followed in the case of employees of SCA No.574 of 1999, whose case has been decided by this Court (Coram : Ravi R. Tripathi, J), and when the trial Court has already held and observed without any

challenge to such findings that the respondent has worked for more than 24 years, this Court sees no error in the award passed by the Labour Court. No interference is desirable .

14. For the foregoing reasons, the present petition fails and is, accordingly, dismissed. Let the case of this employee also be considered at the earliest by the petitioner giving him the same treatment as has been given to other employees. The petitioner is directed to implement the impugned judgment and award within a period of eight weeks from the date of receipt of a copy of this order. It is for the purpose of availing necessary financial aid that such time has been granted to the petitioner.

(MS. SONIA GOKANI, J.)

SUDHIR