

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 14579 of 2016****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE K.M.THAKER**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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JAMNAGAR MUNICIPAL CORPORATION

Versus

JAMNAGAR JILLA MAJDOOR SANGH

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Appearance:

MR HS MUNSHAW(495) for the PETITIONER(s) No. 1

MR TR MISHRA(483) for the RESPONDENT(s) No. 1

NOTICE SERVED BY DS(5) for the RESPONDENT(s) No. 2,3

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CORAM: HONOURABLE MR.JUSTICE K.M.THAKER**Date : 31/07/2018****ORAL JUDGMENT**

1. Heard Mr. Munshaw, learned advocate for the petitioner and Mr. Mishra, learned advocate for the respondent.

2. Rule returnable forthwith. Mr. Mishra, learned advocate for the respondent waives service of Rule and with his consent the petition is heard for final order.

3. In present petition, Jamnagar Municipal Corporation has challenged award dated 18.4.2016 passed by learned Labour Court at Jamnagar in Reference (Demand LC) No. 3 of 2001 whereby the learned Labour Court directed the petitioner Municipal Corporation to regularise service of 4 workmen and treating the said workmen as permanent employees with effect from the dates mentioned in the award.

4. In light of the submission by learned advocates for petitioner corporation and the workmen it has emerged that in view of peculiar facts and circumstances of the case, the petition can be disposed of on a limited ground, instead of entering into various other contentions raised by contesting parties.

5. In view of a particular defect which has emerged from the award, it is clear that on the said limited ground award deserves to be set aside and the proceedings are required to be remanded to learned Labour Court at Jamnagar for further and fresh proceedings and for fresh decision.

6. It has emerged from the record and from rival submission that a Union viz. Jamnagar Jilla Majdoor Sangh sponsored the claim and dispute for regularisation in service and status of permanent workmen, on behalf of and in respect of 6 employees of Bedi Gram Panchayat (which subsequently merged into Jamnagar Municipal Corporation).

7. It has emerged that 6 workmen namely 1)Mr. Ramesh Pilubhai (2) Bachu Pilubhai (3) Sanjay Lakhman (4) Ms. Bhavna Bachubhai (5) Vasant Karabhai and (6) Lilaben Vasantbhai claimed and demanded that their service should be regularised

and they should be conferred the status of permanent workmen from the date when they completed 240 days of service with the Panchayat/ Corporation. The said demand by the 6 workmen was not accepted by the Panchayat/ Corporation. Therefore, above named Union sponsored the demand/ dispute raised by the said 6 workmen.

8. Appropriate government referred the said demand of 6 workmen, sponsored through above mentioned Union for adjudication to learned Labour Court at Jamnagar vide its Order of reference dated 31.1.2001. The learned Labour Court registered the said demand as Reference (Demand LC) No. 3 of 2001.

9. During the proceedings before learned Labour Court the Union, on behalf of the said 6 workmen/ claimants, filed statement of claim in justification of the demand.

10. The Union amended the statement of claim.

Subsequently the panchayat/ corporation filed written statement (Reply) and denied the averments and allegations in the statement of claim and also opposed the demand and disputed justification.

11. From the award it has emerged that the Union, declared before the learned Labour Court at Jamnagar that the demand and claim by and on behalf of one claimant Mr. Vasantbhai Karabhai is withdrawn and that the said claimant does not want to prosecute his demand and that therefore the reference qua the said claimant may be treated as withdrawn and it may be rejected as withdrawn. Therefore, learned Labour Court treated the said claim in respect of the said claimant i.e. Vasantbhai Karabhai Chauhan, withdrawn/ rejected as withdrawn.

12. Now, what is relevant and important is the fact which emerges from the observation in the award.

13. Under the discussion related to Issue No.1 the learned Labour Court has specifically recorded that other 5 claimants did not appear before learned Labour Court to place their respective evidence on record and from the observation by learned Labour Court it appears that out of said 5 claimants Mr. Ramesh Pilubhai, Mr. Sanjay Lakhman and Ms. Bhavna Bachubhai did not depose before the learned Labour Court and their oral evidence was not recorded.

14. From the award it has also emerged that one claimant i.e. Ramesh Pilubhai died during pendency of the proceedings of Reference case.

15. Consequently, the dispute and demand (as well as the reference case) survived only in respect of 4 workmen i.e. Ms. Lilaben Vasantbhai, Mr. Bachubhai Pilubhai, Sanjay Lakhman and Ms. Bhavna Bachubhai.

16. From the award it has also emerged that out

of 4 claimants only 2 workmen i.e. Ms. Lilaben Vasantbhai and Mr. Bachubhai Pilubhai appeared before learned Labour Court and got their deposition recorded.

17. The learned Labour Court has also observed and recorded that the Union submitted that the deposition by Lilaben Vasantbhai and Bachubhai Pilubhai should be treated as evidence on behalf of other workmen as well.

18. On this count, it is relevant to note that the demand raised by the workmen was for regularisation in service and for status of permanent workman.

19. The demand was raised by the said workmen on the premise that they were working with the Corporation/ panchayat since long time and that though they had completed service of 240 days with the Panchayat their service was not regularised and status of permanent workman was

not conferred.

20. Meaning thereby, the demand and claim by the workmen, were based essentially, materially and substantially rather solely on the basis of personal details e.g. the dates when each claimant joined the service, the nature of duty , whether he served continuously, actual days of work/ attendance put in by each workman, etc.

21. On this count, each workman should lead appropriate evidence in support of his own/ her own claim. Any other person cannot depose on behalf of concerned workman/ claimant.

22. However, in present case, only 2 workmen on behalf of other workmen offered evidence.

23. Not only this, from the evidence by the said Ms. Lilaben Vasantbhai and Bachubhai Pilubhai it has emerged that even the said witness did not mention anything about relevant details and fact.

The said 2 witnesses did not mention anything except that the said other workmen were working with them on daily wage basis. The 2 witnesses (claimants) namely Lilaben Vasantbhai and / or Bachubhai Pilubhai did not mention the details of date of joining of other 3 workmen and/ or details about actual days of service/ work rendered by the said other workmen. What is pertinent to note is that except the said general details the said witnesses did not mention/ disclose any relevant fact even to support their own case.

24. Despite such position, the learned Labour Court, unfortunately, proceeded in the case and decided the reference case only on the basis of the evidence of 2 workmen.

25. As mentioned above, the said workmen not only did not place on record exact and relevant details in respect of other workmen but they did not / could not mention relevant fact even for

their own case.

26. In this view of the matter, the learned Labour Court could not have assume relevant facts which the said witnesses did not mention even with regard to their own case and the said witness could not have deposed on behalf of other workmen and the Court could not have determined the claim and demand of other 3 workmen who did not appear before learned Labour Court and who did not depose before learned Labour Court.

27. In absence of any specific evidence with regard to other workmen about their date of joining, about number of days when they actually rendered service, their claim could not have been entertained, adjudicated and determined by learned Labour Court.

28. In present case, surprisingly, learned Labour Court not only entertained, adjudicated and determined the claim of the workmen who did not

appear before learned Labour Court and did not depose before learned Labour Court, but the learned Labour Court allowed the claim of such workmen and issued directions to the petitioner Municipality to regularise service of even those workmen who did not appear before the Court and did not depose before the Court and in whose respect there was no evidence available on record i.e. either documentary evidence or even oral evidence. The award which suffers from such defect cannot be sustained.

29. Further, when the award is examined, it emerges from the award that the learned Labour Court seems to have concentrated and taken into account evidence by only one workman i.e. Lilaben Vasantbhai. The said witness, even for herself, has not mentioned relevant and necessary details namely about date of joining, actual number of days for which she and other workmen had worked, the date when the claimants completed continuous service for 240 days etc. On the basis of very

general and vague deposition by one of the claimants i.e. Ms. Lilaben Vasantbhai (the evidence recorded at Exh-23) the learned Labour Court has decided entire reference case in respect of even other claimants.

30. It is true that the learned Labour Court appears to have taken into account the position with regard to sanctioned set-up, availability of total number of posts, existing vacancies and other aspects. However, in absence of any evidence with regard to other workmen and in absence of relevant and necessary evidence about the workmen who got their evidence recorded but could not mention relevant facts and details impugned direction and award could not have been passed by learned Labour Court.

31. Therefore, on the said limited ground, the award deserves to be set aside and the reference case deserves to be remanded to the learned Labour Court for fresh proceedings from the stage

of oral evidence of the claimants.

32. Therefore, following order is passed:

a) Award dated 18.4.2016 passed by learned Labour Court at Jamnagar in Reference (Demand LC) No.3 of 2001 is set aside.

b) The said reference case is remanded to learned Labour Court at Jamnagar.

c) The learned Labour Court shall start the proceedings of said reference case afresh from the stage of oral evidence i.e. from the stage after the completion of pleadings.

d) The learned Labour Court will call the concerned claimants, except Vasantbhai Karabhai Chauhan whose claim and demand came to be withdrawn at the outset and provide opportunity to lead evidence – oral and documentary- and will also provide similar opportunity to the opponent employer.

e) The learned Labour Court shall record evidence of those claimants who appear before learned Labour Court for getting their deposition

recorded and decide the Reference case afresh, in accordance with law after taking into account the evidence of the workmen who appear before the learned Labour Court for getting their deposition recorded and the evidence- oral and documentary- which may be placed on record by opponent employer and therefore pass award in respect of the claimants who pursue their claim by appearing before learned Labour Court.

f) The learned Labour Court shall pass fresh award on the basis of oral and documentary evidence which may be placed on record by both sides and after considering rival submission and without being influenced by the award which is set aside.

g) In view of the fact that the Reference proceedings commenced in 2001 and almost 17 years have passed and in view of the fact that due to defective award the proceedings have been remanded, learned Labour Court shall endeavour to expedite the pleadings of the reference case and shall endeavour to ensure that the reference case

is finally decided as expeditiously as possible without granting unnecessary and avoidable adjournments and without delaying the proceedings.

With the aforesaid clarification, the petition is partly allowed. Rule is made absolute to the aforesaid extent.

(K.M.THAKER, J)

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