Umrala Gram Panchayat vs The Sec.Municipal Employee Union & Ors on 27 March, 2015

Equivalent citations: 2015 AIR SCW 2240, (2016) 157 ALLINDCAS 8 (SC), 2015 LAB. I. C. 3765, AIR 2015 SC (SUPP) 1072, (2015) 145 FACLR 688, (2015) 3 SCT 104, (2015) 3 SERVLR 705, (2015) 2 CURLR 57, (2015) 2 LAB LN 313, 2015 (12) SCC 775, (2015) 3 SERVLJ 60, (2015) 3 KCCR 323, (2015) 3 GUJ LR 2197, (2015) 1 GUJ LH 712, (2015) 4 SCALE 334

Author: V. Gopala Gowda

Bench: C.Nagappan, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA CIVIL
APPELLATE JURISDICTION

CIVIL APPEAL Nos.3209-3210 OF 2015
(Arising Out of SLP (C) Nos.7105-7106 of 2014)

UMRALA GRAM PANCHAYAT .....APPELLANT

Versus

THE SECRETARY, MUNICIPAL
EMPLOYEES UNION & ORS. .....RESPONDENTS

J U D G M E N T

V. GOPALA GOWDA, J.

Delay condoned. Leave granted.

These appeals have been filed by the appellant against the final judgment and order dated 23.07.2013 passed in Letters Patent Appeal No. 551 of 2013 in Misc. Civil Application No.3071 of 2012 in Special Civil Application No. 7082 of 1994, by the High Court of Judicature of Gujarat at Ahmedabad, whereby the High Court has dismissed the same as being not maintainable and has upheld the judgment and order of the learned single Judge of the High Court dated 13.07.2010, passed in Special Civil Application No. 7082 of 1994, which is also impugned herein, wherein the application filed by the appellant has been dismissed by the High Court by confirming the Award dated 15.05.1991 passed by the Labour Court in Reference (LCD) No. 6 of 1988.

For the purpose of considering the rival legal contentions urged on behalf of the parties in these appeals and with a view to find out whether this Court is required to interfere with the impugned judgment and orders of the High Court as well as the Award of the Labour Court, the necessary facts are briefly stated hereunder:

> The appellant-Gram Panchayat was duly established under the provisions of the Gujarat Panchayat Act, 1993 (in short 'the Act'). The workmen of the Panchayat, some of whom are now deceased and are being represented by their legal heirs, were appointed to the post of safai kamdars of the appellant- Panchayat and have served for many years, varying from 18 years, 16 years, 8 years, 5 years etc. They were however, considered as daily wage workers and were therefore, not being paid benefits such as pay and allowances etc. as are being paid to the permanent safai kamdars of the appellant-

Panchayat.

On 23.07.1987, the workmen raised an industrial dispute before the Conciliation Officer at Bhavnagar, through the respondent no.1, Municipal Employees Union (for short "Union") stating therein that after rendering services for a number of years, the workmen are entitled to the benefit of permanency under the appellant-Panchayat. The settlement between the workmen and the appellant-Panchayat failed to resolve amicably during the conciliation proceedings and therefore, the failure report was sent to the Dy. Commissioner of Labour, Ahmedabad, who referred the same to the Labour Court vide Reference (LCD) No.6/88. The Labour Court by its Award held that the workmen are to be made permanent employees as safai kamdars in the appellant-Panchayat. The Labour Court has further directed the appellant- Panchayat that the workmen should be paid wages, allowances and other monetary benefits as well for which they are legally entitled to.

Aggrieved by the Award of the Labour Court, the appellant-Panchayat filed an appeal before the single Judge of the High Court, whereby the same was dismissed and it was held that the view taken by the Labour Court is just and proper as it has assigned cogent and convincing reasons for arriving at the conclusion that the services of the concerned workmen should be made permanent as the other employees of the appellant. The appellant, thereafter, filed an LPA before the Division Bench of the High Court, which was also dismissed as not maintainable. Hence, these appeals have been filed by the appellant seeking to set aside the judgments and orders of the High Court as well as the Award passed by the Labour Court.

It has been contended by Mr. Mahendra Anand, the learned senior counsel on behalf of the appellant that the workmen were not appointed on a permanent basis as the rules and regulations as prescribed under the provisions of the Act have not been followed. He has further contended that the High Court has erred in upholding the Award passed by the Labour Court as the same is illegal and there is non application of mind by the courts below. The Labour Court has wrongly held that there are 13 permanent posts available for the category in which the concerned employees are working as the other three employees who are made permanent employees have been made so only because there were clear vacant posts available in the approved strength in the capacity in which

these three employees were made permanent and thus, there is no question of any discrimination or unfair labour practice on the part of the appellant-Panchayat in not making the concerned workmen as permanent employees of the appellant.

It has been further contended by the learned senior counsel that the concerned workmen were engaged in the services, as and when required by the appellant-Panchayat and it is not obligatory on the part of the appellant- Panchayat to provide work to the workmen on a day-to-day basis and the appellant-Panchayat has no control over them as there is no employer- employee relationship between them. It has been further contended by him that the appellant-Panchayat has no right to make them permanent employees. For making their services permanent in the appellant-Panchayat, an application has to be made before the District Panchayat, Bhavnagar and a demand has to be raised before it and the recruitment of the employees of the appellant-Panchayat is done by the Gujarat Panchayat Service Selection Board and directions will be issued on its behalf. However, there are no such directions issued in relation to the concerned workmen.

On the other hand, it has been contended by Mr. S.C. Patel, the learned counsel appearing on behalf of the respondent-Union that the concerned workmen have been working for many years, such as 18 years, 16 years, 8 years continuously and some of them have been working for more than 5 years in the appellant-Panchayat. They are not paid the monetary benefits and allowances etc. as are being paid to other permanent safai kamdars who are working in the appellant-Panchayat. He has further contended that the concerned workmen are doing the same work as is being done by the permanent safai kamdars and they have been working for similar number of hours, i.e. eight hours per day like the permanent employees of the appellant- Panchayat. In spite of it, they are being monetarily exploited by the appellant-Panchayat by not being paid regular salary and other monetary benefits for which they are legally entitled to but are being paid much lesser wage, i.e. Rs.390/- per month. Therefore, the learned counsel has contended that the appellant is practicing unfair labour practice as defined under Section 2(ra) of the Industrial Disputes Act, 1947 (in short "the ID Act") as enumerated at Entry No.10 in the Fifth Schedule to the ID Act. Therefore, the action of the appellant-Panchayat is illegal and the workmen should be allowed to get permanency in the said posts.

With reference to the abovementioned rival legal contentions urged on behalf of the parties, we have to examine the impugned judgements and orders of the High Court as well as the Award passed by the Labour Court, to find out whether any substantial question of law would arise in these appeals to exercise the appellate jurisdiction of this Court?

On a perusal of the same, we have come to the conclusion that the High Court has rightly dismissed the case of the appellant as the Labour Court has dealt with the same in detail in its reasoning portion of the Award in support of its findings of fact while answering the points of dispute and the same cannot be said to be either erroneous or error in law. In support of the above said conclusions arrived at by us, we record our reasons hereunder:

> It is an admitted fact that the work which was being done by the concerned workmen was the same as that of the permanent workmen of the appellant- Panchayat. They

have also been working for similar number of hours, however, the discrepancy in the payment of wages/salary between the permanent and the non-permanent workmen is alarming and the same has to be construed as being an unfair labour practice as defined under Section 2(ra) of the ID Act r/w Entry No.10 of the Fifth Schedule to the ID Act, which is prohibited under Section 25(T) of the ID Act. Further, there is no documentary evidence produced on record before the Labour Court which shows that the present workmen are working less or for lesser number of hours than the permanent employees of the appellant-Panchayat. Thus, on the face of it, the work being done by the concerned workmen has been permanent in nature and the Labour Court as well as the High Court have come to the right conclusion on the points of dispute and have rightly rejected the contention of the appellant-Panchayat as the same amounts to unfair labour practice by the appellant-Panchayat which is prohibited under Section 25(T) of the ID Act and it also amounts to statutory offence on the part of the appellant under Section 25(U) of the ID Act for which it is liable to be prosecuted.

Further, the Labour Court has rightly held that there is no restriction for the recruitment of the workmen in the Panchayat's set-up as there is evidence to show that by making a proposal, the District Panchayat has increased the work force in the establishment of the appellant-Panchayat and therefore, the contention urged by the learned senior counsel appearing for the appellant-Panchayat that there are only limited number of permanent vacancies for the workmen in the Panchayat of the appellant is not tenable in law.

Further, we have also taken note of the fact that the financial position of the Panchayat is not so unsound as no activity of the Panchayat has been discontinued, as all the other workers of the appellant-Panchayat are being paid their wages regularly. Thus, there would be no difficulty for the appellant-Panchayat to bear the extra cost for the payment of the wages/salary and other monetary benefits to the concerned workmen if they are made permanent.

Further, Section 25(T) of the ID Act clearly states that unfair labour practice should not be encouraged and the same should be discontinued. In the present case, the principle "equal work, equal pay" has been violated by the appellant-Panchayat as they have been treating the concerned workmen unfairly and therefore, the demand raised by the respondent-Union needs to be accepted. The High Court has thus, rightly not interfered with the Award of the Labour Court as the same is legal and supported with cogent and valid reasons.

Therefore, the learned single Judge as well as the Division Bench of the High Court have exercised the power under Articles 226 and 227 of the Constitution of India and have rightly held that the Labour Court has jurisdiction to decide the industrial dispute that has been referred to it by the Dy. Commissioner of Labour, Ahmedabad. Reliance has been placed upon the decision of this Court in the case of Maharashtra

State Road Transport Corporation and Anr. v. Casteribe Rajya P. Karmchari Sanghatana[1], wherein it has been held thus:

"32.The power given to the Industrial and Labour Courts under Section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer."

Further, reliance has been placed upon the decision of this Court in the case of Durgapur Casual Workers Union v. Food Corporation of India,[2] wherein it has been held thus:

"19. Almost similar issue relating to unfair trade practice by employer and the effect of decision of Umadevi (3) in the grant of relief was considered by this Court in Ajaypal Singh v. Haryana Warehousing Corporation in Civil Appeal No. 6327 of 2014 decided on 9th July, 2014. In the said case, this Court observed and held as follows:

20. The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case.

21. We have noticed that Industrial Disputes Act is made for settlement of industrial disputes and for certain other purposes as mentioned therein. It prohibits unfair labour practice on the part of the employer in engaging employees as casual or temporary employees for a long period without giving them the status and privileges of permanent employees...."

Thus, in the light of the above referred cases of this Court, it is amply clear that the judgments and orders of the High Court and the Award passed by the Labour Court are reasonable and the same have been arrived at in a just and fair manner.

The reliance placed by the learned senior counsel for the appellant upon the decision of this Court in Secretary, State of Karnataka & Ors. v. Umadevi & Ors.[3], does not apply to the fact situation of the present case and the same cannot be accepted by us in the light of the cogent reasons arrived at by the courts below.

In view of the reasons stated supra and in the light of the facts and circumstances of the present case, we hold that the services of the concerned workmen are permanent in nature, since they have worked for more than 240 days in a calendar year from the date of their initial appointment, which is clear from the evidence on record. Therefore, not making their services permanent by the

appellant-Panchayat is erroneous and also amounts to error in law. Hence, the same cannot be allowed to sustain in law.

For the reasons stated supra, we dismiss the appeals and direct the appellants to treat the services of the concerned workmen as permanent employees, after five years of their initial appointment as daily wage workmen till they attain the age of superannuation for the purpose of granting terminal benefits to them.

The appellant is further directed to pay the regular pay-scale as per the revised pay scale fixed to the post of permanent safai kamdars for a total period of 15 years to the concerned workmen and the legal representatives of the deceased workmen. The same shall be implemented within six weeks from the date of receipt of copy of this judgment and compliance report of the same shall be submitted for the perusal of this Court. No Costs.

.....J. [V. GOPALA GOWDA] .....J. [C.NAGAPPAN] New Delhi, March 27, 2015 ITEM NO.1A-For Judgment COURT NO.10 SECTION XV S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS C.A.No...../2015 @ SLP (C) No(s). 7105-7106/2014 (Arising out of impugned final judgment and order dated 23/07/2013 in LPA No. 551/2013,23/07/2013 in SCA No. 7082/1994,23/07/2013 in MCA No. 3071/2012,13/07/2010 in SCA No. 7082/1994 passed by the High Court Of Gujarat At Ahmedabad) UMRALA GRAM PANCHAYAT Petitioner(s) VERSUS THE SEC.MUNICIPAL EMPLOYEE UNION & ORS Respondent(s) Date : 27/03/2015 These petitions were called on for pronouncement of JUDGMENT today.

For Petitioner(s) Mr. Pukhrambam Ramesh Kumar,Adv.

For Respondent(s) Mr. S. C. Patel,Adv.

Hon'ble Mr. Justice V.Gopala Gowda pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice C. Nagappan.

Leave granted.

The appeals are dismissed in terms of the signed Reportable Judgment.

(VINOD KR. JHA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed Reportable judgment is placed on the file)

---

[2] (2009) 8 SCC 556 [4] (2014) 13 SCALE 644 [6] (2006) 4 SCC 1