

Mahavirsinh Narapatsinh Jadeja vs Saurashtra University on 7 May, 2019

Author: N.V.Anjaria

Bench: N.V.Anjaria

C/SCA/10020/2018

CAV JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 10020 of 2018
With
CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2018
In R/SPECIAL CIVIL APPLICATION NO. 10020 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 18424 of 2018
With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2018
In R/SPECIAL CIVIL APPLICATION NO. 18424 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 14699 of 2018
With
CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2018
In R/SPECIAL CIVIL APPLICATION NO. 14699 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 14701 of 2018
With
CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2018
In R/SPECIAL CIVIL APPLICATION NO. 14701 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 14704 of 2018
With
CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2018
In R/SPECIAL CIVIL APPLICATION NO. 14704 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE N.V.ANJARIA

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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 ? | Yes |
| 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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C/SCA/10020/2018

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CAV JUDGMENT

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MAHAVIRSINH NARAPATSINH JADEJA
Versus
SAURASHTRA UNIVERSITY & 2 other(s)

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Appearance:

MR ANAND B GOGIA(5849) for the Petitioner(s) No. 1
MR BB GOGIA(5851) for the Petitioner(s) No. 1
MS MUSKAN A GOGIA(6624) for the Petitioner(s) No. 1
MR AR THACKER(888) for the Respondent(s) No. 1
NOTICE SERVED(4) for the Respondent(s) No. 2,3

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CORAM: HONOURABLE MR.JUSTICE N.V.ANJARIA

Date : 07/05/2019

CAV JUDGMENT

All these petitions and the respective Civil Applications therein, since involved similar facts and identical issues, were heard together. They all are being treated for disposal by this common order.

2. The reproduction of the prayers hereinbelow is from Special Civil Application No.10020 of 2018 reading as under.

"(i) to grant the regular pay scale to the petitioner(s) as prescribed and payable by Respondent No. 1 University and / or State Government to its employees of the post which the petitioner is holding; with deemed effect by considering the entire service as rendered by him on fixed pay basis as regular service for all purpose including of pensionary benefits and all other consequential benefits, as per the law laid down by the Hon'ble Gujarat High Court GLH 321 para-38 and such other decisions"

(ii) to direct Respondents to grant regularization and permanency to the petitioner with deemed effect from the date of his appointment with all the consequential benefits in terms of the service conditions as applicable to similarly situated University Employees."

3. Since the aforesaid Special Civil Application No.10020 of 2018 was treated as main and the arguments were raised therein by the parties, it is treated as representative petition for the purpose of recording the facts. The petitioner of said petition possesses B.Com. and LL.B. Degrees. He came to be appointed as Postal Assistant on 04th September, 1997 on fixed pay and Rs.02,000/-, which was later increased. Lastly the petitioner is stated to have been receiving Rs.15,800/- per month as fixed pay. It is the case of the petitioner that at the time of his appointment he was called for interview and thereafter came to be appointed. It is stated that University has been paying the salary from the grant received from the State Government.

3.1 It was averred by the petitioner that he was called for interview for regular appointment by letter dated 27th May, 2011, however the result was not declared by the University and the petitioner is not aware about what happened to that process. It is the case of the petitioner that he worked since 1988 for 30 years.

3.2 Similarly, the petitioner of Special Civil Application No.14699 of 2018 is qualified with B.Com. Degree, who was appointed as Clerk-cum-Data Entry Operator, also on the fixed pay revised from time-to- time. Petitioner of Special Civil Application No.18424 of 2018 was a Clerk appointed on 12th September, 1997 and his status was also a fixed pay employee getting Rs.15,000/- per month at present.

The next petitioner of Special Civil Application No.14701 of 2018 as well as the petitioner of Special Civil Application No.14704 of 2018 were appointed as Clerk-cum-Data Entry Operator and Laboratory Technician possessing the degrees of B.A. and M.Sc. respectively.

3.3 It is the case of all the petitioners that they have been working for about two decades continuously, however they are kept on a fixed pay. Petitioners want to remove condition of fixed pay and further want that they should be paid regular pay- scale of the post held by similarly situated employees on the similar post. In other words, the claim of the petitioners is for equal-pay for equal- work and to get the regular pay-scale of the post.

4. In support of the prayers made in the petition, learned advocate relied on several decisions in the Secretary, State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1], the decision in State of Jammu & Kashmir v. District Bar Association, Bandipora [AIR 2017 SC 11] as well as in State of Punjab v. Jagjit Singh [(2017) 1 SCC 148] and others were pressed into service. Learned advocate for the petitioners took the Court through the principles laid down in the said decisions to vehemently submit that the petitioners are liable to be regularised in service in regular scale and that continuing them in the fixed pay as temporary tantamount to exploitation of the petitioners. Learned advocate for the petitioners further relied on the decision of the Supreme Court in Sabha Shanker Dube v. Divisional Forest Officer [AIR 2019 SC 220] to submit that in the said case, the Supreme court directed the appellant to be paid the minimum of the pay-scale applicable to the regular employee working on the same post.

4.1 Also relied on was the decision in Sheo Narain Nagar v. State of Uttar Pradesh [(2018) 3 SCC 432] which was a case in respect of regularisation of services of the temporary employee. In that

case, the Supreme Court held that the appellant who had completed 10 years and when the post was available when the appellant came to be appointed pursuant to the court's order, his appointment could not be illegal or in contravention of the Rules, therefore services of the appellant was liable to be regularised.

4.2 Respondent - University contested the petition by giving the details of service of each of the petitioners. It was submitted that a direct writ petition under Article 226 of the Constitution was not maintainable. It was the case of the University that the petitioners had entered into a contract with outsourcing agency and the outsourcing agencies named Max Vigil Security Expert Private Limited and Rajdeep Enterprises were providing the services of the petitioners and salary was paid to the petitioners from the account of the said outsourcing agencies. It was the case of the University that petitioners were not appointed by the University. It was submitted that once the petitioners had accepted the appointment orders on fixed pay, they are estopped from claiming regular salary.

4.3 Learned advocate for the respondent University Mr.A.R. Thacker relied on the following decisions - (I) State of Karnataka v. M.K. Kesri [(2010) 9 SCC 247], (ii) Yogesh Mahajan v. Profesor R.C. Deka, Director, All India Institute of Medical Sciences [(2018) 3 SCC 218], (iii) Upendra Singh v. Sate of Bihar [(2018) 3 SCC 680] and (iv) State of Bihar v. Kirti Narayan Prasad [JT 2018(11) SC 540] to emphasise the submission that regularisation is not a right of an employee. He also relied on various judgments to submit that when the alternative remedy is available, the petitions would not be entertained. It was further submitted that some other employees had already approached the Gujarat Educational Institutions Services Tribunal with a prayer of regularising their services.

5. During the pendency of the petitions, the petitioners had an occasion to file Civil Applications. When notice was issued in the petition, undisputedly, each of the petitioners were working. In the Civil Applications the petitioners complained that behind their back and without their knowledge, their names were transferred to be under some outsourcing agency. It was stated that the respondent

- Saurashtra University had removed the names of the applicants-petitioners from 12th November, 2018 from thumb machine and the applicants-petitioners were not allowed to discharge their duties. Each of the petitioners were prevented from discharging the duties.

5.1 It was alleged that the Registrar, Chief Accounts Officer and Vice Chancellor were requested by representation to allow the petitioners to do their duties. It is the allegation that since the petitions were filed, the petitioners were treated with vengeance. The applicants-petitioners therefore prayed to direct the respondents to allow the applicants-petitioners to discharge their duties on the post on which they are appointed and to pay the salary. It was alleged that the petitioners were disallowed to mark their presence in the muster roll even though no such written order was given to them.

6. The respondent University filed reply to the Civil Application to raise defence that the petitioners were the employees of agency M/s.Max Vigil Security Experts and M/s.Rajdeep Enterprise, and the salaries were paid to the petitioners directly and that the petitioners were not engaged by the University. The petitioners filed rejoinder affidavit and denied that they were the employees of the

outsourcing agencies. They contended that they were the employees of the University and were employed by the University but the outsourcing agency subsequently shown as a facade by the University to disown the liability.

7. Noticeably, following further allegations and revelations were made in the Civil Applications.

"... because the petitioner has filed SCA for the relief(s) as claimed therein in the petition, she / he is not allowed to enter in the office and is not allowed to work by the University Authority(ies) and is being harassed and is mentally pressurized to withdraw the petition. By this Respondent(s) Authority(ies) are giving message to its all employees to refrain from approaching Hon'ble High Court in relation to their any grievances. The Applicant(s) here with annexes the script of recording by the News Reporter Shri Kevalbhai Dave of Nav Gujarat on 12.11.2018...."

7.1 It was further stated, "... in the said script there is voice of Vice Chancellor and of Shri Bhavin Kothari syndicate member on behalf of the University. From the said script, it shall appear that the Respondent(s) University Authority(ies) have taken coercive steps of not allowing the Applicant(s) to enter into office and to do his regular work. The Applicant(s) has obtained CD of the above said recording from the said News Reporter and shall produce before this Hon'ble Court as and when directed...."

7.2 The script in conversation in Gujarati language stated to have taken place between high office bearers of the University and a press reporter in which the issue of termination of the petitioners was talked about, which is made part of the pleadings in the rejoinder affidavit at Annexure-L. The same is reproduced verbatim in the same language hereinbelow.

S],5lTzLGL VMlO;DF\ YI[, ;\JFNGL RRF" GJ U]HZFT ;DI gI]h lZ5M8"Z S[J,EF. NJ[P !Zv!!vZ_!(
!Zo## 5LPV[DP ZL5M8"Z o CF.SM8" DF\ UIF K[V[8,[VF56[ZLD]J SIF" K[P JLP;LPsS],5lTf o
V[8,F DF8[H SIF" K[P EFJLG SM9FZL o SFIDL Y. HFI TM T[A[S oMZ V[g8=L Y. HFI VDFZL
l5]SMXG ,[JF 5o[G[P ZL5M8"Z o T[CF.SM8"DF\ UIF K[4 CH] T[DG]\ S\ . VFjI]\ GYLP EFJLG
SM9FZL o V[8,F DF8[H SIF" VG[VD[ZFC G HM.V[P S],5lT o VDG[BAZ GYL V[RPVMPoLPG[
BAZ GYLP EFJLG SM9FZL o VDFZ[XF;S TZLS[SZJ]\ H 5o[P ZL5M8"Z o DCFJLZl;\C AMIh
CM:8[,DF\ OLS; 5[DF\ , ZZ JQF"YL K[P EFJLG SM9FZL o SFIDL HJF DF8[CF.SM8"DF\ HFI
TM VDFZ[l5]SMXGZL 5U,F ,[JF TM 5o[G[ZL5M8"Z o H[SD"RFZL CF.SM8"DF\ HFI T[G[
ZLD]J SZX[P EFJLG SM9FZL o VF TM DFJFvD,FI K[;ZSFZLDF\ ZL5M8"Z o V[Hg;L C[9/G]\
oL;LhG YI]\ m EFJLG SM9FZL o V[CH] l;goLS[8DF\ 5[goL\U K[P ZL5M8"Z o V[Hg;L C[9/
D]SJF T[G SZJ]\ HM.V[V[DF\ S. OS" 5oTM GYL HM C]\ TDG[S. Np lG6"I 5[goL\U K[SFIDL G
YFI4 VF A[H6F SIFZ[I4 ALHF Z_ H6 EFJLG SM9FZL o G SZ[m VNF6L4 ZL,FIg; S[SM.
SM5MZ[8 CF.SM8"DF\ HJFGM 5]ItG SZ[K[T[GL ;FD[S\5GL ,F, VF\B SZ[H K[P D[C], ~5F6L o
;\:YFGL ;FD[SM8"DF\ YJ]\ V[8,[;\:YF SF\ S EFJLG SM9FZL o V[V[DG] DM8L E], K[P SM8"
lG6"I SZ[SFIDL SZM4 T[VFN[X SZ[T[l;:8D GF SZ[D[C], ~5F6L o l;:8D ;FD[5oM TM V[DG[
ZF.8; H GYLP ZL5M8"Z o VF DF\ S. Z:TM SZFI EFJLG SM9FZL o CF.SM8"DF\ 5FKM B[R] lJGF
XZTL EFJLG SM9FZL o !_! @ VDFZM jllSTUT lG6"I K[S],5lT o OZL SM8"DF\ HFIP 8[,LOMGLS
JFTlRT K]8F SZJF AFAT !&v!!vZ_!(C[oZL lDlCZ ZFJ, OFD";L EJG _5o!\$ 5LPV[DP lDlCZ o DG[

CD6F B[Z ;FC[AGM OMG VFjIM CTMP B[Z ;FC[A V[8,[ZHL:8=FZ S[JLP;LP CMI T[G ;]RGF D/[, K[S[VD[VDFZF TZOYL HF6 SZ[, K[S[TD[V[DG[I]IGJL;"8LDF\YL K]8F SZ[, K[P CJ[T[DG[Sg8LgI] ZFBM KM TM ElJQIDF\ TDFZ[HJFA N[JF 5oX[P VtIFZ[H[oL;LhG VFJ[TM 5KL HM.g8 YFI 56 T[G[VtIFZ[TFtSF],S V;ZYL K]8F SZJF V[DG[VtIFZ[DG[;]RGF VF5L S[K]8F SZL N[JF DG[VMo"Z VF5JM S[ZHL:8=FZ DFZF ;FC[A K[TM DFZ[SZJ]\ 5o[;]RGF VF5[, S[5KL HJFANFZL TDFZL ZC[X[P 7.3 The petitioners have annexed copy of Minutes of Syndicate Meeting held on 25th June, 2018 along with rejoinder affidavit. Out of the total vacancies, at the best, only 30 vacancies are filled up by outsourcing. 412 employees are placed to work on contract basis. It is averred that no Resolutions were passed to give contract or to enter into agreement in relation to the recruitment by outsourcing agency. It was thus, stated by the petitioners that the University has been conducting its affairs in most arbitrary manner in picking, choosing and driving away the petitioners at its sweet will.

8. The above facts, circumstances and events project the total scenario in the controversy.

9. Now, at this stage, going back to the core controversy in the main petition. Therein the petitioners' claim is for equal-pay for equal-work and for regularization of their services. On the other hand, a defence is sought to be raised by the University that the petitioners were engaged through a method of outsourcing and that they were not the employees of the University. The petitioners' claim that they have been performing similar nature of duties as attached to the regular post, therefore according to their case, they are entitled to the same pay-scale. The above and the other questions arising in the compass of the controversy are essentially the question of fact. Whether an employee is entitled to equal pay on the ground that his working is equal in kind and nature to other employee, is always a factual aspect to be established by leading evidence. It would require comparison of nature of duties of both the posts, degree of responsibility attached to the post, the qualification to man the post, the powers of working connected with the post etc would be amongst the relevant consideration to decide whether an employee is entitled to equal pay.

9.1 All the above issues would need leading of evidence. It is only by means of adducing evidence that the question of above nature could be adjudicated. It is true that the Supreme Court has in its above-referred decisions directed that if the temporary employees are found to have been discharging similar nature of duties as compared to the employees working on the regular post, such employees would be entitled to be paid the minimum of the pay-scale of the regular employee.

9.2 While this court is not inclined to entertain the writ jurisdiction in view of the above aspects and considerations, there is further reason that the present petition is not being entertained. The petitioners have got alternative statutory remedy of approaching the Gujarat Educational Institutions Service Tribunal under the Gujarat Educational Institutions Services Act, 2006. Section 11 of the said Act provides that an employee aggrieved by an original order or appellate order or the decision of the educational institution which is connected with the conditions of service of such employee or the educational institution, may, within the specified time, prefer appeal before the Tribunal. The Tribunal would be the forum where the petitioners would be able to lead evidence and thereby their case. Thus, when the statutory alternative efficacious remedy is available to the petitioners and the nature of the claim of the petitioners is such that it would require leading of

evidence, the petitioners' case could not be considered for final relief of granting them the equal-pay for equal-work or the benefit of regularization by exercising the writ powers.

9.3 Pausing at this stage, it may be mentioned that the following observations of the Supreme Court in Sabha Shanker Dube (supra) could be noticed.

"9. On a comprehensive consideration of the entire law on the subject of parity of pay scales on the principle of equal pay for equal work, this Court in Jagjit Singh (supra) held as follows:

"58. 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. Anyone, 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 dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situated 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."

10. The issue that was considered by this Court in Jagjit Singh (supra) is whether temporary employees (daily wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and likewise) are entitled to the minimum of the regular pay scales on account of their performing the same duties which are discharged by those engaged on regular basis against the sanctioned posts. After considering several judgments including the judgments of this Court in Tilak Raj (supra) and Surjit Singh (supra), this Court held that temporary employees are entitled to draw wages at the minimum of the pay scales which are applicable to the regular employees holding the same post.

11. In view of the judgment in Jagjit Singh (supra), we are unable to uphold the view of the High Court that the Appellants-herein are not entitled to be paid the minimum of the pay scales. We are not called upon to adjudicate on the rights of the Appellants relating to the regularization of their services. We are concerned only with the principle laid down by this Court initially in Putti Lal (supra) relating to persons who are similarly situated to the Appellants and later affirmed in Jagjit Singh (supra) that temporary employees are entitled to minimum of the pay scales as long as they continue in service."

10. Even though for the aforesaid reason of availability of alternative statutory remedy, the petitioners are not entitled to relief as finally claimed in the petition, the startling revelations in the pleadings of Civil Application became suggestive of the fact that the petitioners were victimised so as to drive them away from services. The conversation in Gujarati as above, recorded between the press

reporter and the functionaries of the University including the Vice Chancellor of the University, had, at least, *prima facie* given out and establish the approach and treatment which the University meted out to the petitioners.

10.1 It could be readily gathered from the text of the conversation above that answering the questions of reporter, the Vice Chancellor audaciously says that the petitioners are removed because they had gone to the Court. The answers by the Vice Chancellor and the University authorities in conversation amongst other facts, mentioned that some way would be found if the matters are withdrawn from the High Court. In the above conversation, the arbitrary approach on part of the University authorities is clearly discernible. What is manifested is that, the person like Vice Chancellor of the University holding such high office, is shown to be treating the courts, the proceedings before the court and the court's order in a very low esteem to develop the attitude of no care to the court and the proceedings of the court. Such stance is highly deprecable.

10.2 It could be thus *prima facie* submitted by learned advocate for the petitioners that dispensing with the services of the petitioners was not only arbitrary but actuated with extraneous considerations and *mala fide* approach. The University directly or indirectly coerced the petitioners to withdraw the proceedings. The contention of the petitioners that they have been singled out and victimised only because they have approached this Court by filing the present petition, while all other were retained in service, have to be appreciated in light of the above facts and pleadings and the conduct shown from the above dialog in the chamber of the office of the Vice Chancellor.

10.3 The dialog and the conversation took place on 12th November, 2018. Notice in the petition was issued on 10th July, 2018 and the Civil Applications were filed on 15th November, 2018. Order in Civil Application was passed on 04th December, 2018. Other material developments of syndicate meeting and the rejection of the case of the petitioners took place subsequently. From the chain of time-wise events, the petitioners could create a strong argument that the University has been acting with a malice against the petitioners. The plea of arbitrariness against and victimisation of the petitioners could not be brushed aside lightly in wake of the above facts, events and developments. The petitioners were in service when the petitions were filed and the notice was issued. Thereafter the aforesaid developments took place and the petitioners were disallowed to work by dispensing with their services.

10.4 The total operation of the above facts and circumstances go to show that the petitioners were treated with an eye of victimisation by the University after they filed the petitions. Whatever was the status of their work and in whatever capacity they were working, they could not have been driven away from service. It clearly appeared that engaging the petitioners in service and driving the petitioners out of service and the incidental and attendant things were all controlled, monitored and actuated by the University. The arbitrariness in dispensing with the services of the petitioners after filing of petitions is manifested from the above circumstances.

11. In view of the foregoing reasons and discussion, all the petitions and the Civil Applications are disposed of in terms of the following observations and directions.

(i) The petitions under Article 226 of the Constitution are not entertained inasmuch as the Court is not persuaded to exercise the writ jurisdiction in wake of availability of alternative statutory remedy under Section 11 of the Gujarat Educational Institutions Services Act, 2006 available to the petitioners before Gujarat Educational Institutions Services Tribunal;

(ii) The petitioners are relegated to the aforementioned alternative statutory remedy of preferring Applications/Appeals before the Gujarat Educational Institutions Services Tribunal to agitate and claim before the said forum the prayers for equal-pay for equal-work and regularization of the petitioners ;

(iii) The petitioners may file their Applications/ Appeals before the Tribunal within three months from today;

(iv) In the meantime, in view of what is observed and found hereinabove, all the petitioners shall be immediately taken back in service and shall be allowed to work by way of ad-interim relief which shall operate till the Applications/Appeals are placed for the first time before the Tribunal;

(v) At the same time, it would be open for the petitioners to seek the continuation of the interim relief which is granted herein to allow them to continue to work during the pendency of the Applications/Appeals before the Tribunal;

(vi) It would be further open for the petitioners to seek interim prayer before the Tribunal for grant of minimum of the regular pay-scale given to the employees on the similar post;

(vii) The prayers for interim relief as above which may be made by the petitioners, shall be considered by the Tribunal on the first date when the Applications/Appeals are placed before it to be decided on merits and keeping in view the facts obtained on record;

(viii) The Tribunal shall endeavour to decide the Applications/Appeals of the petitioners within six months;

(ix) This Court has not expressed any opinion on the merits of the case of the petitioners either for the main relief or for interim relief. It is the Tribunal which shall be deciding in accordance with law and on merits;

(x) It is clarified that the above directions, observations and/or pendency of proceedings of Applications/Appeals of the petitioners before the Tribunal as may be preferred, shall not be a precluding aspect for the University to take back the petitioners in service and to address their grievance about the benefit of regularization etc. The present petitions and Civil Applications stand disposed of as above.

(N.V.ANJARIA, J) FURTHER ORDER At this stage, learned advocate Mr.A.R. Thacker for the respondent requests for stay of the aforesaid directions. Learned advocate Mr.Gogia for the petitioners objects to grant of the request.

In the facts and circumstances of the case and what is held above, the directions are not required to be stayed. Hence, request is refused.

(N.V.ANJARIA, J) Anup