

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 10126 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 10127 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 10128 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 10129 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 10130 of 2018****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.Y. KOGJE****Sd/-**

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

**JAMNAGAR MUNICIPAL CORPORATION****Versus****AVDESH KISHORBHAI SOLANKI****Appearance:****MR HS MUNSHAW(495) for the Petitioner(s) No. 1****MR YOGEN N PANDYA(5766) for the Respondent(s) No. 1****CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE****Date : 25/07/2022****ORAL JUDGMENT**

1. **RULE.** Learned Advocate Mr.Yogen Pandya waives service of Rule on behalf of the respondents.

2. These petitions are arising out of the same facts and are raising identical issues and hence, at the request of learned Advocates for the parties, both these petitions are taken up for joint hearing and final disposal. The facts are taken from Special Civil Application No.10126 of 2018.

3. This petition under Article 227 of the Constitution of India is filed for quashing and setting aside award dated 02.01.2018 passed by the Labour Court, Jamnagar in Reference (LCJ) No.62 of 2016. By the aforesaid impugned award, the Labour Court directed reinstatement to the original post with continuity in service and back wages to the extent of 20%.

4. The main contention of learned Advocate for the petitioner-Corporation is that the original engagement of the respondent-workman was for a temporary period, on ad hoc basis and on contract basis. He drew attention of this Court to Exh.18, which is order of appointment on contract basis of the respondent-workman. He also drew attention of this Court to the contents of the document to submit that for a particular purpose of maintaining of street light in the city of Jamnagar, appointment is made on ad hoc basis. It is submitted that thereafter, entire process of street light was changed with development in technology and LED technology was adopted by the Corporation, as a result of which the petitioner-Corporation had to float tender for this special job of

work and work order came to be issued in the year 2015 for the purpose of installing of LED lights. In view thereof, now the work of installation, maintenance and operation of street lights being outsourced under the work order by tender process, the requirement of the workman for that purpose was no more necessary. Hence, decision was taken to lastly enter into the contract with the respondent-workman for a period between 06.12.2015 to 31.05.2016, which the respondent-workman voluntarily and readily entered into and therefore, as per the condition of such contract, when the lapse of period after 31.05.2016, the relation between the petitioner and the workman came to an end.

4.1 Learned Advocate for the petitioner-Corporation vehemently submitted that the Labour Court has erroneously relied upon resolution No.1010 of Standing Committee of Jamnagar Municipal Corporation to arrive at a conclusion that the respondent is also to be appointed as daily rated employee of the Corporation and in fact, on account of new system of installation of LED lights on contract basis for operation and maintenance, resolution No.1010 was never put into application insofar as the respondents are concerned. It is submitted that even as per the statement of claim itself, the respondents have claimed that resolution No.1010 has not been implemented.

4.2 Learned Advocate for the petitioner-Corporation

submitted that in view of the fact that the respondents had entered into the contract with the Corporation, their case would be covered under Section 2(oo)(bb) and therefore, Section 25(F) will not be attracted. In absence of attraction of Section 25(F), there cannot be an order of reinstatement.

5. As against this, learned Advocate for the respondents submitted that the Labour Court has taken into consideration cogent evidence placed on record in support of the respondents-workmen indicating that since 2010, the respondents have been continuously working as linemen for the purpose of street light in Jamnagar city and till 2016, the respondents have rendered services as such and therefore, have completed more than 240 days and therefore, are in continuous service for almost six years. It is submitted that the Labour Court has treated case to be in breach of Section 25(G) and (H) and hence, justified in ordering reinstatement.

5.1 Learned Advocate for the respondents-workmen further submitted that the contention regarding change in method of installing LED by contract of installation, maintenance and operation is only an artificial reason, but would not mean that no manpower will be required for installation and maintenance of such street lights, though such street lights may be LED.

5.2 It is further submitted that this Court in its decision in

case of ***State of Gujarat & Ors. Vs. Vinodbhai Shivrambhai Rathod & Ors.***, in **Letters Patent Appeal No.1155 of 2019 and allied matters dated 09.05.2019**, has deprecated practice of discontinuing workman and replacing the work performed by such workman by a contract labourer and such will be clearly covered under the definition of unfair labour practice.

5.3 It is submitted that case of the petitioner-Corporation cannot be saved by Section 2(oo)(bb) in view of the fact that the contract, which the petitioner is relying upon Exh.28 was the last contract. However, first appointment of the respondent-workman was of the year 2008, wherein by order dated 25.06.2010 (Exh.18), the respondent was duly appointed. It is not the case of the petitioner-Corporation that after 2010, the respondent was discontinued for the entire period and straightaway in the year 2015, was appointed by another contract. In fact, evidence on record clearly indicates that he has continuously worked.

5.4 Learned Advocate for the respondents-workmen relied upon decision of this Court in case of ***Gujarat Agro Industries Corporation Ltd. Vs. Ramniklal Talsibhai Sitapara***, reported in **2017 (1) GLR, 108**, to submit that consecutive order in short time by giving artificial break will not be covered under Section 2(oo)(bb) of the Industrial Disputes Act.

6. Having heard learned Advocates for the parties and

having perused documents on record, it appears that the petitioner is a Corporation and respondent are workmen who were appointed as wiremen-helper in the Light Department of the Corporation for the work of street light maintenance (Exh.18). A perusal of this document indicates that the order is dated 25.06.2010 and refers to calling for the names from the Employment Exchange and also from the Employment Office of Jamnagar ITI to recommend names of eligible candidates. Accordingly, interview was conducted and pursuant to such interview, appoints were made by order dated 30.06.2010 (Exh.19). The Court has taken into consideration the pay slip of the respondent-workman placed at Annexure-E, which indicates post to be of Lineman-Helper on contract basis.

7. At Exh.21 is the resolution of Standing Committee being resolution No.1010 dated 04.09.2015, wherein also, as per the policy of the Government those individuals, who are in service prior to 2012 on the basis of contract or fixed pay, were to be treated daily wagers. The names of the respondents are reflected in such resolution. The aforesaid evidence was correctly appreciated by the Labour Court to conclude that the respondents were in service of the petitioner-Corporation till 2016.

8. It appears that the work order dated 01.01.2015 was issued by the petitioner-Corporation by way of tender process for replacement of existing street light with energy efficient LED street lights, installation of control systems along with operation and

maintenance.

9. Exh.28 is the contract signed between the petitioner and the respondent wherein on contract basis, for period between 06.12.2015 to 31.05.2016, services of the respondents-workmen were engaged on fixed pay of Rs.7,800/-. This contract was signed on 06.02.2016 whereas from 01.07.2016, successful contractor, viz. E-smart Energy Solution was to begin work under contract. The dates observed in this document would suggest of an afterthought exercise undertaken by the petitioner-Corporation by executing the contract (Exh.28) for the period between 06.12.2015 to 31.05.2016 whereas date of such document Exh.28 is 06.02.2016. Such act, in the opinion of the Court, is clear breach of Section 25(G) and (H) of the Industrial Disputes Act.

9.1 The Court has taken into consideration cross-objections of the witness of the petitioner-Corporation vide Exh.26, wherein the witness has clearly stated that the work, which was being undertaken by the persons of the contractor (E-smart Energy Solution), was the same work which was being done by the respondents-workmen. The finding that after initial appointment on 30.06.2010 (Exh.19), the respondents have worked continuously without any break, is given by the Labour Court on the basis of evidence and there is nothing on record placed by the petitioner-Corporation to assail such finding except for the argument offered that each time requirement of wireman-helper arose, the

Corporation was following procedure of issuing advertisement and in response to the advertisement, giving appointments to eligible qualified wiremen (Exh.25). In the opinion of the Court, even if that be so, still finding of the Labour Court of workmen being appointed continuously cannot be set aside.

10. This Court in case of in case of Gujarat Agro Industries Corporation Ltd. (supra), has clearly held as under:-

“11.1 Further, the fact that consecutive orders repeatedly appointing the claimant for short duration are passed from time to time, go to show that the such arrangement is a conscious decision and attempt of the respondent to give artificial breaks in the service of the claimant so as to circumvent or frustrate the statutory provisions, more particularly section 25F of the Act and to misuse, rather abuse, the provisions under clause (bb) of section 2(oo) of the Act with a view to depriving the claimant of his legal rights conferred by various provisions under different Labour Laws.

11.2 Under the circumstances, the corporation is not justified in taking shelter under clause (bb) of section 2(oo) of the Act. In the background of above facts, the contention based on the ground of clause (bb) of section 2(oo) cannot be entertained and accepted.

11.3 It is pertinent that Section 25F of the Act is beneficial provision which is introduced with the object to provide some relief to the workman who is visited with drastic action of retrenchment on account of which the workman and his entire family are thrown into life



full of uncertainties, difficulties and dark future. In connection with the said beneficial provision an exception is carved out by virtue of clause (bb) of Section 2(oo). Certain types of termination of service, which would, ordinarily, tantamount to retrenchment [but for the said clause (bb) of Section 2(oo) of the Act], are taken out of Section 25F of the Act. The said clause (bb) provides an exception in respect of the terms and condition prescribed by section 25F. Therefore, the said clause (bb) of Section 2(oo) of the Act must be construed strictly. This is necessary so as to curb abuse by unscrupulous employers. Otherwise the said provision can prove to be a handle or weapon in the hands of the employer to resort to policy of hire and fire and indiscriminate violation of Section 25F of the Act as well as to circumvent various provision under different Labour Laws and deprive the workmen the benefits which would flow from continuous service. The scheme of the Act and object of the clause (bb) of Section 2(oo) do not permit, rather abhors its misuse or exploitation for such purpose by employing such novel and ingenious methods.

11.6 Actually, such practice of engaging workman by separate but consecutive appointment orders of short duration with a view to opposing workman's claim about continuity in service by citing separate appointment orders giving artificial breaks between two phase of appointments is unjust and runs counter to the object of the provision and such practice has been repeatedly deprecated by Courts. By adopting such practice, the employer actually engages the workman continuously but with a view to establishing

that the person was engaged intermittently and was not engaged continuously, separate orders for short duration are issued and/or artificial breaks are given by issuing appointment letters for 3 months or 6 months duration or in some case 1 year tenure and in some cases appointment orders are issued for tenure of 29 days (then break of one or two days is given) and the same workman is again appointed. In such arrangement, the appointment which, in reality and in actual effect, is continuous, is artificially interjected by such facade or smoke screen of separate orders despite the fact that the work, for which the person is engaged, continues and the need for engaging the workman also continues. Such action of engaging the workman in such manner and then abruptly discontinuing the person, would not fall within the purview of clause (bb) of Section 2(oo) and such practice cannot get protection of the principle of fixed term appointment recognised by clause (bb) of Section 2(oo)(bb).

11. In facts of the present case also and in view of continued appointment and discharge of services by the respondents-workmen, the Court is of the view that case of the respondents will not be covered under Section 2(oo)(bb).

12. In view of the aforesaid, no case is made out for interference. The petitions deserve to be and are hereby dismissed. Rule is discharged. No order as to costs.

**Sd/-**  
**(A.Y. KOGJE, J)**

SHITOLE