

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 592 of 2022

In R/SPECIAL CIVIL APPLICATION NO. 8601 of 2012

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2022
In R/LETTERS PATENT APPEAL NO. 592 of 2022

STATE OF GUJARAT

Versus

ARJANBHAI TITABHAI BARAIYA

Appearance:

MR TIRTHRAJ PANDYA, AGP for the Appellant(s) No. 1,2,3,4
for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE R.M.CHHAYA

and

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

Date : 02/05/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE R.M.CHHAYA)

1. Heard Mr. Tirthraj Pandya, learned AGP for the appellants.

2. Feeling aggrieved and dissatisfied by the judgment and order dated 05.04.2021 passed in SCA No. 8601 of 2012, the State and its authorities have preferred this intra court appeal under Clause 15 of the Letters Patent.

3. The Roads & Buildings Department of the State of Gujarat gave advertisement on 03.03.2001 for inviting application for the post of Assistant Engineer, pursuant to which the Respondent-Original Petitioner

applied for the same to on 30.05.2001. After oral interview on 11.03.2001, the original petitioner came to be appointed on 01.06.2001, initially for a period of 9 months on fixed pay of Rs.5,000/- per month. It is a matter of record that such posts were filled up by the appellant-authorities to see that post earthquake, the work can be carried out in different talukas of Kachchh District, which had experienced devastating earthquake.

4. It is the case of the Respondent-Original Petitioner that services of similarly situated employees who were appointed along with the Respondent-Original Petitioner have been regularised. Reliance was placed on the judgment of this Court in the case of Rapar Area Development Authority in SCA No. 16634 of 2012. The learned Single Judge has observed thus -

"12. Therefore, as discussed hereinabove, the petitioner being found eligible in all respect was appointed by duly constituted Selection Committee of Chairman & Superintendent (Roads & Buildings) Circle Gandhinagar. Besides, this Court, in similar set of facts, has directed regularization of the service of the employees. One such order is dated 21.12.2009 rendered in Special Civil Application No.9523 of 2009. In another oral judgment dated 26.9.2014, in the case of Dipesh Bharatbhai Joshi vs. State of Gujarat, rendered in Civil Application No. 10457 of 2014 in Special Civil Application No. 11020 of 2010, this Court has directed regularization of the service. Paragraphs 2 and 3 whereof, read as under:

"2. Having considered the rival contentions there does not appear to be a

dispute on the fact that the petitioners were appointed through set recruitment procedure as Surveyors w.e.f 15th June 2004. In the Civil Application an order dated 30th October 2013 regularising various similarly situated Surveyors has been produced and there does not appear to be a serious dispute that the petitioners also can be regularised in terms of the said order. Even otherwise this Court has been consistent in its view that regularly selected employees cannot be continued for long on contractual, adhoc or temporary basis and they are required to be regularised. Even in Secretary, State of Karnataka & Ors. V. Umadevi & Ors (AIR 2006 SC1806), the Apex Court emphasised the need for regularisation of such employees and deprecated the practice of making appointments on permanent post on contractual or on adhoc basis for long time.

3. In above view of the matter the petition is required to be allowed partly as submitted by learned counsel for the petitioner, to an effect that the petitioner will be regularised not from the date of inception in service but from the date his juniors were regularised. Accordingly the petition is partly allowed in above terms and the petitioner shall be regularised in terms of the order dated 30th October 2013. The decision to regularise the petitioner will be taken by the respondent preferably within a period of six weeks from today. Rule is made absolute to the above extent. Direct service is permitted."

13. In paragraph 2, there is a reference of order dated 30.10.2013 whereby service of various surveyors has been regularized. Following the aforesaid two judgments, this Court vide judgment dated 23.2.2016 has directed the State Government to regularize the service of the petitioner therein. The petitioner therein was appointed pursuant to the very same

advertisement issued in the local daily newspaper on the post of Additional Engineer (Civil) and was thereafter appointed to the post of Surveyor. The grievance raised therein was that he was serving past sixteen years on contractual basis and despite request being made to the authorities, his service was not regularized. This Court, while allowing the writ petition, has observed thus:

"Perhaps, the only ground put forward for not regularizing the services of the petitioner is that he was appointed for a brief period only with a view to meet with the exigencies that arose on account of the devastating earthquake. If that would have been so, probably, he would not have been continued for sixteen years at a stretch. On one ground or the other, this petition is sought to be opposed. It is now submitted that his performance is not satisfactory. It is also submitted that one FIR was registered against him for the offence of forgery. It is pointed out that the investigation resulted in filing of a 'C' summary report by the Investigating Officer and the learned Magistrate has accepted the 'C' summary. Of course, a revision seems to have been filed in the Sessions Court against the order of the learned Magistrate accepting the 'C' summary.

I take notice of the fact that many employees in the establishment who were appointed along with the petitioner at the relevant point of time have all been regularized. It seems that the work is still there, otherwise the petitioner would not have been continued all these years in service.

In the result, the respondent nos.2 and 3 are directed to consider the case of the petitioner for regularization, more particularly, in view of the order which was passed by this Court dated 21st December 2009 referred to above. An appropriate decision shall be taken in this regard with

necessary order within a period of eight weeks from the date of receipt of the writ of the order.

The respondent nos.2 and 3 are also directed to take into consideration the judgment and order passed by this Court dated 4th February 2016 in Special Civil Application No.10829 of 2003 and allied matters, wherein this Court has considered the law on the subject of regularization at length.

I expect the authorities to take a positive decision keeping in mind the judgments referred to above. The respondent nos.2 and 3 are also directed to consider the order dated 26th September 2014 passed by a learned Single Judge in Civil Application No.10457 of 2014 in Special Civil Application No.11020 of 2010 and allied matters.

I expect the authorities concerned to ensure that there is no second round of litigation.

With the above, this writ-application is disposed of. Direct service is permitted."

It has been reported that pursuant to the aforesaid directions contained in the judgment dated 23.2.2016, the service of the petitioner therein, who was working with the office of Rapar Area Development Authority has been regularized, by passing necessary orders. The case of the petitioner is identical to the case of the petitioner of Special Civil Application No.16634 of 2012 and therefore, the case of the petitioner deserves consideration on similar lines.

14. Considering the facts discussed herein above so also, the directions issued by this Court in the aforesaid judgments, there is no reason available to this Court to take a different view than the aforesaid views taken by this Court, more particularly, when the petitioner also has been appointed in the year

2001 after following the procedure and by duly constituted Selection Committee. Furthermore, the said order was approved by the State Government vide Government Resolution dated 8.3.2001 and it is only thereafter that the appointment was effected. The continuation of the petitioner from the year 2001, till date, also buttress the fact that the service of the petitioner is still required by the authorities concerned. Also, the recommendations made by the office of the Mamlatdar so also, the Deputy Collector strengthens the fact about requirement of service of the petitioner and therefore, in absence of any strong justification assigned by the respondents, for not regularizing the service of the petitioner, the case of the petitioner also needs consideration in line with directions contained in the judgments passed by this Court in the aforementioned writ petitions.

15. Under the circumstances, the respondent no.1, in consultation with the concerned departments namely, Revenue Department and Urban Development & Urban Housing Department of the State Government, are directed to consider the case of the petitioner for regularization. The concerned authorities shall take decision in terms of this judgment within a period of four months from today. It is expected that the authorities will take positive decision, ensuring that there is no second round of litigation.

16. In view of the aforementioned discussion, the petition is partly allowed. Rule is made absolute to the aforesaid extent. No order as to cost."

5. We are in total agreement with observations made by the learned Single Judge, wherein the learned Single Judge has directed to consider the case of the Respondent-original petitioner within a period of four months from today.

6. At the last, Mr. Tirthraj Pandya, learned AGP appearing for the appellants requested that time be extended to comply with the directions issued by the learned Single Judge.

7. In facts of this case, time is extended till 31.07.2022 to carry out the directions issued by the learned Single Judge.

8. Before parting, we may also add that the learned AGP had pointed out that in the last sentence of para 15, the learned Single Judge has observed that it is "expected" that the authorities will take positive decision, ensuring that there is no second round of litigation is objectionable. We do not find anything objectionable in the said observation. The authorities shall take appropriate steps as per the directions issued by the learned Single Judge.

9. The appeal is thus bereft of any merits and the same deserves to be dismissed and is hereby dismissed. The connected Civil Application, if any, would also stand dismissed.

(R.M.CHHAYA, J)

(HEMANT M. PRACHCHAK, J)

BIJOY B. PILLA