SUPREME COURT OF INDIA

Bhupendra Kumar Chimanbhai Kachiya Patel

Vs.

Divisional Controller GSRTC Nadiad

C.A.No.2546 of 2018

(R.K.Agrawal and Abhay Manohar Sapre,JJ.,)

07.03.2018

JUDGMENT

Abhay Manohar Sapre,J.,

SLP(Civil)No.6105 of 2018

1. Leave granted.
2. These appeals are filed against the final judgments and orders passed by the High Court of Gujarat at Ahmedabad dated 28.06.2016 in L.P.A. No.550/2016, dated 22.08.2017 in L.P.A. Nos.1344-1347/2017, dated 04.07.2017 in L.P.A. Nos. 1185/2014, 1199, 1252, 1254-1259, 1261, 1264-1278, 1281-1282, 1284, 1286, 1288, 1291-1296, 1298/2014, dated 21.06.2016 in L.P.A. Nos.497-500/2016 and dated 04.07.2017 in L.P.A. Nos.1200, 1287, 1289, 1297 and 1299/2014 whereby the Division Bench of the High Court dismissed the appeals filed by the appellants herein and upheld the orders passed by the Single Judge of the High Court.

3. In order to appreciate the issues involved in these appeals, it is necessary to set out the facts in detail. The facts and the legal issues arising in all these appeals are similar in nature except the date of their initial appointment and absorption, which vary from case to case in the service of the respondent.

4. For the sake of convenience, the facts mentioned in Reference I.T. No.44/2011 (Annexure- 12) of the paper book of SLP Nos. 28519-28522 of 2017 are mentioned hereinbelow.

5. Prafulbhai Hirabhai Solanki, one of the appellants herein, whose name appears at page 18 of the SLP paper book joined the services of the respondent-Gujarat State Road Transport Corporation (hereinafter referred to as “the Corporation) on 04.06.1999 as "Badali Kamdar" at Mangrol Depot of Junagadh Section. He was employed as a daily wager.

6. On 21.12.1989, the Corporation and the Union of the workers entered into a settlement to resolve several issues in relation to the service conditions of the employees working in the Corporation.

7. Clause 20 of the Settlement, which is relevant for the disposal of these appeals, deals with the placement and absorption of the "Badali Kamdar" in the permanent cadre of conductor and grant of time scale to such workers. It provides a procedure as to how, when and in what manner, the services of a "Badali Kamdar" shall be regularized and absorbed in a particular time scale.

8. In terms of clause 20 of the settlement dated 21.12.1989, the Corporation considered the case of the appellant when the vacancy occurred in the permanent cadre on the post of Conductor and accordingly he was absorbed as permanent employee in the services of the Corporation on 27.08.2008 as Conductor. He was given the time scale with effect from 27.08.2008 with consequential benefits.

9. Like the appellant, there were hundreds of "Badali Kamdars" who were working in the set up of Corporation at all relevant time. The cases of these "Badali Kamdars" were also considered with a view to find out as to whether they fulfill the conditions set out in clause 20 for making them permanent in the set up of the Corporation as and when permanent vacancy arose in the cadre of the Conductor. Those who were found eligible and fulfilled the conditions were absorbed in the services as permanent employees on the post of conductor and were accordingly given the time scale on the expiry of completion of 180 days in the cadre. They were accordingly made permanent in terms of the procedure prescribed in clause 20 of the Settlement.

10. This led to dispute between these employees and the Corporation. The dispute was essentially as to from which date this benefit, namely, to make them permanent and the benefit of time scale should be granted to such "Badali Kamdars".

11. According to the employee (appellant), he was entitled to claim this benefit on his completing 180 days of the service from the date of his initial joining of the service as "Badali Kamdar", i.e., 04.06.1999 and not from the date of absorption whereas according to the Corporation, the appellant and all employees alike the appellant were rightly granted the benefit on the expiry of 180 days from the date when they were absorbed in the permanent cadre, i.e., as in the case of the appellant from 27.08.2008 as provided in clause 20 of the Settlement.

12. This issue was accordingly referred to the Industrial Tribunal, Rajkot at the instance of the appellant under Section 10 of the Industrial Dispute Act (hereinafter referred to as "the Act"). Several such references were made to the Industrial Tribunal at the instance of similarly situated employees.

13. By award dated 08.08.2013 (Annexure-P-12), the Industrial Tribunal answered the reference in favour of the employees and accordingly granted them benefit, which the

employees had claimed. In other words, the Industrial Tribunal held that the appellant (employee) is entitled to claim the permanent absorption in his service in the time scale as Conductor with effect from the completion of his 180 days of service period from the date of his initial joining, i.e., 04.06.1999. The Corporation was accordingly asked to pay all consequential benefits from such date. In substance, the Industrial Tribunal rejected the stand taken by the Corporation.

14. The Corporation felt aggrieved and filed writ petition in the High Court of Gujarat at Ahmadabad. The Single Judge of the High Court, by order dated 18.09.2014, allowed the writ petition and set aside the award of the Industrial Tribunal. The Single Judge accepted the stand taken by the Corporation and accordingly upheld their action in granting the benefit to the employee (appellant) from 27.08.2008 as provided in clause 20 of the Settlement.

15. The appellants (employees) felt aggrieved and filed intra court appeals before the Division Bench. By impugned judgments and orders, the Division Bench dismissed the appeals filed by the employees and upheld the orders of the Single Judge, which has given rise to filing of these appeals by way of special leave by the employees in this Court.

16. Heard Mr. Colin Gonsalves, learned senior counsel for the appellants and Mr. Tushar Mehta, learned Additional Solicitor General for the respondent.

17. Mr. Colin Gonsalves learned senior counsel appearing for the appellants(employees) while assailing the legality and correctness of the impugned orders contended that the reasoning and the conclusion arrived at by the Industrial Tribunal was just, proper and legal and hence it should not have been interfered with by the High Court (Single Judge and Division Bench).

18. Learned counsel urged that the findings of the Industrial Tribunal were based on proper appreciation of evidence adduced by the parties and hence such findings could not be faulted with. Learned counsel took us through the evidence to show that the findings recorded by the Industrial Tribunal deserve to be upheld as against the findings of Single Judge and Division Bench.

19. Learned counsel placed reliance on some judicial orders passed in previous litigation between the Corporation and its employees which, according to him, decided the issue in question in favour of the employees.

20. Learned senior counsel for the appellants submitted that in the light of these judicial orders, the similar order should be passed in these appeals also.

21. In reply, Mr. Tushar Mehta, learned Additional Solicitor General, appearing for the respondent supported the impugned judgment and contended that the concurrent findings of the High Court (Single Judge and Division Bench) deserve to be upheld.

22. Placing reliance on clause 20 of the settlement, learned ASG contended that the action taken by the Corporation is in conformity with the requirements of Clause 20 and hence deserves to be upheld.

23. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeals.

24. As rightly argued by the learned ASG, the issue in question has to be decided in the light of clause 20 of the Settlement.

25. One cannot dispute the legal proposition that the settlement once arrived at between the employer and the employees as provided in Section 18 of the Act, it is binding on the employer and the employees.

26. It is not in dispute that on 21.12.1989, the Corporation and the Union of the workers of the Corporation has entered into the settlement in respect of various issues in relation to their service conditions. One such issue was in relation to the absorption of Badali Kamdars in the permanent cadre of the Corporation. Clause 20 provides the manner in which it is to be given effect to by the parties.

27. Clause 20 of the Settlement dated 21.12.1989 reads as under:

> "In reference to the representation made to delete the provision of the section 29 of the settlement dated 23/11/ 1984 and implement the provision of section 43 of the settlement dated 22/10/1964 it is determined that after preparing the Division wise list of the selected employees they will be given temporary/daily wager appointment against the permanent posts in the division/unit, and if such appointed temporary/daily wager has worked continuously for 180 days including the weekly holiday/paid holiday and authorize leave then they will be taken on time scale. This provision will not be applicable to the employees on work charge working in the Civil Engineering Department and such appointed temporary/daily wager has worked continuously for 180 days including the weekly holiday/paid holiday and authorized leave then they will be taken in time scale and they will be entitled to all benefits available to time scale employees. The absence due to authorized leave for the above purpose will not be considered break and these days will not be considered for 180 days service. As per permission of S.T.T. 1981, if the recruitment of the staff has been done as a temporary or badli kamdar then after completion of their 180 days of service on the permitted vacancies they would be taken on time scale serially. Such workers will be granted all benefits as per the Rules along with the notional increment with effect from 1.8.87 and there will not be any recoveries made from them nor there will be any arrears paid. The workmen taken into service are not required during the monsoon, therefore they can be retrenched as per the requirement and after the monsoon if their services are required then again as per seniority they will be taken in time scale. If there is any permanent post vacant then the appointment of the administrative staff will be made on time scale."

28. It is not in dispute that the Corporation has followed the procedure provided in clause 20 while granting the employees their permanent cadre and the time scale of conductor. In other words, all eligible "Badali Kamdars" were absorbed in the set up and accordingly granted benefit in terms of the procedure prescribed in clause 20 of the Settlement.

29. It is also clear from the undisputed facts that firstly, the appellant (employee concerned) was appointed as "Badali Kamdar" in the set up of Corporation on 04.06.1999; Secondly, clear vacancy arose in the permanent cadre of Conductor in and around 27.08.2008; Thirdly, as per the seniority list of the "Badali Kamdars", the appellant was accordingly absorbed in the permanent cadre at the time scale with effect from 27.08.2008 on completion of 180 days of his service in the cadre and, as a consequence thereof, was given all the benefits of the said post from the said date; and lastly, since then the appellant and all employees alike him are continuing on their respective post.

30. In our considered opinion, in the light of what we have held above, there is no basis for the appellants (employees) to claim the aforesaid benefit from the date of their initial appointment as "Badali Kamdar". Indeed, there is neither any factual foundation nor any legal foundation to claim such benefit.

31. Learned counsel for the appellants was also not able to show any document, such as any term/condition in the appointment letter or in the settlement or any Rule/Regulation framed by the Corporation recognizing such right in appellants' favour to enable them to claim such benefit from the date of their initial appointment.

32. Clause 20 of the Settlement is the only clause which recognizes the appellant's right for consideration of his case on individual basis and to grant him the benefit subject to his fulfilling conditions specified therein which, in appellant's case, were found satisfied and accordingly, he was granted the benefit along with each such employees.

33. It is pertinent to mention that the appellants neither challenged the settlement nor its applicability. In other words, the legality or/and binding nature of settlement dated 21.12.1989 was never questioned in these proceedings. In this view of the matter, the settlement is binding on both parties in terms of Section 18 of the Act.

34. The concept of "Badli Kamdar" is statutorily recognized under the Act. Explanation to Section 25C defines the term "Badli Kamdar". The appellant never questioned his status as "Badli Kamdar". Indeed, it is due to the status of "Badli Kamdar", which he enjoyed for few years in the service of Corporation, he got the benefit of absorption in permanent cadre.

35. So far as the reliance placed by the learned counsel for the appellants on some previous judicial orders are concerned, in our view, they are of no help to the appellants inasmuch as those orders turned on the facts involved in the case and secondly, we find that in those cases, parties did not even lead any evidence (see Para-3 of the order dated 27.01.2000

passed in SCA No. 393/2000 page 45 of Paper Book), and lastly, one case was based on clause 49 of 1956 settlement and clause 19 of 1985 settlement.

36. In substance, in our view, those orders did not directly deal with the issues, which are the subject matter of these appeals and, even if, they deal with the issue in question, as urged by the learned counsel, then also, in our view, those cases turned on their own facts.

37. In this view of the matter, those orders were rightly not relied on by the High Court and we find no good ground to take different view and accordingly reject this submission.

38. Mr. Colin Gondsalves, learned senior counsel for the appellants then referred extensively to the evidence led by the parties to support his submission.

39. We are afraid we cannot appreciate the evidence in the appeals filed under Article 136 of the Constitution. It is more so when the Single Judge and Division Bench did not agree with the factual findings of the Tribunal and rightly reversed those findings. It is binding on this Court.

40. In the light of the foregoing discussion, we find no merit in the appeals which thus fail and are accordingly dismissed.