(2019) 07 GUJ CK 0152

Gujarat High Court

Case No: R/Special Civil Application No. 4293 Of 2014, 18091 Of 2013

STATE OF GUJARAT		APPELLANT
	Vs	
SOUTH GUJARAT ENGINEERING AND GENERAL WORKS UNION - LALVAVTA & 1 Other(S)		RESPONDENT

Date of Decision: July 9, 2019

Acts Referred:
Industrial Disputes Act, 1947 â€" Section 2(ra), 25T, 25U, 33#Gujarat Municipalities Act, 1963 â€" Section 47, 47(2), 47(3), 50, 260, 227, 271#Constitution Of India, 1950 â€" Article 226

Citation: (2019) 07 GUJ CK 0152

Hon'ble Judges: G.R. Udhwani, J

Bench: Single Bench

Advocate: Ritu Guru, Paritosh Calla, Rajesh P Mankad

Judgement

1. Captioned petitions are cross petitions; first by the State and the another by the workman assailing the judgement and award rendered below Exh.

54 in Reference LCS Demand No. 1 of 2004 on 14.08.2013 by the Labour Court, Surat directing to confer the permanent status upon the workman

either as Chokidar or in absence of such a post in the set up, any other Class 4 post with the pay attached to such post with effect from 17.09.2003.

The award further directed to pay to the workman consequential benefits including arrears. By the impugned award, it was also directed that on

conferring the status of permanency to the workman effective from 17.09.2003, his pay be fixed accordingly and all other consequential benefits shall

be paid to him effective from 01.01.2010, with arrears and difference of pay etc. While State is aggrieved by whole of the award, the workman has

made a grievance against the award denying him the benefits for the period between 17.09.2003 and 01.01.2010.

1.1 In the reference the workman sought permanent status with pay and consequential benefits at par with the permanent workmen from the year he

completed 240 days of service during the course of 17 years.

1.2. In absence of satisfaction of his demand made to his employer as also in absence of the resolution of the dispute by Conciliating Officer who was

moved on 06.10.2003, eventually the industrial dispute culminated into the reference under challenge, upon the failure report of Conciliation on

25.02.2004.

1.3. In the statement of demand, it was the case of the workman that he was working as Chokidar since 09.01.1986 in the Aadavasi Area Sub

Scheme, Songadh office, under the State of Gujarat since 17 years. He pleaded that except himself, other 26 workmen in the same scheme were

benefited by permanent pay scale and other benefits. He thus alleged an unfair labour practice against the State.

1.4 It was his case that he was illegally terminated on 02.01.1997 and in the dispute which he raised in the past which culminated into Reference Case

No. 881 of 1997 with Labour Court, Surat, award upon a settlement to post the workman on his original post with continuity of service was made on

28.06.2001. Pursuant thereto he had been working; however with fixed pay of Rs.1350/Ã, which according to the workman was below the minimum

wage.

1.5 On service of the notice upon his employer, reply was filed Exh. 5 wherein it has been pleaded that the workman having agreed to work on daily

wage basis was employed according to the prescribed terms and conditions with periodical appointments of 29 days each. The workmanÃ¢â‚¬â„¢s prayer

for permanency was opposed in absence of his recruitment by regular recruitment procedure as also in absence of the post in the set up and the

power with the concerned authority to grant permanent status.

1.6 According to the employer the workman was a partÃ‚timer and he having not completed requisite 10 years of service as a partÃ‚timer with six

hours work a day excluding his employment under the orders of Courts/Tribunal, if any, as envisaged in Circular dated 01.05.2007, conferring

permanency and regularization was not possible.

1.7. It was also pleaded that he was appointed in Class 4 on daily wage basis on 09.01.1986 and that he was irregular in his work; abandoned the

work and subsequently filed a Reference No. 881 of 1997 on 12.11.1997 and then was taken as partÃ‚â€‹ time employee on 09.07.2001 and in absence of

his complying with conditions no. 2 and 4 in aforementioned circular, he has no right to be permanent and that his services are required to be

terminated.

1.8 Five issues were raised amongst which focus in this petition is on issue no.3 touching the aforementioned controversy.

1.9. After recording the rival contentions, the case of Secretary, State of Karnataka and others vs. Umadevi and othersÃ‚, (2006) 4 SCC 1 was

considered by the Labour Court and after being conscious of the principle laid in Umadevi(supra), the Labour Court proceeded to examine whether

the appointment of the workman was illegal or irregular or regular; whether it was made against the vacant post; was it backdoor entry, what was the

duration of the services, whether the workman continued in service on the strength of the order of the Tribunal or Court, whether the workman has

legal right to claim the relief aboveÃ‚stated? The Labour Court then proceeded to appreciate the contents of the order of appointment of the workman

made on 09.01.1986 Exh. 43 and reached the factual finding that in the said document, reference was made to various Government Resolutions and

that in absence of the case of the employer that the appointment of the workman was without authority of law and in view of the admission that the

appointment dated 09.01.1986 was made pursuant to authority vested in the appointing officer.

1.10. Relying upon the very same document, the Labour Court found a reference to the letter dated 08.05.1978 therein, indicating the requirement of

the Watchman and in absence of the evidence to the contrary, it was found by the Labour Court that the workman was eligible for such appointment.

It therefore reached to the finding of fact that the appointment of the workman was not illegal and irregular. Furthermore, in absence of the evidence

as to existence of prevalent rules governing the service conditions of the workman, it was held that the breach of recruitment rules or illegality of the

recruitment was not proved. Referring to the testimony of the employer where the employer relied upon the Government Resolution dated 01.05.2007

to impugne the appointment of the workman, it was held that the said resolution could not be invoked retrospectively in relation to the appointment

made on 09.01.1986.

1.11 As to the existence of vacant post, the Labour Court after referring to the appointment order of the workman dated 09.01.1986 which recited

that the workman was employed against vacant post on account of the abandonment of the services by daily wager Chokidar Shri Ruwajibhai

Radatiyabhai Gamit, it was found that the workman was not favoured and there was no backÃ‚â€‹door entry.

1.12 As to duration of his services, factual finding that the workman had worked since 09.01.1986 till the date of the award was rendered. As to

appointment of the workman as partÃ‚timer, it was noticed that such facts were not fortified by any documents. It was also found that the employer

was unable to justify how, in absence of compliance with relevant provisions of Section 33 of the I.D. Act during the pendency of the demand case,

conversion of workman into partÃ‚timer was legal. The Labour Court also noted that there was no dispute about the workman working till the date of

award.

1.13 As to interruption of the continuity of service by interim order of the Court/Tribunal, it was found that facts constituting such interruption were not

on record. In that context, the previous award was also referred to. It was also found that under the previous award, employer was under an

obligation to reinstate the workman with continuity of service. It also referred to previous settlement to find that the workman agreed to forgo the

backwages if continuity of service as daily wager Watchman was given to him in pursuance to the previous award. It also answered argument that

the person settling the matter with the workman then had such authority. It also referred to the fact that the authority to appoint was available with the

Project Administrator upto 2006 and thus during the settlement on 28.06.2001, he had such authority. After referring to the letter of appointment dated

30.03.2002 factual finding was rendered that Project Administrator had full authority to enter into settlement arrived at and appoint the workman. It

was also found that the appointment of the workman made through appointment order dated 30.03.2002 for 29 days in a month was contrary to the

settlement arrived at between the employer and employee. It was also found that as directed in Umadevi (supra), the workman was entitled to the

benefit of one time measure since he was in continuous service from 09.01.1986 till 10.04.2006 when the judgement was rendered inasmuch as he has

completed more than 10 years of service for the purpose of benefit of such one time measure as indicated in Umadevi(supra). Finding of fact that

continuing the workman as temporary or partÃ‚â€‹timer or daily wagers for a long duration of 26 years was an unfair labour practice.

1.14 In absence of the pleadings and the evidence contrary to the claim of the workman, a finding of fact of the workman having completed 240 days

in a relevant year for the purpose of status of permanency and related benefits, it was held that he was entitled to the permanency and consequential

benefits atleast from the date of raising the dispute i.e. 17.09.2003.

1.15 The Labour Court also considered the decision in Upleta Nagar Palika through Chief Officer vs. Amritaben Deshibhai Vadher Ã¢â‚¬" Special Civil

Application No. 18468 of 2012 wherein it has been held that a wrong doer cannot take benefit of his own wrong. After applying the said principle, it

adopted 01.01.2010 which was the date adopted in the said case for permanency and ordered the benefit of permanency.

2. In the context of the aforesaid factual findings, the judicial pronouncements relied upon by the rival sides are required to be considered at this stage.

2.1 In Amreli Municipality v. Gujarat Pradesh Municipal Employees UnionÃ, 2004(3) GLR 1841 relied upon by the learned Assistant Government

Pleader, following guidelines were issued in para 12.1 to 12.1.14.

12.1 After considering the decisions cited before us, the following principles emerge :

(A) No regularisation or permanency can be effected de hors the statutory provisions or the guidelines.

(B) Long service put in by the workmen itself may not be a ground to regularise services of ad hoc/temporary workmen against the sanctioned setÃ‚â€‹up

without following statutory procedure of recruitment. At the most, Labour Court/Industrial Tribunal can issue direction for consideration of absorption

subject to availability of posts on the establishment.

(C) To avoid nepotism and corruption, no backÃ‚â€‹door entry in service;

(D) Financial capacity of the local body to have additional burden is a relevant consideration to be kept in mind while ordering regularisation or

absorption.

12.1.2 The Apex Court, in no uncertain terms, ruled that the Labour Court/ Industrial Tribunal can neither regularise services of a workman nor grant

permanency when his initial appointment itself is de hors the rules or not on the sanctioned post and has depricated orders of the High Court/Labour

Courts/ Tribunals directing to regularise services of illegally recruited persons and has given guidelines. We are not impressed by the submission

advanced on behalf of the workmen that the orders were passed in petitions under Article 226 of the Constitution of India, and therefore, such orders

are not applicable in the present case in deciding the controversy. The Labour Courts/ Industrial Tribunals are required to pass orders consistent with

the law laid down by the Higher Courts. Needless to say that the exercise of wide powers by Labour Court/ Tribunal is always subject to or governed

by the law laid down by the Higher Courts.

12.1.3 As far as the cases on hand are concerned, wherein local authorities are involved, so far as the Municipality is concerned, it is bound by the

statutory provisions, more particularly Sections 47, 50, 260 and 271 of the Gujarat Municipalities Act. As provided under SubÃ, section (2) of Section

47, the Municipality, with the previous sanction of the Director and if so required by the State Government, create all or any of the posts stated therein

and shall have power to make appointment to the post as provided under SubÃ,section (3) of Section 47. Likewise, under Section 50 of the Act, it is

obligatory on the part of the Municipality to obtain previous sanction of the Director to create such posts of officers and servants as specified under

SubÃ,sections (1) and (2) of Section 47 as it shall deem necessary for the purpose of carrying out duties under the Act. Any recruitment in that behalf

shall be determined in accordance with the rules made under Section 271 of the Gujarat Municipalities Act and the power to make appointment in any

post referred to in SubÃ,section (1) shall vest in the Municipality or in the authority empowered by the Municipality by rules made in this behalf under

Section 271. Thus, the local authority is the appointing authority and in service jurisprudence, the appointing authority has the key role to play in the

matter of appointment. Before creating a post of Officer or a servant of the Municipality, previous sanction of Director of Municipalities is a

mandatory condition which is known as Ã¢â‚¬Å“sanctioned setÃ‚â€‹upÃ¢â‚¬â€‹ of the Municipality.

12.1.4 True, as far as the petitioner Amreli Municipality is concerned, there are no rules under Section 271 of the Act. However, for filling up the

vacancies, previous sanction by the Director of Municipalities is a statutory requirement. The Municipality is bound by the directions issued by the

State Government from time to time. Likewise, under Section 260 of the Act, the Director of Municipalities is empowered to prevent extravagance in

the employment. The Director can issue such directions without hearing the local authority or the employees in view of the fact that such directions

are not affecting any individual employment.

3. The question referred to the full bench in Amreli Municipality (supra) was answered in paragraph 12.1.5. thus:

12.1.5 As far as Municipal Corporations are concerned, Chapter IV provides for Municipal officers and servants, their appointments and conditions of

service. Chapter III of the Schedule provides for method of appointment of certain Municipal officers and servants and their duties and powers. As

far as Panchayats are concerned, the employees are governed by provisions of Section 227 of the Gujarat Panchayats Act which reads as under :

Ã¢â‚¬Å“Section 227. Panchayat service to be regulated by rules :

(1) For the purpose of bringing about uniform scales of pay and uniform conditions of service for persons employed in the discharge of functions and

duties of Panchayats, there shall be constituted a panchayat service in connection with the affairs of Panchayats. Such service shall be distinct from

the State service.

(2) The panchayat service shall consist of such classes, cadres and posts and the initial strength of officers and servants in each such class and cadre

shall be such as the State Government may by order from time to time determine.

Provided that nothing in this subÃ‚sec. Shall prevent a district panchayat from altering with the previous approval of the State Government any class,

cadre or number of posts so determined by the State Government.Ã¢â‚¬â€‹

3.1 Following salient features can be discerned from the above decisions: (1) there should not be the requirement of daily rated workmen; (2) for the

purpose of regularization, if the posts are not sanctioned, the authority is required to take necessary steps within the budgetary provisions; (3) in the

event of termination of the services of the employees who have worked for long, the authorities must ensure that no unqualified person is appointed

replacing them; (4) powers can be exercised by the court/tribunal for alteration of the service conditions subject to the recruitment rules, availability of

sanctioned posts and subject to the grant and limits of budgetary provisions; (5) in absence of the permanent post, no direction for absorption of the

daily wager by creating new post would be competent with the Labour Court/ Tribunal; (6) the person selected without recruitment process cannot be

regularized.

3.2. In Secretary to Government Commercial Taxes and Registration Department vs. Singamuthu Ã¢â‚¬" AIR 2017 SC 1304 various judicial

pronouncements came to be referred to in paragraph nos. 14 and 15, relied upon by the learned Assistant Government Pleader. The pronouncement

raised the question whether the partÃ, timer Sweeper could have been directed by the High Court to be regularized and the question was answered in

negative. The pronouncement also ruled on the powers of the High Court under Article 226 of the Constitution of India and it was held that the

litigious employees like partÃ,timers, temporary or adÃ,hoc employees entering or continuing under the judicial orders for long period were not entitled

to regularization; the persons beyond the cutÃ,off date, if the one exists, under the scheme, have no right to be considered for regularization; that the

partÃ, timer are not entitled to regularization since they are not working against any sanctioned posts; they also cannot claim parity with regular

employees. Similarly the employees under the private employment cannot claim parity with government employees under the right to claim a particular

salary under a contract or statute.

3.3 Learned Assistant Government Pleader while placing reliance upon Writ Petition (PIL) No. 244 of 2014 submitted that in conformity with judicial

pronouncement the circular prescribing necessary criteria for the eligibility of the benefits contemplated therein was issued; in terms of which the

workman is being paid Rs. 220/Ã,â€‹ per day for six hours work with other benefits in terms of Government Resolution dated 01.01.2016.

3.4 In order to justify that the workman working for six hours a day as partÃ, timer would be entitled to fixed pay of Rs. 1350/Ã,, reliance is placed

upon Government Resolution dated 23.09.1998.

3.5. To contend that only person completing 10 years of service on the specified date as indicated in Government Resolution dated 01.05.2017,

reliance is placed on the said Government Resolution. Learned Assistant Government Pleader also placed reliance upon Meenaben Dajirajibhai

Parmar vs. State of GujaratÃ, Special Civil Application No. 27793 of 2007 decided on 29.11.2018 to oppose the regularization of partÃ, timer in

absence of the sanctioned post and in absence of the government policy and in absence of their following the prescribed recruitment procedure.

4. Per contra, learned counsel Mr. Rajesh Mankad for the workman placed reliance upon Maharashtra State Road Transport Corporation and another

vs. Casteribe Rajya Parivahan Karmchari SanghatanaÃ, (2009) 8 SCC 556 to buttress the submission that in case of unfair labour practice, the Labour

Court/ Tribunal has power to correct the wrong notwithstanding Umadevi (supra). Learned counsel also placed reliance upon Narendra Kumar Tiwari

vs. State of JharkhandÃ, 2018 (8) SCC 238 wherein also after referring to regularization as one time measure as indicated in Umadevi(supra), the

case was explained.

4.1. Learned counsel for the workman also placed reliance on Bhartiya Seva Samaj Trust vs. Yogeshbhai Ambalal PatelÃ, AIR 2012 SC 3285 to

buttress the submission that wrong doer cannot cite the wrong to his benefit. In his submission even if the workman was treated as illegal or irregular,

no benefit can be given to the employer in view of this decision.

4.2. Learned counsel Mr. Mankad also placed reliance upon Workmen of Food Corporation of India vs. Food Corporation of India Ã,Civil Appeal No.

1055 (NL) of 1981 to buttress the submission that it would not be permissible for the employer to unilaterally alter the terms and conditions of the

employment; more particularly when the employer has acted against the judicial pronouncements i.e. award of the Labour Court.

4.3. Learned Counsel Mr. Mankad lastly relied upon Oil and Natural Gas Corporation Limited vs Petroleum Coal Labour Union and othersÃ, (2015) 6

SCC 494 where the relief was granted to the workman after finding the fact the unfair labour practice was resorted to though the workman was doing

perennial nature of work he was continued as temporary employee against the permanent post. Paragraph 48 and 49 thereof read thus:

Ã¢â‚¬Å“48. Further, it has been contended by the learned senior counsel on behalf of the Corporation that in the absence of any plea taken by the

workmen in their claim statement regarding unfair labour practice being committed by the Corporation against the concerned workmen, the learned

single Judge and the Division Bench ought not to have entertained the said plea as it is a well settled principle of law that such plea must be pleaded

and established by a party who relies before the Tribunal. In support of the above contention reliance was placed by him on the decision of this Court

in .Siemens Limited & Anr. v. Siemens Employees Union & Anr 49. The said contention of the learned senior counsel on behalf of the Corporation is

wholly untenable in law and the reliance placed on the aforesaid case is misplaced for the reason that it is an undisputed fact that the workmen have

been appointed on term basis vide memorandum of appointment issued to each one of the concerned workmen in the year 1988 by the Corporation

who continued their services for several years. Thereafter, they were denied their legitimate right to be regularised in the permanent posts of the

Corporation. The said fact was duly noted by the High Court as per the contention urged on behalf of the Corporation and held on the basis of facts

and evidence on record that the same attracts entry Item No.10 of Schedule V of the Act, in employing the workmen concerned as temporary

employees against permanent posts who have been doing perennial nature of work and continuing them as such for number of years. We affirm the

same as it is a clear case of an unfair labour practice on the part of the Corporation as defined under Section 2(ra) of the Act, which is statutorily

prohibited under Section 25T of the Act and the said action of the Corporation warrants penalty to be imposed upon it under Section 25U of the Act.

In fact, the said finding of fact has been recorded by both the learned single Judge and the Division Bench of the High Court in the impugned judgment

on the ground urged on behalf of the Corporation. Even if, this Court eschews the said finding and reason recorded in the impugned judgment

accepting the hyper technical plea urged on behalf of the Corporation that there is no plea of unfair labour practice made in the claim statement, this

Court in this appeal cannot interfere with the award of the Tribunal and the impugned judgment and order of the High Court for the other reasons

assigned by them for granting relief to the concerned workmen. Even in the absence of plea of an act of unfair labour practice committed by the

Corporation against the concerned workmen, the Labour Court/High Court have got the power to record the finding of fact on the basis of the record

of the conciliation officer to ensure that there shall be effective adjudication of the industrial dispute to achieve industrial peace and harmony in the

industry in the larger interest of public, which is the prime object and intendment of the Industrial Disputes Act. This principle of law has been well

established in a catena of cases of this Court. In the instant case, the commission of an unfair labour practice in relation to the concerned workmen by

the Corporation is exÃ‚facie clear from the facts pleaded by both the parties and therefore, the courts have the power to adjudicate the same

effectively to resolve the dispute between the parties even in the absence of plea with regard to such an aspect of the case.Ã¢â‚¬â€‹

4.4 The facts (supra) would indicate that the workmanÃ¢â‚¬â„¢s continuous service since 1986 till the date of award except for period between 1997 and

2001 could not be disputed. The fact that previous dispute comprised in Reference No. 881 of 1997 was decided by settlement acknowledged by the

Labour Court in its order dated 28.06.2001 also could not be disputed. The terms and conditions of the said settlement to an effect that the workman

would forgo the backwages in lieu of his reinstatement on 01.07.2001 with continuity of service as a daily wager could not be disputed.

4.5 The workman was thus required to be reinstated in terms of the settlement aboveÃ‚stated but certain whimsical mind seems to have taken

disadvantage of his social status and unilaterally treated him as partÃ‚timer with fixed pay of Rs.1350/Ã‚ per month contrary to the settlement aboveÃ‚â€■

stated. It is not understood as to how the contemptuous decision in disregard to the settlement could have been taken and is sought to be justified in

this petition. Not only that, the employer with the obvious object of denying to the workman who by now has completed more than 26 years, his

legitimate dues and benefits, persisted with periodical appointment orders of 29 days each so as to give artificial brake to the tenure of the workman;

which practice has been deprecated in plethora of judicial pronouncements. As if the deprecated practice of artificial brake is the right of whimsical

mind herein, the contention to that effect with a hope that it would be accepted was raised in the pleadings with the Labour Court. It appears that

mere deprecation in absence of stringent action has fallen on the deaf ears of the respondent employer. It would not be out of place to state that if

mere deprecations do not work, the court may resort to a stringent action including the contempt proceedings and fixation of the personal liability of

erring executive so as to compensate the workman/sufferer for the faulty action.

5. It is high time that the State should think of fixing the personal responsibility of the erring personnel who by his whimsical and wrongful acts not only

disrepute the State but also prejudice the rights of poor strata of society i.e workman herein. It is also high time for the State to sensitize the

responsible personnel with the judicial pronouncements of the Constitutional Courts as also to take departmental action if warranted against deliberate

prankers.

6. The facts like nonÃ‚sanction of the post in question, the illegality of the appointment of the workman and incapacity of the appointing authority to

make his appointment could not be proved in the court below. On the contrary legality in the appointment against the vacant post and the unfair labour

practice was found against the respondent. No infirmity or perversity is thus pointed out by the learned Assistant Government Pleader in the

aforementioned findings.

7. It appears that on premise that the workman was employed afresh as partÃ‚timer with the fixed pay of Rs. 1350/Ã‚ per month, his case was not

considered in terms of the directions issued in Umadevi (supra). In the opinion of this court, the workman was entitled to be considered in terms of

Umadevi(supra). Furthermore as pointed out by the Labour Court, the ban against regularization indicated in Umadevi would not apply to the cases

arising under the Labour legislation, more particularly when unfair labour practice found in the evidence by the Labour Court/Tribunal persuaded it to

grant appropriate relief to the workman.

8. Assuming that appointment of the workman lasting for more than two and half decade by now was illegal, such a plea cannot be countenanced

from the employer who was the partner in wrong doing in view of the decision in Bhartiya Seva Samaj Trust (supra), the relevant para 21 reads thus.

Ã¢â‚¬Å“21. A person alleging his own infamy cannot be heard at any forum, what to talk of Writ Court, as explained by the legal maxim Ã¢â‚¬Ëœallegans suam

turpitududinem non est audiendusÃ¢â‚¬â„¢. In a party has committed a wrong , he cannot be permitted to take the benefit of his own wrong (Vide G.S.

Lamba & Ors. v/s Union of India & Ors., AIR 1985 SC 1019, Narender Chadha & Ors. V/s Union of India & Ors., AIR 1986 SC 638, Molly Joseph

@ Nish V/s. George Sebastian @ Joy, AIR 1997 SC 109, Jose V/s Alice & Anr., (1996) 6 SCC 342 and J. Srinivasan V/s T. Varalakshmi (Mrs.),

AIR 1999 SC 595). This concept is also explained by the legal maxims Commodum ex injuria sua nemo habere deberÃ¢â‚¬â„¢; and Ã¢â‚¬Ëœnullus commodum

capere potest de injuria sua propriaÃ¢â‚¬â„¢ (see also Ã¢â‚¬Å“ Eureka Forbes Ltd. V/s Allahabad Bank & Ors.(2010) 6 SCC 193; and Inderjit Singh Grewal

V/s State of Punjab & Anr. (2011) 12 SCC 588).

9. Once the factual finding that the termination of the workman was illegal was reached obvious consequence was his reinstatement in terms of the

directions of the Labour Court, on the same or similar post in absence of the same post. By the impugned order the Labour Court has not directed

creation of the post. It has only stated that the workman be accommodated as Chokidar in the setÃ, up of Chokidar and in absence of such post, to

any other equivalent post, as a special case. Thus it is misconceived to submit that the post was ordered to be created.

10 Surprisingly, after finding each and every fact in favour of the workman by the supporting evidence, the Labour Court seems to have been

persuaded to grant the consequential benefits to the workman only from 01.01.2010 without any justification. When the services of the workman were

found to be continuous; brakes were found to be artificial, employer was found to have resorted to unfair labour practice and under the settlement the

employer had agreed to reinstate the workman with continuity of service, no justification could have persuaded the Labour Court to select the said

date. To that extent, the award must be ruled to be perverse.

11. In above view of the matter except to the extent aboveÃ‚stated, this court does not find any reason to interfere in the impugned judgement and

award. The petition being Special Civil Application No. 4293 of 2014 must therefore, fail and the petition being Special Civil Application No. 18091 of

2013 must partly succeed and it is held that the workman would be treated as in continuous service however not at par with the regularly employed

workman in accordance with the recruitment rules. The workman however would be entitled to all other benefits as if his service was continuous with

effect from 09.01.1986 and shall be awarded consequential benefits with effect from 17.09.2003 as Chokidar or equivalent post. The workman shall

be paid all the benefits as indicated within eight weeks from the date of receipt of writ of this court.