(1987) 06 GUJ CK 0002

Gujarat High Court

Case No: None

Dineshkumar Himatlal Nimavat		APPELLANT
	Vs	
State of Gujarat and Another		RESPONDENT

Date of Decision: June 30, 1987

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Citation: (1987) 2 GLR 1146

Hon'ble Judges: A.S. Qureshi, J

Bench: Single Bench

Judgement

A.S. Qureshi, J.

In this Revision Application, the petitioner has challenged the order dated 30th April 1987, passed by the learned Joint District Judge, Jamnagar, allowing the appeal of the present respondents, State of Gujarat and Another, setting aside the judgment and order dated 7-10-1986 passed by the learned 2nd Joint Civil Judge (S.D.), Jamnagar. It is the petitioner''s case that he has been serving as work-charge employee since 1st April, 1981. According to him, he has been given employment for 28 or 29 days every month for a period of about four years with the artificial breaks of one or two days between the two periods of 28 or 29 days. He has stated that the appointment orders were ususlly given to him long after the work commenced and ended for those periods of 28 or 29 days. Now his services are sought to be terminated. Hence, he filed the present suit to obtain injunction restraining the respondents from terminating his service. The learned trial Judge granted the interim relief prayed for and directed the respondents to continue the present petitioner in service. The Court also granted injunction restraining the present respondents from interfering with the petitioner performing his duty and getting his pay and allowances till the final disposal of the suit.

2. The present respondents challenged the order of the trial Court before the lower appellate Court, who allowed the appeal on the ground that the present petitioner was not in service on the day of filing of suit. Hence, according to the appellate Court, the present petitioner was not entitled to get the interim relief prayed for by him and granted by the trial Court.

3. Mr. M.S. Shah, learned Counsel for the petitioner has urged that the lower appellate Court was not justified in holding that the present petitioner was not in service on the date of the suit. According to Mr. Shah, the lower appellate Court has only looked at the order of termination of service which purports to be of a date about six months prior to the filing of the suit. Mr. Shah has also urged that the present petitioner was actually working till the suit was filed, although the order of termination bears the earlier date. In his submission, the order of termination like earlier orders of appointments every month, were issued subsequently but carried the earlier dates. He, therefore, submits that the trial Court was fully justified in granting the interim relief prayed for and that the lower appellate Court was not justified in reversing the said order and allowing the appeal of the present respondents.

4. Mr. B.D. Desai, learned A.G.P. has urged that the termination order was in fact passed about six months prior to the filing of the present suit and therefore, the learned trial Judge was not justified in granting the interim relief. According to him, the lower appellate Court was fully justified in allowing the appeal and refusing the interim relief to the present petitioner.

5. This is one of the several cases which have come before this Court and in which this Court has unequivocally held that the practice adopted by the State as an employer to resort to the practice of engaging the persons as workcharge employees over a period of years with artificial breaks, is illegal, unfair, unjust and oppressive. Yet some persons in the State bureaucracy just do not pay heed to this clear pronouncement of the Court. They persist in resorting to this reprehensible tactics. The obduracy and mindlessness of the State bureaucracy is fairly well-known. But it is difficult to understand how could the bureaucrats totally ignore the judicial pronouncements of the superior Courts and persist in ignoring them especially when the Constitution has made decisions binding on all including the State. It is due to mere ignorance and incompetence or is it something much worse? By an earlier decision of this Court in Mariamben Amirbhai and Ors. v. State of Gujarat and Ors. 26 (2) GLR 946, this Court had observed as under:

...The fact that the petitioners have worked for a period of nearly two years although with short intervals and only for 29 days at a stretch, cannot be taken to mean that they have not worked for a period of six months continuously. If they had been given continuous employment, it would have been much longer than six months. But by resorting to the subterfuge of employing for 29 days at a stretch, an attempt is made to circumvent the aforesaid provision of the Rules. Technically, of course, it

may be correct to say that the petitioners have not worked continuously for a period of six months, but this technicality cannot be allowed to prepetrate injustice. The re-employment over and over again although for 29 days at a time, must be regarded as continuous for the purpose of giving rational and just meaning to the aforesaid provision in the Rules. Even if a private employer were to resort to this kind of unfair tactics, it would be regarded as had enough. But the State resorting to these kinds of unfair tactics must be denounced in no uncertain terms. It does not behave the State as an employer to resort to the exploitation of its employees especially those belonging to the lowest stratum, the poor, the ignorant and the weak ones.

Again in Ghanshyam M. Pandya v. State of Gujarat and Ors. 1985 GLH (U.J. 51) page 41 my brother R.C. Mankad, J. observed as under:

...The instances cited in the petition clearly indicate that the breaks in service were artificial and not real; otherwise orders could not have been issued at any time in the middle of the month after the petitioner had actually started working as stated in the orders. This indicates that though the petitioner was working on all the days of the month as Peon, he was given appointment order on any date for a period covering about 29 days.... As already observed above, these instances established beyond doubt that the breaks in the petitioner''s service were artificial and not real.... It is not shown as to what authority or right the respondents have to give appointment orders in the manner they have done. The fact that 42 appointment orders were passed during the period of little more than four years indicates that there was vacancy of the post of peon and the petitioner was appointed on such vacancy. It would further appear that respondents were giving the petitioner appointment for only 29 days thinking that he would not acquire any right over the post to which he was appointed. The action of the respondents in giving appointment order in the manner they have done appears to be arbitrary. The petitioner being in continuous service from 1980 to 1984 he had in any case acquired status of a temporary Government servant. His services could not have been terminated by an oral order. The action of terminating his services by an oral order is also arbitrary and it has no basis in law. The action is, therefore, clearly violative of Articles 14 and 16 of the Constitution.

5.1. There are several such decisions where the practice by the State of employing persons for 28 or 29 days every month by a separate order, is held to be without authority of law and an unfair practice. Yet, we come across cases where it becomes clear that the State as an employer, persists in such unfair tactics. It is hoped that the State will give an anxious thought to this question and give appropriate directions to its departments not to resort to such illegal, unfair, unjust and oppressive practice in future.

6. In view of the fact that in the past, the monthly orders of employment have been passed subsequently, the contention of Mr. Shah that the petitioner was in service

on the day of the suit must be accepted as correct prima facie. In this view of the matter, the Revision must be allowed. The impugned judgment and order of the lower appellate Court must be quashed and set aside and the order of the trial Court granting the interim relief must be confirmed. The respondents are directed to take the petitioner in service and continue him in service during the pendency of the present suit. The petitioner will be entitled to the salary and allowance for the period in question as the respondents have wrongfully prevented him from performing his duties. The arrears of wages due to the petitioner shall be paid on or before 14-8-1987. Rule is made absolute. In the circumstances of the case, there shall be no order as to costs.