AHMEDABAD MUNICIPAL CORPORATION

v.

VIRENDRA KUMAR JAYANTIBHAI PATEL

JULY 23, 1997

[SUJATA V. MANOHAR AND V.N. KHARE, JJ.]

Labour Laws : Municipal Corporation—Recruitment of Doctors—Respondent not selected—Respondent raised a dispute claiming himself to be a permanent employee having served as a workman for number of years—Industrial Tribunal holding respondent entitled to be made permanent relying on an award and circulars issued by the Municipal Corporation in pursuance thereof—High Court also holding respondent to be a workman, thus entitled to being made permanent—Whether respondent is a workman entitled to permanent service and whether his case requires sympathetic consideration—HELD : No, The award and the circulars issued thereunder not applicable—Equity and compassion in the matter of appointment will give rise to nepotism and arbitrariness where merit would be a causality.

Constitution of India : Article 226—Scope of High Court's power under.

The appellant Corporation had been hiring the services of the respondent for treating the patients on daily basis whenever the corporation's dental surgeons were on leave. Later on, the appellant decided to fill the vacant posts of dental surgeons in its clinics. The respondent also applied in response to the advertisement. However, the respondent was not selected. On being rejected, the respondent claimed himself to be a permanent dental surgeon of the corporation. This dispute was referred to the Industrial Tribunal. There the case of the respondent was that since he had put in 1034 days of service, he was entitled to be made permanent in view of a certain award rendered by the Tribunal. However, the corporation submitted that the respondent was not a workman covered under the award. However, the tribunal relying upon the aforesaid award and the circulars issued by the corporation held that the respondent is entitled to be made permanent in the staff of the Corporation. Aggrieved, the Corporation challenged the said award. The High Court held the respondent to be a workman, having served for a requisite number of years, thus entitled to the benefits of a permanent employee.

A **Hence, this appeal.**

The questions that arose for examination of this court were whether the finding of the tribunal that the respondent was a workman entitled to permanent service was based upon relevant materials; and whether the case of respondent required sympathetic consideration.

B

Allowing the appeal, this court

HELD : 1.1. The award of the tribunal and circulars issued in pursuance thereof by the Corporation were not applicable to the case of the respondent and if these materials are excluded, the finding of the

C **tribunal that the respondent is a workman entitled to permanent status in the service of the corporation is rendered without any evidence and exposed to the vice of error apparent on the face of record. Therefore, the High Court fell in error in dismissing the Writ Petition holding that the finding of fact recorded by tribunal does not call for interference. [30-E-F]**

D

1.2. The recruitment of the doctors in the clinic run by the Corporation is made in accordance with the statutory rules and by no other method. Under the rules the vacancies are advertised for inviting applications from eligible candidates. After the applications are received the selection committee is constituted to select the candidates for appointment

E **in the Corporation clinic. Only after the candidates are selected they are taken in the service. The respondent appeared before the selection committee but was not selected. Under such circumstances, there is no room for sympathy or equity in the matter of such appointment specially where the recruitment in service is governed by the statutory rules. If the reason-**

F **ing given by the tribunal is accpeted, the statutory recruitment rules would become nugatory or *otiose* and the department can favour any person or appoint any person without following procedure provided in the recruitment rules which would lead to nepotism and arbitrariness. Once the consideration of equity in the face of statutory rules is accepted then eligible and qualified persons would be sufferers as they would not get any**

G **chance to be considered for appointment. The result would be that persons lesser in merit would get preference in the matter of appointment merely on the ground of equity and compassion. It is therefore not safe to bend the arms of law only for adjusting equity. Therefore, the reasoning given by the tribunal that sympathy demands the absorption of the respondent**

H **in the service of the corporation suffers from error of law. [30-H; 31-A-D]**

2. High Courts under Article 226 of the constitution are entitled to issue directions, writs and orders for correcting the record of the inferior courts or the tribunal. It is true that the High Court while exercising its jurisdiction under Article 226 of the constitution, cannot convert itself into a court of appeal and assess the sufficiency or adequacy of the evidence in support of the finding of fact reached by the competent courts or tribunals, but this, however, does not debar the High Court from its power to enquire whether there is any evidence in support of a finding recorded by the inferior court or tribunal. It is well established that there is a difference between finding based on sufficiency or adequacy of evidence and a finding based on no evidence. If the finding of fact recorded by the tribunal is based on no evidence, such a finding would suffer from error of law apparent on the face of record. [30-C-E]

3. The Corporation shall not recover any salary paid to the respondent for rendering services, in pursuance of the award of the tribunal. [31-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1090 of 1990.

From the Judgment and Order dated 9.10.89 of the Gujarat High Court in S.C.A. No. 7153 of 1989.

Ranjit Kumar, Mrs. Nandini Gore and Mrs. Manik Karanjawala for the Appellant.

Dushyant A. Dave, (Ms. Mukti Sinha) for Ms. Indu Malhotra for the Respondent/(Petitioner in SLP No. 2317/91.

The Judgment of the Court was delivered by

V.N. KHARE, J. The appellant (hereinafter referred to as the Corporation) is established and constituted under the Bombay Municipal Corporation Act, 1949 (hereinafter referred to as the Act). One of the duties assigned to the Corporation under the Act is to provide medical service to the residents of the Corporation. For that purpose, the Corporation has set up four dental clinics. The dentists attending the said clinics are the Corporation's employees recruited through the positive act of selection as provided under the statutory rules framed in that regard. Whenever any doctor of the Corporation is on leave, the Corporation takes

A the services of private doctors only with a view that patients may not be inconvenienced. Such doctors in lieu of their services are paid their fee on daily basis. The respondent herein is a dental surgeon who was carrying on his private practice from private clinics. Since early seventies the Corporation had been taking the services of the respondent for treating the Patients
B whenever the Corporation's dental surgeons were on leave. In the year 1984 the Corporation decided to fill the vacant posts of dental surgeons in its clinics, and for that purpose issued an advertisement inviting applications from qualified dental surgeons for appointments to the said posts. The respondent amongst others, also applied in response to the said advertisement. However, the respondent was not selected by the Selection Commit-
C tee constituted for that purpose. On being unsuccessful in the said selection, the respondent raised a dispute claiming himself to be a permanent dental surgeon in the staff of the Corporation. This dispute was referred to the Industrial Tribunal, Gujarat under Section 10 of the Industrial Disputes Act for adjudication being reference No. (IT) 858 of 1984.

D

The case of the Union which sponsored the cause of the respondent was that since the respondent has put in 1034 days of service between 1978 and 1982 and as such in view of the award rendered by Industrial Tribunal in Case No. 179 of 1975 and the circulars issued in pursuance thereof, the respondent is entitled to be made permanent in the service of the
E Corporation. However, this was disputed by the Corporation. The Corporation submitted before the Tribunal that the respondent was not a workman covered under the award given in Case No. 179 of 1975 and further the benefit arising out of the award given in reference No. 179 of 1975 and the circulars issued in pursuance thereof, cannot be extended to
F the respondent as they are not applicable to the case of the respondent. However, the tribunal relying upon the aforesaid award and the circulars issued by the Corporation held that the respondent is entitled to be made permanent in the staff of the Corporation. Aggrieved, the Corporation challenged the said award in the High Court of Gujarat by means of a
G petition under Article 226 of the Constitution. The High Court dismissed the petition being of the opinion that the tribunal after appreciating the evidence on record has recorded a finding that the respondent employee is a workman, having served for a requisite number of years, thus entitled to the benefits of a permanent employee. Aggrieved, the appellant has
H come up in appeal before this Court.

The first question that arises for consideration in this appeal is as to whether the finding of the tribunal that the respondent is a workman entitled to a permanent status in the service of the Corporation is based upon relevant materials. Materials relied upon by the tribunal in recording the aforesaid finding are, the award rendered in Ref. No. 179 of 1975 and various circulars issued by the Corporation in pursuance thereof. In order to answer the aforesaid question, it is necessary to refer the award of the tribunal and the circulars issued by the Corporation. The award dated June 30, 1978 given by the Industrial Tribunal, Gujarat in the reference IT No. 179 of 1975 related to the permanency of daily rated workmen in different sections of the Engineering Department of the Corporation. By the said award, the tribunal had prescibed a formula for determining the question of permanency of daily rated workmen in the Engineering Department. Thereafter, successive circulars were issued which considered the proposal to make permanent the daily rated workmen of different sections of Engg. Deptt., on the basis of the formula laid down by the tribunal. The first circular dated 30.6.78 issued by the Corporation was for making permanent the daily rated workmen who have performed the duties for five years or more in different sections of Engineering Department. This circular makes it clear that the policy of making a daily rated workman as permanent was applied only to the Engineering Department of the Corporation. The circular dated October 4, 1980 again was issued with reference to the award given in IT Reference No. 179 of 1975, Standing Committee Resolution No. 2846 dated 6.12.78 and Municipal Corporation Resolution No. 969 dated 29.12.78 directing the department to make the staff permanent who have put in a requisite number of days in the service of the Corporation. By the Subsequent circular dated 26.8.82 it was clarified by the Corporation that only the daily rated workmen of the Engineering Department, daily wager majdoor and employees in the equivalent pay scale came within the ambit of the policy to make permanent such the daily rated workmen who have served the length of time prescibed by the award. Thereafter the Corporation approved the above proposal, and the Chief Accountant issued a circular dated 1.9.1982 with an amendment vide circular dated 12.10.1982. The aforesaid circular dated 12.10.1982 was by way of an amendment to circular dated 1.9.1982 which clearly related to the daily rated workmen of the Engineering Department. The circular No. 44 dated 16.8.84 further relied upon by the tribunal contained prospective policy which was to be followed in future in the matter of making daily rated workmen in the Corporation as permanent. The award and the

A B C D E F G H

A circulars referred to above do not show that they related to the case of the respondent who had been visiting the dental clinic run by the Corporation on daily fee basis for treating patients. Once it is found that the award and the circulars referred to above relied uon by the tribunal were not applicable in the case of the respondent, can it be held by the High Court
B that the finding of fact recorded by the tribunal that the respondent is a workman entitled to be absorbed as a permanent dental surgeon in the service of the Corporation is a finding of fact based on appreciation of evidence.

High Courts under Article 226 of the Constitution are entitled to
C issue directions, writs and orders for correcting the record of the inferior courts or the tribunal. It is true that the High Court while exercising its jurisdiction under Article 226 of the Constitution, cannot convert itself into a court of appeal and assess the sufficiency or adequacy of the evidence in support of the finding of fact reached by the competent courts or the
D tribunals, but this, however, does not debar the High Court from its power to enquire whether there is any evidence in support of a finding recorded by the inferior court or tribunal. It is well established that there is a difference between a finding based on sufficiency or adequacy of evidence, such a finding would suffer from error of law apparent on the face of record. As noticed earlier that award of the tribunal and circulars issued
E in pursuance thereof by the Corporation were not applicable to the case of the respondent and if these materials are excluded, the finding of the tribunal that the respondent is a workman entitled to permanent status in the service of the Corporation is rendered without any evidence and exposed to the vice of error apparent on face of record. We are, therefore,
F of opinion that the High Court fell in error in dismissing the Writ Petition holding that finding of fact recorded by the tribunal does not call for interference.

The second reasoning given by the tribunal in issuing direction to the Corporation for absorbing the respondent in its permanent service which
G was not touched upon by the High Court is that the case of the respondent requires sympathetic consideration, as presumably the respondent has been visiting the Corporation's Clinic since early seventies, remains to be considered. As noticed earlier, the recruitment of the doctors in the clinic run by the Corporation is made in accordance with the statutory rules and by
H no other method. Under the rules the vacancies are advertised for inviting

applications from eligible candidates. After the applications are received the Selection Committee is constituted to select te candidates for appointment in the Corporation's clinic. Only after the candidates are selected they are taken in the service. It is also noticed earlier that respondent appeared before the Selection Committee but was not selected. Under such circumstances, there is no room for sympathy or equity in the matter of such appointment specially where the recruitment in service is governed by the statutory rules. If the reasoning given by the tribunal is accepted, the statutory recruitment rules would become nugatory or otiose and the department can favour any person or appoint any person without following procedure provided in the recruitment rules which would lead to nepotism and arbitrariness. Once the consideration of euity in the face of statutory rules is accepted then eligible and qualified persons would be sufferers as they would not get any chance to be considered for appointment. The result would be that persons lesser in merit would get preference in the matter of appointment merely on the ground of equity and compassion. It is therefore not safe to bend the arms of law only for adjusting equity. We, therefore, find that the reasoning given by the tribunal that sympathy demands the absorption of the respondent in the service of the Corporation suffers from error of law.

For the foregoing reasons the award dated June 15, 1989 and the judgment of the High Court dated October 9, 1989 are set aside. The appeal is allowed, but there shall be no order as to costs.

Before we part with this judgment, we would like to observe that, counsel for the Corporation has stated that in the event this appeal is allowed, the Corporation shall not recover any salary paid to the respondent for rendering services in pursuance of the award of the tribunal. We order accordingly.

In view of the above, S.L.P.(C) No. 2317/1991 stands dismissed.

S.S. Appeal allowed.