

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 876/93

Date of Decision:

21/4/98

K.B.Patel & Ors.

Applicant.

Shri I.J.Naik

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar

Advocate for  
Respondent(s)

CORAM:

Hon'ble Shri.Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri.P.P.Srivastava, Member (A)

(1) To be referred to the Reporter or not?

No

(2) Whether it needs to be circulated to  
other Benches of the Tribunal?

No

(P.P.SRIVASTAVA)

MEMBER (A)

R.G.Vaidyanatha

(R.G.VAIDYANATHA)

VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

DA.NO.876/93

~~Pronounced~~ this the 21<sup>st</sup> day of April 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri P.P.Srivastava, Member (A)

1. Kishorkumar Balubhai Patel
2. Sureshchandra Manilal Patel
3. Tansukhbhai Parbhubhai Patel
4. Amratbhai Parbhudass Patel
5. Vishnubhai Ishverlal Patel
6. Kishorkumar Nagindas Lad
7. Hemantkumar Balubhai Bhagudia
8. Nareshkumar Gandabhai Patel
9. Dineshkumar Chhotubhai Patel
10. Ashokkumar Chhanabhai Patel
11. Manharbhai Bavabhai Patel

C/o I.J.Naik  
Advocate,  
Parkota Street,  
P.O.Daman - 396 210.

By Advocate Shri I.J.Naik

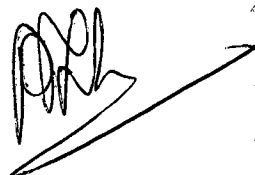
... Applicants

V/S.

1. Shri Jacob Yohanan, Incharge  
Executive Engineer, P.W.D.  
Civil Division No. II,  
Dadra & Nagar Haveli, Silvassa.
2. The Administrator,  
Union Territory of Dadra & Nagar  
Haveli, At : Silvassa - 396 230.
3. The Collector,  
Dadra & Nagar Haveli,  
At : Silvassa - 396 230.
4. Union of India through  
The Secretary,  
Ministry of Works & Housing,  
Secretariat, New Delhi.

By Advocate Shri V.S.Masurkar  
C.G.S.C.

... Respondents



O R D E R

(Per: Shri P.P.Srivastava, Member (A))

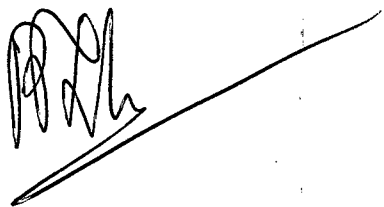
The applicants were working as Surveyors in the Department of Public Works at Dadra & Nagar Haveli under Executive Engineer P.W.D. The applicants were appointed on different dates ranging from 1989 to 1992 and they worked in the post of Surveyor for 4 years to 10 months. The case of the applicant has been shown at page 4 of the OA. The respondents issued a Note which is placed at Annexure- 'A-1' dated 12.7.1993. The Note was issued by Executive Engineer to all the Deputy Engineers and Junior Engineers working under PWD Civil Division No.II Dadra and Nagar Haveli. According to this Note because of the reasons explained in the Note, the services of all the daily wages Surveyors were discontinued. Aggrieved by the termination of their services, the applicants have approached this Tribunal in the present OA.

2. The applicants have challenged the termination of services on many grounds and they prayed that the applicants services be regularised in the Department of Public Works in the Union Territory of Dadra & Nagar Haveli. Firstly, the applicants have mentioned that the post of Surveyors were required in the past and are required even at present and will be necessary in future also. Therefore, it is not valid and proper to terminate the services of the applicants.



The applicants have also taken a ground that the lack of fund is no reason to terminate the services of them. The applicants have also stated instead of terminating the services of the applicants, they could <sup>been</sup> have accommodated in some other department which needs Surveyors, and that the applicants be treated as regular Surveyors and their pay etc. should be in comparative posts. The applicants have also prayed that the department be asked to prepare a scheme for regularising the services of the applicants.

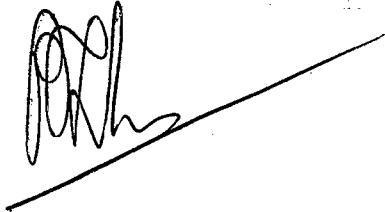
3. Respondents have opposed the OA. and they have filed the written statement. The respondents have brought out that there are no sanctioned posts of the Surveyors and that the work which Surveyors are required to do is to be done by Junior Engineer. The Note dated 12.7.1993 impugned by the applicants states that all the daily wages Surveyors whose services are not required may be discontinued. The respondents have also brought out that there are no posts of Surveyors in the regular establishment and therefore as and when the need for Surveyors is required for some project work, some persons are engaged on daily wages. The respondents have disputed the number of days which the applicants have worked as brought out by the applicants in their OA. and have given a Table in Exhibit 'R-1' showing the number of days they worked. The respondents have further brought out that since there are no regular posts, the applicants cannot be engaged on regular basis as Surveyors. The respondents have further brought out that the O.M. dated 7.5.1985 referred to by the applicants and placed at Annexure-'A-3' concerning Regularisation of services of casual worker in Group 'D' posts-



The present applicants are of the category on part of the Group "C" post, the O.M. therefore does not apply to the applicants and since there are no posts of Surveyors in the department, the question of their regularisation does not arise.

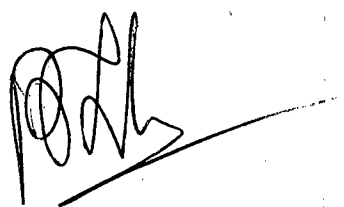
4. The learned counsel for the applicant has heavily relied on the judgement of the Hon'ble Supreme Court in the case of Niadar & Anr. vs. Delhi Administration & Anr. (1992) 21 ATC 398. In this case, the petitioner was daily wages worker working in Soil Conservation Deptt. Agricultural Section, Delhi Administration, Delhi. The Hon'ble Supreme Court after considering the case of the petitioner had directed to prepare a scheme for absorbing as regular employees the casual labourers working for one year or more in the Deptt. within 6 months and absorb on regular basis those found fit. It is seen that the facts of this case are different from the facts of the OA. under consideration. In the Hon'ble Supreme Court case the petitioners were working on daily wages and were required to be given regular employment. In the case under consideration, the respondent department has brought out that there are no posts of Surveyors in the P.W. Deptt. and therefore the question of preparation of scheme would not arise.

5. The learned counsel for the respondents has argued that in all cases the various Tribunals and Hon'ble Supreme Court had ordered framing of scheme for absorption of casual labourers where the department has posts in the cadre against which the regularisation




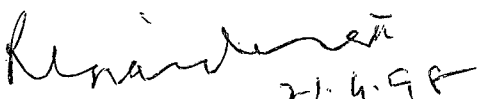
is to take place. But in the PWD Department there are no posts of Surveyors and therefore the question of framing the scheme does not arise. In this connection, the judgement of Hon'ble Supreme Court in the case of Union of India vs. Uma Maheswari & Ors. 1998(1) SC (SLJ) 194 decided on 8.4.1997 is brought to our notice. In this case, 10 persons were engaged over the years on daily wages and for different periods during each year by the Regional Director, Staff Selection Commission. Their services were discontinued w.e.f. 19.6.1993. They approached the CAT, Madras Bench praying for their reinstatement and regularisation. The Tribunal by order dated 21.10.1993 directed reinstatement of the ten respondents and has also directed the Staff Selection Commission to frame a scheme for absorption of the respondents against Group "D" vacancies which exist or which may arise in their establishment and has given other directions in this connection. The department has come in the appeal from this decision of the Tribunal. After considering the facts of the case, the Hon'ble Supreme Court has opined as under :-

"In the absence of any scheme of regularisation and in the absence of any regular work being available for the post of which the respondents claim regularisation, we do not see how the Tribunal could have granted any order directing regularisation of the services of the respondents. It is true that the respondents have worked for a number of days in a years and for some years, but this was prior to the introduction of the new policy in 1993. The Tribunal was, therefore, not right in directing the appellant to reinstate the respondents whose services had been discontinued or for directing regularisation of their services."



6. In our opinion, in the absence of posts of Surveyors in the department, it will not be in the public interest to order reinstatement as well as regularisation of the applicants since the posts are not there and according to the department, they are not required. We, therefore, do not see any merit in the claim of the applicants for reinstatement and regularisation in the facts and circumstances of the case. We, however, make it clear that in case if the department considers to create the posts of Surveyors, the claim of the applicants would be considered on priority basis as and when the surveyors posts are required and the applicants would also have a right for regularisation if the department later on creates the posts of Surveyors. It is also brought to our notice that the Administrator of Dadra & Nagar Haveli has issued a letter dated 10.12.1992 wherein they have asked the names of those persons who have been serving on work charged establishment in various departments to be sponsored for interview for regular appointment if they were within the stipulated age limit when they joined their services on work charged basis. The applicants have also brought out that in some other department the posts of Surveyors are available. If that be the case, then <sup>according to</sup> the letter of Administrator, the claim of the applicants should be considered by the Administrator of Dadra & Nagar Haveli. Subject to above observations, the DA. is dismissed with no orders as to costs.

  
(P.P. SRIVASTAVA)  
MEMBER (A)

  
(R.G. VAIDYANATHA)  
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

C.P.No.97/2001 in  
O.A. 876/1993

24/1/2002

On 21st day of April, 1998, this Tribunal while finally disposing of OA-876/1993; Kishorkumar Balubhai Patel & 10 Ors V/s. Jacob Yohanan, Incharge Executive Engineer and 3 Ors which was filed by applicants, passed an order, operative part of which is as under:-

"In our opinion, in the absence of posts of Surveyors in the department, it will not be in the public interest to order reinstatement as well as regularisation of the applicants since the posts are not there and according to the department, they are not required. We, therefore, do not see any merit in the claim of the applicants for reinstatement and regularisation in the facts and circumstances of the case. We, however, make it clear that in case if the department considers to create the posts of Surveyors, the claim of the applicants would be considered on priority basis as and when the surveyors posts are required and the applicants would also have a right for regularisation if the department later on creates the posts of Surveyors. It is also brought to our notice that the Administrator of Dadra & Nagar Haveli has issued a letter dated 10/12/1992 wherein they have asked the names of those persons who have been serving on work charged establishment in various departments to be sponsored for interview for regular appointment if they were within the stipulated age limit when they joined their services on work charged basis. The applicants have also brought out that in some

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other department the posts of Surveyors are available. If that be the case, then according to the letter of Administrator, the claim of the applicants should be considered by the Administrator of Dadra & Nagar Haveli. Subject to above observations, the OA is dismissed with no orders as to costs."

2..... The applicants have moved this Contempt Petition No.97/2001 for wilful disobedience of order passed in the OA impleading as contemnor respondents Shri Jacob Yohanan Incharge Executive Engineer, P.W.D., Civil Division No.II, Dadra and Nagar Haveli and three others as respondents. After considering the averments in CP, this Tribunal issued notice on 29/11/2001 to contemner respondent no.1, Shri Jacob Yohanan to show cause as to why he should not be punished for wilful disobedience of the order of this Tribunal passed in OA No.876/93 making it clear that the case against contemnor respondents nos. 2 to 4 will be considered after obtaining reply of respondent no.1,. Shri Jacob Yohanan. The ground giving rise to notice is that despite there being vacancies in respect of post of Surveyors yet without first considering the applicants case for appointment, the respondents appointed some Surveyors directly and brought some Surveyors on deputation from outside which they could not do in view of judgement thus this has been done in wilful disobedience, flouting order dated 21/4/1998 passed in OA. In support of CP, an affidavit has also been filed wherein it has been stated that by order No. SUV/EST/99/276 dated 10/8/2001, two persons namely, Shri Tansukhbhai Prabhubhai Patel  
B. D. J. ...3.

and Shri Jayendrasing Bhikhubhai Solanki were engaged as Daily Wage Surveyors under the Survey and Settlement Department of Dadra and Nagar Haveli. It has been stated on affidavit that ten other persons were engaged on deputation basis from Gujarat Government. To support said statement a letter dated 8/6/2000 of Gujarat Government has also been referred in CP. In reply, Shri Jacob Yohanan has stated that the matter is of department of Survey and Settlement and it has nothing to do with his department namely, P.W.D. No rejoinder has been filed.

3. We have heard Shri I.J.Naik, Counsel for Applicant and Shri V.S.Masurkar, Counsel for Respondents. As stated by Shri Jacob Yohanan in reply, the matter relates to Department of Survey and Settlement and his department has nothing to do with this matter. As no Rejoinder has been filed to rebut said stand of Jacob, the notice against him is liable to be discharged.

4. The learned counsel for applicant then argued that even if the Department of Survey and Settlement is not concerned, the notice may be issued on CP to Administrator, Shri O.P.Kelkar who is head of the Administration. This argument of learned counsel for applicant is also untenable. The appointments, which applicant alleges to be in wilful dis-obedience of order, have been made by Shri Kulanand Joshi, Assistant Secretary (Per). If there could be any wilful disobedience of order then it could be by Shri Kulanand Joshi. His argument that as all the official acts are done by Officers on behalf of Administrator and if any officer sub-ordinate to him has committed wrong then he is

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responsible. We cannot accept ~~to~~<sup>such</sup> position for the purpose of wilful disobedience of order. The proceedings for action under section 11 read with section 12 of Contempts of Court ~~are~~<sup>Act</sup> are of penal in nature where the person who wilfully disobeys the order has to reply to notice and he alone is liable to be punished. The head of administration, who has several departments under him, cannot be proceeded as vicariously liable. It is humanly impossible for Administrator of an Union Territory to administer each and every thing himself personally. As he cannot deal with each matter of state himself, he delegates his authority to officer and officer ~~who~~<sup>who</sup> acts on his behalf. It is that particular officer <sup>who</sup> will be responsible for his action and we cannot hold administrator guilty for any wrong done by an officer working under him and exercising authority in his name. Thus, <sup>as</sup> stated, the order in question being passed by Kulanand Joshi, the argument of learned counsel for applicant for issueing notice to Shri O.P.Kelkar, Administrator fails.

5. We would also like to observe here that so far <sup>as</sup> 10 Surveyors released by Gujarat State to join in the Union Territory Dadra and Nagar Haveli vide Office order dated 8/6/2000 are concerned, the C.P. appears barred by limitation. To meet bar of limitation, the learned counsel for applicants argued that the time for drawing proceedings for wilful disobedience of order run from the date of appointment. However, applicant has not disclosed any date of appointment and therefore, when the 10 Surveyors were released by Gujarat Government on 8/6/2000 then we reasonably believe that they must have joined duties soon thereafter. It was for applicants to have pleaded necessary

A. B. Joshi

facts so that CP could be considered within limitation. So far respondent no.3 Smt.P.Srivastava and Respondent No.4 Shri P.K.Jalali are concerned, there appears no averments in CP as well as affidavit filed on the basis of which notice could be issued to Respondent No.3. or Respondent No.4.CP fails against them for that reason.

6. The learned counsel for applicant during course of arguments made a prayer that he be permitted to amend the CP. The amendment that he wants to make is in respect of impleading Shri Kulanand Joshi, Assistant Secretary (Per.) (as opposite party) and the two persons Mansukhbhai Prabhubhai Patel and Shri Jayendrasing Bhikubhai Solanki. He has not impleaded Kulanand Joshi as well as the said two persons as parties nor is there any averment against them in the CP. ~~and~~ We cannot allow the CP to be amended <sup>as</sup> will as question of limitation will arise, which will require virtually re-writing CP. Applicant can seek remedy by moving a separate CP in accordance with law against Shri Kulanand Joshi and said two persons, if so advised, where said aspect may also arise beside there being any wilful disobedience of the order. Thus, we do not permit amendment of CP.

7. As notice was issued to Respondent Shri Jacob Yohanan who had to defend himself, we consider that applicant without taking due care impleaded him as party when there was nothing done by him which could give slightest cause for impleading him as respondent no.1 in CP. Jacob has been made to run to this Tribunal from Silvasa for which applicant has to compensate him by paying cost. In said circumstances, we fix the cost of *p. visit*