

(2023) 10 GUJ CK 0104

In the Gujarat High Court

Case No : R/Special Civil Application No. 12939 Of 2023

Ambubhai Bhanabhai Dhodi

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 26-10-2023

Acts Referred:

Citation : (2023) 10 GUJ CK 0104

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Dharmesh Devnani, Murali N Devnani, Nirali Sarda

Final Decision : Disposed Of

Judgement

Nikhil S. Kariel, J

1. Heard learned advocate Mr. Dharmesh Devnani on behalf of the petitioners and learned Assistant Government Pleader Ms. Nirali Sharda on behalf of the respondent State. Though served, none appears on behalf of the respondents No. 2, 3 and 4.

2. By way of the present petition, the petitioners have prayed for the following prayers:-

“(A) Your Lordships may be pleased to admit the petition.

(B) Your Lordships may be pleased to allow the petition by issuing a writ of mandamus or any other appropriate writ, direction and/or order in the nature of mandamus directing the respondents to release the benefits of 300 days unavailed leave encashment in favour of the petitioners with 12% interest per annum.

(C) Your Lordships may be pleased to direct the respondents to revise the gratuity of the petitioners by taking into consideration their entire period of service from their date of appointment till their date of retirement in the interest

of justice.

(D) Your Lordships may be pleased to award any such other and further relief as may be deemed just and expedient in the interest of justice.”

3. Learned advocates for the respective parties would submit that the issue raised in the present petition stands covered by the decision of a learned Coordinate Bench of this Court (Coram:- Mrs. Mauna M. Bhatt, J.) dated 24.07.2023 passed in Special Civil Application No. 12544 of 2023.

4. Considering such a submission, more particularly, having appreciated the fact situation of the present case and the fact situation of the case for consideration before the learned Coordinate Bench was the same, the relevant observations of the learned Coordinate Bench, starting from paragraph no. 4.1 to 9 are reproduced herein below for benefit:-

“4.1 He further pointed out that the issue involved in the present petition which is in relation to payment of leave encashment for 300 days leave as also counting the retirement benefits available to the petitioners from the date of their appointment, is no more res integra in view of decision of Hon’ble Supreme Court dated 01.09.2022, in Special Leave Petition (C) No. 7229 of 2022. Learned advocate for the petitioner submitted that present petitioners were working with the respondent No. 3 department with more than 3 decades and they all had retired upon attaining the age of superannuation and therefore considering their continuous service they are entitled for the benefits of leave encashment as well as pension and gratuity.

4.2 He pointed out that in the Government Resolution dated 24.01.2023, of Road and Building Department, Sachivalaya, Gandhingar the State Government has resolved as under:

“At the end of active deliberations, subject to the following conditions, it is hereby prescribed to pay gratuity to the daily wagers working in offices under various departments of the State within the maximum limit of 33 (thirty-three) years as per the Resolution dated 21.10.2020 of this Department:

(1) The concerned Department will have to check the eligibility of the daily wagers as per the Payment of Gratuity Act, 1972, of the Government of India.

(2) The order of this Department will also apply to the cases of retired/deceased daily wagers/work-charge employees after issuance of the resolution dated 24.03.2006 of this Department.

(3) The concerned Department will have to pay gratuity to the daily wagers/work-charge employees, for the services rendered before becoming permanent, upon verifying their eligibility as per the resolution dated 21.10.2020 of this Department. Whereas, the payment of gratuity for the pensionable services after becoming permanent will be made by the Director, Pension & Provident Fund Office. The Department will ensure that the gratuity is paid within the maximum

limit of 33 years by counting both the services together and in any case no double payment is made.

(4) The payments made to the daily wagers/work-charge employees under the Resolution dated 21.10.2020 of this Department before issuance of this order will not be reopened.”

5. In relation to leave encashment vide circular dated 07.10.2022 the Government has also taken a policy decision which reads as under: -

“According to the decision of the Supreme Court, since the retiral benefits given to the daily wagers under the resolution dated 17.10.1988 also includes the benefit of leave encashment, therefore the daily wagers are entitled to the benefit of leave encashment as per Clause (5) of the State Litigation Policy of the Government. The instructions in this regard are circulated after consultation and as per the approval received through the informal note dated 3.10.2022 of the Finance Department. With regard to the various claims filed before the Hon’ble Court, after verifying the service record of the petitioners – daily wagers and after calculating as per rules and the policy of the Government applicable to the regular services, the benefit of encashment of earned leaves (within the maximum limit of 300 earned leaves) shall be paid in the following terms :

(1) The petitioners - daily wagers who have retired and completed 70 years as on 1.10.2022 shall be paid latest by 31.10.2022.

(2) Rest of the petitioners – daily wagers shall be paid within a period of three months, i.e. on or before 31.12.2022.”

5.1. It is also not in dispute that for counting entire length of service for payment of gratuity and other retiral benefits the decision of this Court in the case of Executive Engineer, Panchayat (Maa & M) Department vs. Samudabhai Jyotibhai Bhedi, reported in 2017(4) GLR 2952 would be applicable.

6. The above factual position could not be controverted by learned Assistant Government Pleader for the respondent – State.

7. In view of the above said position, this Court deems it appropriate to direct the respondents to undertake scrutiny of individual cases of each of the petitioners herein, and upon such scrutiny, if they are found eligible then a proposal shall be forwarded to the State Authorities in this regard and thereafter, the State Authority shall consider proposal of each of the petitioners herein expeditiously and in consonance with the State policy.

8. It is reported that in many of such matters, the concerned department has already moved a proposal to the State Government in this regard. However, wherever such proposal is not moved, the same shall be moved by the concerned department within a period of eight weeks from the date of receipt of copy of writ of this order.

9. The aforesaid exercise shall be completed within a period of twelve weeks

from today.”

5. Considering the above, it would appear that in case of similarly situated persons, learned Coordinate Bench had directed the respondents to take appropriate action, more particularly upon the concerned respondents moving a proposal and whereas having regard to the same, the following directions are passed :

(i) The respondents No. 2 and 3 to move a proposal to the State Government within a period of eight weeks from the date of copy of receipt of writ of the order, if not moved already.

(ii) Upon receipt of the proposal, the State Government shall decide the same within a period of six weeks thereafter and whereas the benefits accruing in favour of the petitioners shall be paid within a period of four weeks thereafter.

(iii) It is clarified that in case the above directions are not complied with, the petitioners shall be entitled to seek interest at the rate of 6% from the date of filing of the petition

6. With the above observations and directions, the present petition stands disposed of as allowed. Direct service is permitted.